This is Exhibit "V" referred to in the

Affidavit of Waleed Malik, solemnly affirmed before me,

this 8th day of August, 2019

.....

A Commissioner for Taking Affidavits

David Rosenblat

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	)	Chapter 11
JACK COOPER VENTURES, INC., *et al.*[1]	)	Case No. 19-62393 (PWB)
Debtors.	)	(Joint Administration Requested)

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

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion:

[1] 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.

Relief Requested[2]

1. By this motion, the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the "Interim Order" and "Final Order," respectively):

a. authorizing, but not directing, continued use of the Cash Management System as well as honoring any prepetition obligations related to the use thereof;

b. authorizing, but not directing, continued use of the: (i) Bank Accounts (as well as authorizing the Debtors to open and close new bank accounts as appropriate) and (ii) Business Forms;

c. authorizing and directing the Banks to continue to maintain, service, and administer the Bank Accounts and to debit the Bank Accounts in the ordinary course of business;

d. authorizing, but not directing, continued intercompany funding through the Cash Management System, approving the Intercompany Transactions, and granting administrative expense status to all postpetition Intercompany Claims among the Debtors; and

e. granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Northern District of Georgia has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

[2] A description of the Debtors' businesses, the reasons for commencing these chapter 11 cases, the relief sought from the Court to allow for a smooth transition into chapter 11, and the facts and circumstances supporting this motion are set forth in the *Declaration of Greg May, the Debtors' Chief Financial Officer, in Support of First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith. Capitalized terms used in this Relief Requested section of the Motion but not otherwise defined therein shall have the meanings ascribed to such terms later in the Motion, and any other capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the First Day Declaration.

4. The statutory bases for the relief requested herein are sections 105, 345, 363, 364, 503, and 553 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and *General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 4, 2019 (the "Complex Case Procedures").

The Cash Management System

I. Overview

5. To facilitate the efficient operation of their businesses, the Debtors use an integrated, streamlined cash management system (the "Cash Management System")[3] to collect, transfer, and disburse funds generated by their operations. The Cash Management System facilitates cash monitoring, forecasting, and reporting and enables the Debtors to maintain control over the administration of thirty-three (33) bank accounts[4] (the "Bank Accounts") that are maintained with banks (collectively, the "Banks"). The Debtors' Bank Accounts are listed on **Schedule 1** annexed to each of **Exhibit A** and **Exhibit B** attached hereto. The Cash Management System is similar to those commonly employed by businesses comparable to those of the Debtors and uses integrated systems to help control funds, ensure cash availability for each entity, and reduce administrative expenses by facilitating the movement of funds among multiple entities. Any disruption of the Cash Management System would be extremely detrimental to the Debtors' operations, as their businesses require prompt access to cash and accurate cash tracking.

[3] As illustrated on **Exhibit C** annexed hereto (the "Schematic").

[4] There are approximately 19 other bank accounts maintained in the name of, and for the benefit of, non-debtor, foreign affiliates. These accounts are operated on a standalone basis by the applicable non-debtor affiliate and are not part of the Debtors' Cash Management System. Therefore, they are not included herein.

6. The Debtors' finance personnel maintain daily oversight over the Cash Management System and implement cash management controls for entering, processing, and releasing funds. Additionally, the Debtors' accounting department regularly reconciles the Debtors' books and records (the "Books and Records") to ensure that all transfers have appropriate authorizations and are accounted for properly. Notably, with the assistance of their advisors, the Debtors have implemented internal procedures to control and prohibit payments on account of prepetition debts without the prior approval of the Debtors' senior management and finance personnel and in accordance with any applicable orders of this Court.

II. The Cash Management System

7. The Debtors' thirty-three (33) Bank Accounts are held in the name of the following Debtors: (i) five (5) Bank Accounts at Jack Cooper Transport Company, Inc. ("JCT"); (ii) five (5) Bank Accounts at North American Auto Transportation Corp. ("NAAT"); (iii) five (5) Bank Accounts at Jack Cooper Transport Canada Inc. ("JCAN"); (iv) three (3) Bank Accounts at Jack Cooper Logistics, LLC ("JCL"); (v) three (3) Bank Accounts at Jack Cooper CT Services, Inc. ("JCCTS"); (vi) three (3) Bank Accounts at CTEMS, LLC ("CTEMS"); (vii) three (3) Bank Accounts at Axis Logistic Services, Inc. ("AXISLS"); (viii) two (2) Bank Accounts at Jack Cooper Rail and Shuttle, Inc. ("JCRS"); (ix) two (2) Bank Accounts at Jack Cooper Enterprises, Inc. ("JCEI"); (x) one (1) Bank Account at Auto Handling Corporation ("AHC"); and (xi) one (1) Bank Account at Auto & Boat Relocation Services, LLC ("ABRS"). Thirty (30) of the Bank Accounts are located in the United States with twenty-six (26) of the Bank Accounts held at Wells Fargo Bank, N.A. ("Wells Fargo"), three (3) at Bank of America,

N.A. ("BoA"), and one (1) at TD Bank, N.A. ("TD Bank"). The remaining three (3) Bank Accounts are located in Canada and are held at Scotiabank.

8. The following table describes the Bank Accounts in further detail:

Accounts	Descriptions of Accounts
Operating Accounts Wells Fargo ****7106 ****7886 ****2072 ****6612 ****6048 ****6155 ****5764	These accounts serve as the main operating accounts (the "Operating Accounts") for the Debtors and are used to make wire payments for the Debtors' operating, capital, and general administrative expenses, including payroll expenses, and also fund the Disbursement Accounts (as defined below) on an as-needed basis. Historically, these Operating Accounts received operating revenue from the applicable Depository Accounts (as defined below). As described further herein, however, as of July 25, 2019, the Operating Accounts are no longer funded by the Depository Accounts. Instead, (a) the Depository Accounts are swept on a daily basis to pay outstanding amounts under the Debtors' Revolving Credit Facility, and (b) Operating Account ending 7106 receives advances from the Revolving Lender upon request and disburses such funds, as necessary, to the applicable Operating Accounts. As of August 5, 2019, the Operating Accounts held in the aggregate approximately $924,212. The Operating Account ending 7106 is the main operating account for JCT and is primarily funded by Depository Account ending 5975. Additionally, this account receives funds from the account ending 2474 on a monthly basis, which is a Wells Fargo account in the name of JCAN. This JCT Operating Account is also tied to Disbursement Accounts ending 7205, 6849 and 6868. As of August 5, 2019, this account had a balance of approximately $704,626. The Operating Account ending 7886 is the main operating account for NAAT and is funded by Depository Account ending 7894. This Operating Account is tied to Disbursement Account ending 9847. As of August 5, 2019, this account had a balance of approximately $62,913. The Operating Account ending 2072 is the main operating account for JCL and is funded by Depository Accounts ending 6055, 6030, 5772 and 2064. This Operating Account is tied to Disbursement Account ending 0488. As of August 5, 2019, this account had a balance of approximately $135,992. The Operating Account ending 6612 is an operating account for JCEI, which was utilized prior to the Company's internal restructuring of its Cash Management System. As of the Petition Date, receipts and disbursements no longer occur at JCEI. As of August 5, 2019, this account had a balance of approximately $2,904. The Operating Account ending 6048 is an operating account for JCCTS that makes periodic payments to the Department of Revenue of Michigan for services rendered in connection with JCCTS' title business. All other disbursements in connection with JCCTS' operations flow through the account ending 2072. As of August 5, 2019, this account had a balance of approximately $6,044.

	The Operating Account ending 6155 is an operating account for AXISLS. In order to further streamline the Cash Management System, all disbursements in connection with AXISLS's operations are currently paid through the account ending 2072. As of August 5, 2019, this account had a balance of approximately $9,355. The Operating Account ending 5764 is an operating account for JCRS. In order to further streamline the Cash Management System, all disbursements in connection with JCRS's operations are currently paid through the account ending 2072. As of August 5, 2019, this account had a balance of approximately $2,378.
Lockbox Accounts Wells Fargo ****4710 ****4714 ****7100 ****7832 Scotiabank ***349C	There are four (4) lockbox accounts maintained at Wells Fargo (the "**Lockbox Accounts**") and one (1) lockbox account maintained at Scotiabank that periodically receive customer receipts. The Lockbox Account ending 4710 wires funds directly into Depository Account ending 2064 on a nightly basis. The Lockbox Account ending 4714 wires funds directly into Depository Account ending 6030 on a nightly basis. The Lockbox Account ending 7100 wires funds directly into Depository Account ending 5975 on a nightly basis. The Lockbox Account ending 7832 wires funds directly into Depository Account ending 7894 on a nightly basis. The Lockbox Account ending 349C wires funds directly into the central account ending 9714 on a nightly basis.
Depository Accounts Wells Fargo ********5975 ****7894 ****2064 ****6055 ****6030 ****5772	The Debtors maintain six (6) zero-balance depository accounts (the "Depository Accounts"), which are funded by automated clearing house ("ACH") payments, wires, accounts receivable, customer receipts, funds from the Lockbox Account (if any) tied to such Depository Account, and other miscellaneous sources. Historically, the Depository Accounts were swept on a daily basis to the applicable Operating Account. As described further herein, however, as of July 25, 2019, the Depository Accounts are swept on a daily basis to pay outstanding amounts under the Debtors' Revolving Credit Facility. On the Petition Date, the Depository Accounts held no balance.
Disbursement Accounts Wells Fargo ****7205 ****6849 ****6868 ****9847 ****0488	These accounts are disbursement accounts (the "Disbursement Accounts") funded, as necessary, by the applicable Operating Account immediately before issuing checks for payments to the Debtors' vendors and on account of certain medical benefits. The Debtors receive daily notice of checks that will clear from a Disbursement Account in a given day, which amount is then funded into the applicable Disbursement Account. As of the Petition Date, the Disbursement Accounts held no balance.
Owner Operator Reserves Account Wells Fargo ****6523	NAAT maintains an interest-bearing account that holds deposits on reserve from contracted non-employee operators to protect against inventory loss. As of August 5, 2019, this account had a balance of approximately $104,000.

Escrow Account Wells Fargo ****6620	JCEI maintains an escrow account (the "Escrow Account") in connection with warrants that have been exercised prior to the Petition Date. The Escrow Account currently holds approximately $315, which reflects a rounding calculation in connection with the payment of dividends.
ABRS Bank Account TD Bank ******6652	ABRS maintains a central bank account at TD Bank that serves as the ultimate receipt and disbursement point for all funds in connection for its operations. As of August 5, 2019, this account had a balance of approximately $958,968.
CTEMS Bank Accounts BoA ********4874 ********2212 ********2596	CTEMS maintains three (3) accounts at BoA. Accounts ending 4874 and 2212 are depository accounts for customer receipts and other deposits. Account ending 2596 makes all disbursements related to CTEMS operations. A transfer occurs from the account ending 2212 to the account ending 2596 to fund all expenditures from account ending 2596. On the Petition Date, the account ending 4874 had a balance of approximately $51,239, the account ending 2212 had a balance of approximately $281,165 and the account ending 2596 held no balance.
Canadian Bank Accounts Wells Fargo ****2474 ****0326 Scotiabank ********9714 ********9911	In addition to the Lockbox Account ending 349C described above, JCAN maintains two (2) Bank Accounts with Wells Fargo and two (2) Bank Accounts with Scotiabank for the Debtors' Canadian operations, as described below. The account ending 2474 is a depository account from which funds are transferred to JCT's Operating Account ending 7106 on a monthly basis. As of August 5, 2019, this account had a balance of approximately $33,747. The account ending 0326 is a U.S. dollar checking account, utilized to make disbursements on an as needed basis. As of August 5, 2019, this account had a balance of approximately $967. The account ending 9714 is the central account for JCAN as it serves as the primary receipt and disbursement point for the funds in connection with the Canadian operations, including funds received from account ending 349C. As of August 5, 2019, this account had a balance of approximately $1,006,444. The account ending 9911 is a legacy account that receives checks from time to time. As of August 5, 2019, this account had a balance of approximately $4,333.

9. As illustrated above and on the Schematic, receipts and revenues generated from the Debtors' business activities flow into the Cash Management System to the Debtors' various Operating, Depository, and Lockbox Accounts. The funds from the Depository Accounts are automatically swept to the applicable Operating Account on a daily basis and periodically disbursed from the Operating Accounts to make a variety of payments, including payroll

obligations. Further, each Disbursement Account is tied to an Operating Account that transfers, on an as-needed basis, cash sufficient to satisfy the Debtors' operational payment obligations, which primarily include vendor payments.

10. Several weeks prior to the Petition Date, Wells Fargo Capital Finance, LLC, the administrative agent under the Debtors' Revolving Credit Facility (the "Revolver Agent"), notified the Debtors that they were in breach of the cash dominion liquidity threshold of $8.5 million under the Revolving Credit Facility. As of July 25, 2019, the Revolver Agent has implemented certain cash dominion procedures, which modify in part the Debtors' Cash Management system set forth above:

(a) all of the receipts that are collected in Depository Accounts ending 5975, 7894, 2064, 5772, 6030 and 6055 are swept on a daily basis to pay down outstanding obligations under the Revolving Credit Facility;

(b) the Debtors must make borrowing requests under the Revolving Credit Facility for a particular business day by 2:00 p.m. (prevailing Eastern Time);

(c) all advances under the Revolver Credit Facility are deposited into Operating Account ending 7106 only;

(d) drawdown wire requests from approved vendors remain in pending status until 5:30 p.m. (prevailing Eastern Time) on the applicable business day; and

(e) ACHs are funded immediately.

III. Compliance of the Bank Accounts with Section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines

11. Each Bank Account is maintained at a bank that is insured by the Federal Deposit Insurance Corporation (the "FDIC") or, with respect to the Bank Accounts at Scotiabank, the Canadian Deposit Insurance Corporation ("CDIC"). As such, the U.S. Bank Accounts comply with section 345(b) of the Bankruptcy Code. Further, the *Operating Guidelines and Reporting Requirements for Debtors in Possession and Chapter 11 Trustees* (the "U.S. Trustee

Guidelines") generally require chapter 11 debtors to, among other things, deposit all estate funds into an account with an authorized depository that agrees to comply with the requirements of the Office of the United States Trustee (the "U.S. Trustee").

12. Here, all but four (4) of the Bank Accounts are held by Wells Fargo and BoA, which are designated as authorized depositories in the Northern District of Georgia. Three (3) of the remaining Bank Accounts are at Scotiabank and one (1) is at TD Bank, both of which are not designated as authorized depositories in the Northern District of Georgia. The Debtors respectfully request that the Court authorize Scotiabank and TD Bank to continue to maintain, service and administer the applicable Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course of business, notwithstanding that they are not authorized depository institutions. Scotiabank and TD Bank are well-capitalized and financially stable financial institutions and the amounts maintained in each of these Bank Accounts are insured by the FDIC or the CDIC, as applicable. As of the Petition Date, the amounts in Bank Accounts maintained at TD Bank and Scotiabank, respectively, exceed the FDIC and CDIC insurance limits, as applicable. For the reasons set forth herein, the Debtors respectfully request that the Court waive strict compliance with section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines.

13. Requiring the Debtors to close certain of the Bank Accounts at Scotiabank and/or TD Bank and reopen them at a designated authorized depository would place an unnecessary administrative burden on the Debtors given that there is no meaningful risk to the cash held therein. Therefore, the Debtors respectfully submit that cause exists to continue to allow the Debtors to utilize the existing Bank Accounts.

IV. Intercompany Transactions

14. The Debtors maintain business relationships with each other (the "Intercompany Transactions") resulting in intercompany receivables and payables in the ordinary course of business (the "Intercompany Claims"). Intercompany Transactions are generally made to reimburse certain Debtors for various expenditures associated with their business or fund certain Debtors' accounts in anticipation of such expenditures, as needed. Thus, in connection with the daily operation of the Cash Management System, as funds are swept and disbursed throughout the Cash Management System and as business is transacted between the Debtors, at any given time there may be Intercompany Claims owing by one Debtor to another Debtor. The Intercompany Claims are reflected as journal entry receivables and payables, as applicable, in the respective Debtors' accounting systems.

15. The Debtors track all fund transfers through their accounting system and can ascertain, trace, and account for all Intercompany Transactions. If the Intercompany Transactions were to be discontinued, the Cash Management System and the Debtors' operations would be disrupted unnecessarily to the detriment of the Debtors, their creditors, and other stakeholders.

V. Bank Fees

16. In the ordinary course of business, Wells Fargo Bank, Scotiabank, TD Bank and BoA charge, and the Debtors pay, honor, or allow the deduction from the appropriate account, certain service charges and other fees, costs, and expenses (collectively, the "Bank Fees"). Historically, the Debtors estimate that they pay approximately $25,000 in Bank Fees each month, depending on transaction volume. The Debtors estimate that there was approximately $12,500 in

prepetition Bank Fees outstanding on the Petition Date (the "Prepetition Bank Fees"). To maintain the integrity of their Cash Management System, the Debtors request authority to pay the Prepetition Bank Fees, in addition to any other prepetition Bank Fees for prepetition transactions that are charged postpetition, and to continue to pay the Bank Fees in the ordinary course of business postpetition.

VI. Business Forms

17. As part of their Cash Management System, the Debtors utilize numerous preprinted correspondence and business forms, including, without limitation, letterhead, purchase orders, invoices, and preprinted checks (collectively, the "Business Forms") in the ordinary course of their businesses. To minimize expenses to their estates and avoid confusion on the part of employees, customers, vendors, and suppliers during the pendency of these chapter 11 cases, the Debtors request that the Court authorize their continued use of all existing Business Forms as such forms were in existence immediately before the Petition Date—without reference to the Debtors' status as chapter 11 debtors in possession—rather than requiring the Debtors to incur the expense and delay of ordering new Business Forms and creating new Books and Records; *provided* that, consistent with the Complex Case Procedures, once the existing Business Forms have been used, the Debtors shall, during the pendency of these chapter 11 cases, reorder new Business Forms that include a stamp to reference the Debtors' status as debtors in possession and the corresponding bankruptcy case number. *See* Complex Case Procedures (K)(1).

Basis for Relief

I. The Court Should Approve the Debtors' Continued Use of the Cash Management System

A. The Continued Use of the Debtors' Cash Management System Is Essential to the Debtors' Operations and Restructuring Efforts

18. The Cash Management System constitutes an ordinary course and essential business practice of the Debtors. The Cash Management System provides significant benefits to the Debtors including, among other things, the ability to control corporate funds, ensure the availability of funds when necessary, and reduce costs and administrative expenses by facilitating the movement of funds and developing timely and accurate account balance information. Thus, to ensure the seamless operation of the Debtors' businesses and realize the benefits of the Cash Management System, the Debtors should be allowed to continue using the Cash Management System and should not be required to open new bank accounts.

19. The U.S. Trustee Guidelines, unless otherwise ordered by the Court, require a debtor to, among other things, establish one debtor in possession account for all estate monies required for the payment of taxes (including payroll taxes), close all existing bank accounts and open new debtor in possession accounts, maintain a separate debtor in possession account for cash collateral, obtain checks that bear the designation "debtor in possession," and reference the bankruptcy case number and the type of account on such checks. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition claims and payments and help protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the Petition Date. Strict enforcement of those

guidelines in these chapter 11 cases, however, would severely disrupt the ordinary financial operations of the Debtors by reducing efficiencies and causing unnecessary expenses.

20. The Debtors may continue using the Cash Management System under section 363(c)(1) of the Bankruptcy Code, which authorizes debtors in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). Section 363(c)(1) of the Bankruptcy Code also allows a debtor in possession to engage in the ordinary course transactions required to operate its business without unneeded oversight by its creditors or the court. *See, e.g., In re Delco Oil, Inc.*, 599 F.3d 1255, 1263 (11th Cir. 2010); *Med. Malpractice Ins. Ass'n* v. *Hirsch (In re Lavigne)*, 114 F.3d 379, 384 (2d Cir. 1997); *In matter of Shree Meldikrupa Inc.*, No. 15-41411 (EJC), 2016 WL 235205, at *4 (Bankr. S.D. Ga. Jan. 15, 2016); *In re Enron Corp.*, No. 01-16034 (AJG), 2003 WL 1562202, at *15 (Bankr. S.D.N.Y. Mar. 21, 2003); *Chaney* v. *Official Comm. of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.)*, 207 B.R. 406, 409 (S.D.N.Y. 1997). Included within the purview of section 363(c) of the Bankruptcy Code is a debtor's ability to continue the "routine transactions" necessitated by a debtor's cash management system. *See Amdura Nat'l Distrib. Co.* v. *Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996).

21. Bankruptcy courts treat requests for authority to continue utilizing existing cash management systems as a relatively "simple matter," *see In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987), and have recognized that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in*

part and rev'd in part, 997 F.2d 1039 (3d Cir. 1993). As a result, courts have concluded that the requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient." *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor "to administer more efficiently and effectively its financial operations and assets").

22. In other large, complex, and/or well-publicized chapter 11 cases, such as these, courts in this district and others routinely waive certain U.S. Trustee Guideline requirements and allow the continued use of cash management systems and prepetition bank accounts employed in the ordinary course of a debtor's prepetition business. *See, e.g.*, *In re Beaulieu Group, LLC*, Case No. 17-41677 (MGD) (Bankr. N.D. Ga. July 18, 2017) [Docket No. 34]; *In re Astroturf, LLC*, Case No. 16-41504 (MGD) (Bankr. N.D. Ga. June 30, 2016) [Docket No. 34]; *In re S. Reg'l Health Sys., Inc.*, Case No. 15-64266 (WLH) (Bankr. N.D. Ga. Aug. 11, 2015) [Docket No. 67]; *In re Cagle's, Inc.*, Case No. 11-80202 (JB) (Bankr. N.D. Ga. Oct. 20, 2011) [Docket No. 31]; *In re AtheroGenics, Inc.*, Case No. 08-78200 (JEM) (Bankr. N.D. Ga. Oct. 16, 2008) [Docket No. 54]; *In re Centennial HealthCare Corp.*, Case No. 02-74974 (JEM) (Bankr. N.D. Ga. Dec. 24, 2002) [Docket No. 43]; *In re The New Power Co.*, *Case* No. 02-10835 (WHD) (Bankr. N.D. Ga. June 17, 2002) [Docket No. 54].[5]

B. Opening New Accounts Will Disrupt the Debtors' Businesses

23. The prospects for a successful reorganization of the Debtors' businesses, as well as the preservation and enhancement of the Debtors' value as a going concern, will be materially and negatively impacted if the Cash Management System is disrupted and any Bank Accounts

[5] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

are closed. Indeed, if the Debtors were required to open new accounts as debtors in possession and modify the Cash Management System, the Debtors would be forced to reconstruct the Cash Management System at this critical juncture when the Debtors should be otherwise focused on their restructuring. Thus, the Debtors' finance, accounting, and bookkeeping employees would need to focus their efforts on immediately opening new bank accounts and working to ensure proper controls are in place for cash to properly flow through all operations and confirm that customers are aware of new accounts related to the Debtors' receipts, thereby diverting them from their daily responsibilities during this critical juncture in these chapter 11 cases. Opening new bank accounts would increase operating costs, and the delays that would result from opening new accounts, revising cash management procedures, and instructing customers to redirect payments would negatively impact the Debtors' ability to operate their businesses while pursuing these arrangements.

24. In addition, the Debtors would be subject to significant administrative burdens and expenses because they would need to execute new signatory cards and depository agreements and create an entirely new manual system for issuing checks and paying postpetition obligations, all as generally would be required by the U.S. Trustee Guidelines. *See* U.S. Trustee Guidelines, at pp. 2–3.

C. Maintaining the Existing Cash Management System Will Facilitate a Smooth Transition into Chapter 11 and Will Not Harm Parties in Interest

25. The Debtors' continued use of the Cash Management System will facilitate their transition into chapter 11 by, among other things, avoiding administrative inefficiencies and expenses and minimizing delays in the payment of postpetition debts. The Debtors respectfully submit that parties in interest will not be harmed by the Debtors' maintenance of the Cash

Management System, including the Bank Accounts. Specifically, with the assistance of their professionals, the Debtors have implemented internal protocols that prohibit payments on account of prepetition debts, including prepetition accounts payable payments, without prior approval, which will not be granted unless such payment is authorized by an order of this Court. In light of such protective measures, the Debtors submit that maintaining the Cash Management System is in the best interests of their estates and creditors.

26. In addition, the Cash Management System provides the Debtors with the ability to, among other things, quickly create status reports on the location and amount of funds, which, in turn, allows management to track and control such funds, ensure cash availability, and reduce administrative costs through a centralized method of coordinating the collection and movement of funds.

II. The Debtors Should Be Granted Authority to Use Existing Business Forms

27. The Debtors submit that the continued use of existing Business Forms will not prejudice parties in interest and such relief will avoid unnecessary expenses and administrative delays at this critical time. Furthermore, the Debtors' requested relief will not prejudice parties in interest because parties doing business with the Debtors undoubtedly will know of the Debtors' status as a debtor in possession. Thus, changing of existing Business Forms is unnecessary and unduly burdensome. Nevertheless, consistent with the Complex Case Procedures, once the existing Business Forms have been used, the Debtors shall, during the pendency of these chapter 11 cases, reorder new Business Forms that include a stamp to reference the Debtors' status as debtors in possession and the corresponding bankruptcy case number. *See* Complex Case Procedures (K)(1).

28. Courts in this district and others regularly grant similar relief in similar large, complex, or well-publicized cases. *See, e.g.*, *In re Beaulieu Group, LLC*, Case No. 17-41677 (PWB) (Bankr. N.D. Ga. July 18, 2017) [Docket No. 34]; *In re Astroturf, LLC*, Case No. 16-41504 (MGD) (Bankr. N.D. Ga. June 30, 2016) [Docket No. 34]; *In re S. Reg'l Health Sys., Inc.*, Case No. 15-64266 (WLH) (Bankr. N.D. Ga. Aug. 11, 2015) [Docket No. 67]; *In re Miller Auto Parts & Supply Co.*, Case No. 14-68113 (MGD) (Bankr. N.D. Ga. Sept. 18, 2014) [Docket No. 27]; *In re Cagle's, Inc.*, Case No. 11-80202 (JB) (Bankr. N.D. Ga. Oct. 20, 2011) [Docket No. 31]; *In re Galey & Lord, Inc.*, Case No. 04-43098 (MGD) (Bankr. N.D. Ga. Aug. 19, 2004) [Docket No. 21]; *In re Dan River Inc.*, Case No. 04-10990 (WHD) (Bankr. N.D. Ga. Apr. 1, 2004) [Docket No. 58].

III. The Debtors Should Be Authorized to Continue Using Debit, Wire, and ACH Payments

29. Considering the complexity of the Debtors' operations, the Debtors request authority to conduct transactions by debit, wire, or ACH payments and other similar methods. If the Debtors are denied the opportunity to conduct transactions by debit, wire, or other methods used in the ordinary course of business, the Debtors likely would have difficulty performing on their contracts and the Debtors' business operations would be disrupted unnecessarily, burdening the Debtors and their creditors with additional costs.

IV. The Debtors Should Be Authorized to Continue Engaging In the Intercompany Transactions

30. At any given time, there may be balances due and owing between and among Debtors. These balances, which represent extensions of intercompany credit to Debtors and which are made in the ordinary course of business and in compliance with past practices, are an

essential component of the Cash Management System. If the Intercompany Transactions that permit use of the Cash Management System were to be discontinued, that system and related administrative controls would be disrupted to the Debtors' detriment. On the other hand, preserving the "business as usual" atmosphere and avoiding the unnecessary distractions that inevitably would be associated with any substantial disruption in the Cash Management System will facilitate the Debtors' reorganization efforts. Thus, the Debtors respectfully request the authority, in their sole discretion, to continue engaging in the Intercompany Transactions, as described herein, in the ordinary course of business and in compliance with past practices without need for further Court order.

31. Courts have routinely provided authority in other complex multi-debtor chapter 11 cases to continue ordinary course intercompany transactions.[6] *See, e.g.*, *In re Argos Therapeutics, Inc.*, Case No. 18-12714 (KJC) (Bankr. D. Del. Jan. 23, 2019) [Docket No. 127]; *In re Parker Drilling Co.*, Case No. 18-36958 (MI) (Bankr. S.D. Tex. Jan. 3, 2019) [Docket No. 175]; *In re Westmoreland Coal Co.*, Case No. 18-35672 (MI) (Bankr. S.D. Tex. Nov. 15, 2018) [Docket No. 518]; *In re Aegean Marine Petroleum Network Inc.*, Case No. 18-13374 (MEW) (Bankr. S.D.N.Y. Nov. 9, 2018) [Docket No. 53]; *In re Bertucci's Holdings, Inc.*, Case No. 18-10894 (MFW) (Bankr. D. Del. May 3, 2018) [Docket No. 151]; *In re Armstrong Energy, Inc.*, Case No. 17-47541-659 (Bankr. E.D. Mo. Dec. 1, 2017) [Docket No. 199]; *In re Noranda Aluminum, Inc.*, Case No. 16-10083-399 (BSS) (Bankr. E D. Mo. Apr. 13, 2016) [Docket No.

[6] Because the Debtors engage in Intercompany Transactions on a regular basis and such transactions are common among enterprises like that of the Debtors, the Debtors believe the Intercompany Transactions are ordinary course transactions within the meaning of section 363(c)(1) of the Bankruptcy Code, and thus do not require the Court's approval, but nonetheless seek such relief out of an abundance of caution.

643]; *In re Patriot Coal Co.*, Case No. 15-32450 (KLP) (Bankr. E.D. Va. May 13, 2015) [Docket No. 53].[7]

32. For the reasons discussed herein, the Debtors submit that this Court should authorize them to continue to engage in the Intercompany Transactions.

V. Granting Administrative Priority Status to Postpetition Intercompany Claims Is Necessary to Protect the Debtors' Claims

33. The Debtors' funds are commingled in the Cash Management System with that of other Debtors. To ensure that each individual Debtor will not fund, at the expense of its creditors, the operations of another entity, the Debtors respectfully request that all Intercompany Claims against a Debtor by another Debtor arising after the Petition Date, as a result of ordinary course Intercompany Transactions, be accorded administrative expense status pursuant to sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code. If these Intercompany Claims are accorded administrative expense status, each Debtor utilizing funds flowing through the Cash Management System should continue to bear ultimate repayment responsibility for such funds.

34. Administrative expense treatment for Intercompany Transactions, as requested herein, has been granted in chapter 11 cases comparable to these chapter 11 cases. *See, e.g.*, *In re Parker Drilling Co.*, Case No. 18-36958 (MI) (Bankr. S.D. Tex. Jan. 3, 2019) [Docket. No. 175]; *In re Westmoreland Coal Co.*, Case No. 18-35672 (MI) (Bankr. S.D. Tex. Nov. 11, 2018) [Docket. No. 518]; *In re Bertucci's Holdings, Inc.*, Case No. 18-10894 (MFW) (Bankr. D. Del. May 3, 2018) [Docket. No. 151]; *In re SBSH Winddown, Inc.*, Case No. 18-10039 (CSS) (Bankr. D. Del. Jan. 29, 2018) [Docket. No. 108]; *In re Avaya Inc.*, Case No. 17-10089 (SMB)

[7] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

(Bankr. S.D.N.Y. Mar. 31, 2017) [Docket. No. 341]; *In re Aeropostale, Inc.*, Case No. 16-11275 (SHL) (Bankr. S.D.N.Y. June 3, 2016) [Docket. No. 238].

35. In addition, the Court should authorize the Debtors to preserve and exercise intercompany setoff rights, including in connection with the postpetition Intercompany Transactions. Section 553(a) of the Bankruptcy Code provides that "[e]xcept as otherwise provided in this section and in sections 362 and 363 of the title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case." 11 U.S.C. § 553(a).

36. A creditor need only establish two elements before a setoff may be asserted—mutuality and timing. *See Official Comm. of Unsecured Creditors* v. *Mfrs. & Traders Trust Co. (In re Bennett Funding Grp., Inc.)*, 212 B.R. 206, 212 (B.A.P. 2d Cir. 1997); *aff'd* 146 F.3d 136 (2d Cir. 1998); *see also Verco Indus.* v. *Spartan Plastics (In re Verco Indus.)*, 704 F.2d 1134, 1139 (9th Cir. 1983); *In re Lundell Farms*, 86 B.R. 582, 584 (Bankr. W.D. Wis. 1988). Although courts have not uniformly defined the elements of mutuality, most courts require that the debts are owed between the same parties and in the same right or capacity. *See* 5 Collier on Bankr. ¶ 553.03[3][a] and n.86 (16th ed. rev. 2012) (citing, *inter alia*, *Davidovich* v. *Welton (In re Davidovich)*, 901 F.2d 1533, 1537 (10th Cir. 1990); *Lubman* v. *Sovran Bank, N.A. (In re A & B Homes, Ltd.)*, 98 B.R. 243, 248 (Bankr. E.D. Va. 1989)). Timing requires that both claims arise prepetition. *See, e.g.*, *Packaging Indus. Grp., Inc.* v. *Dennison Mfg. Co. (In re Sentinel Prods. Corp.)*, 192 B.R. 41, 45 (S.D.N.Y. 1996); *Scherling* v. *Hellman Elec. Corp. (In re Westchester Structures Inc.)*, 181 B.R. 730, 739 (Bankr. S.D.N.Y. 1995). In addition, courts

have allowed the parties to offset postpetition claims in the same manner as prepetition claims, as long as the mutuality requirements are met. *See, e.g.*, *United States* v. *Gordon Sel-Way, Inc. (In re Gordon Sel-Way, Inc.)*, 239 B.R. 741, 751-55 (E.D. Mich. 1999), *aff'd*, 270 F.3d 280 (6th Cir. 2001); *Mohawk Indus., Inc.* v. *United States (In re Mohawk Indus., Inc.)*, 82 B.R. 174, 179 (Bankr. D. Mass. 1987).

37. The Cash Management System allows the Debtors to track all obligations owing between related entities and thereby ensures that all setoffs of Intercompany Transactions will meet both the mutuality and timing requirements of section 553 of the Bankruptcy Code. Therefore, the Debtors respectfully request that the Debtors be expressly authorized to setoff postpetition obligations arising on account of Intercompany Transactions between a Debtor and another Debtor.

VI. Cause Exists for Waiving the Deposit and Investment Guidelines Under Section 345 of the Bankruptcy Code

38. The Debtors further seek a waiver of the deposit and investment requirements of section 345 of the Bankruptcy Code and Complex Case Procedure (K)(2) to the extent the Cash Management System does not strictly comply with section 345 of the Bankruptcy Code. Section 345(a) of the Bankruptcy Code governs a debtor's cash deposits during a chapter 11 case and authorizes deposits of money as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345 requires debtors to obtain, from the entity with which the money is deposited, a bond in favor of the United States and secured by the undertaking of an adequate corporate surety, or

"the deposit of securities of the kind specified in section 9303 of title 31," unless the Court "for cause" orders otherwise. 11 U.S.C. § 345(a)–(b).

39. As discussed above, each Bank Account is maintained at a bank that is insured by the FDIC, other than the three (3) accounts maintained at Scotiabank, which are each insured by the CDIC. Therefore, other than the three Scotiabank accounts, the Bank Accounts are in compliance with section 345(b) of the Bankruptcy Code. With respect to amounts in any of the Bank Accounts in excess of the FDIC insurance limit, the Debtors submit that cause exists to waive any such noncompliance because such funds are deposited safely and prudently at Wells Fargo and BoA, which are financially-stable banking institutions and authorized depositories in the Northern District of Georgia, in a manner specifically designed to preserve capital and maintain liquidity. To the extent the amounts in one or more of the Bank Accounts maintained at TD Bank or Scotiabank exceeds the FDIC or CDIC insurance limit, as applicable, during these chapter 11 cases, the Debtors request that the Court waive strict compliance with section 345(b) of the Bankruptcy Code and the U.S. Trustee Guidelines.

40. In other large, complex chapter 11 cases, under similar circumstances, courts have found that cause exists to excuse compliance with the requirement of section 345(b) of the Bankruptcy Code and have waived compliance with the U.S. Trustee Guidelines. *See, e.g.*, *In re Argos Therapeutics, Inc.*, Case No. 18-12714 (KJC) (Bankr. D. Del. Jan. 23, 2019) [Docket No. 127]; *In re Bertucci's Holdings, Inc.*, Case No. 18-10894 (MFW) (Bankr. D. Del. May 3, 2018) [Docket No. 151]; *In re Payless Holdings LLC*, Case No. 17-42267-659 (KAS) (Bankr. E.D. Mo. May 25, 2017) [Docket No. 892]; *In re Avaya Inc.*, Case No. 17-10089 (SMB) (Bankr.

S.D.N.Y. Mar. 31, 2017) [Docket No. 341]; *In re Noranda Aluminum, Inc.*, Case No. 16-10083-399 (BSS) (Bankr. E.D. Mo. Apr. 13, 2016) [Docket No. 643].

Emergency Consideration

41. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." Here, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

42. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

43. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' or any party in interest's

rights to dispute and/or contest any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any claim related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute such claim.

Notice

44. The Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the Northern District of Georgia; (b) the Debtors' thirty (30) largest unsecured creditors; (c) counsel to the Prepetition Secured Parties; (d) counsel to the administrative agents for the Debtors' prepetition credit facilities; (e) counsel to the administrative agents for the Debtors' debtor-in-possession financing facilities; (f) the United States Securities and Exchange Commission; (g) the Internal Revenue Service; (h) the Georgia Department of Revenue; (i) the Attorney General for the State of Georgia; (j) the United States Attorney for the Northern District of Georgia; (k) the state attorneys general for states in which the Debtors conduct business; (l) the Banks; (m) the Pension Benefit Guaranty Corporation; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

45. No prior request for the relief sought in the motion has been made to this or any other court.

[*Remainder of page intentionally left blank.*]

WHEREFORE, the Debtors respectfully request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: August 6, 2019
Atlanta, Georgia

/s/ Sarah R. Borders

Sarah R. Borders
Georgia Bar No. 610649
Leia Clement Shermohammed
Georgia Bar No. 972711
Britney Baker
Georgia Bar No. 625752
KING & SPALDING LLP
1180 Peachtree Street NE
Atlanta, Georgia 30309
Telephone: (404) 572-4600
Email: sborders@kslaw.com
Email: lshermohammed@kslaw.com
Email: bbaker@kslaw.com

-and-

Kelley A. Cornish (*pro hac vice* pending)
New York Bar No. 1930767
Brian S. Hermann (*pro hac vice* pending)
New York Bar No. 2810232
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Email: kcornish@paulweiss.com
Email: bhermann@paulweiss.com

Proposed Counsel for the Debtors in Possession

Exhibit A

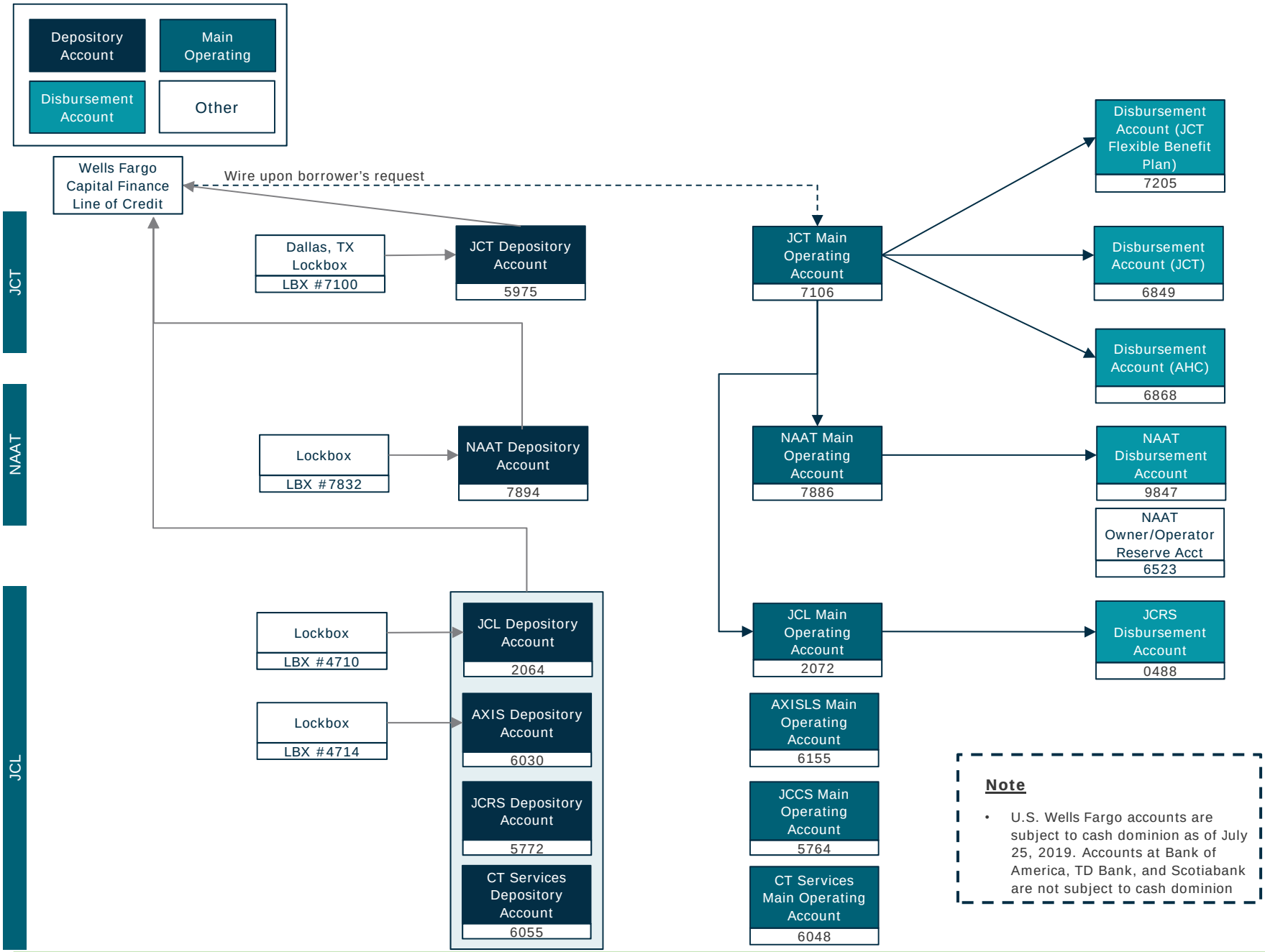
Interim Order

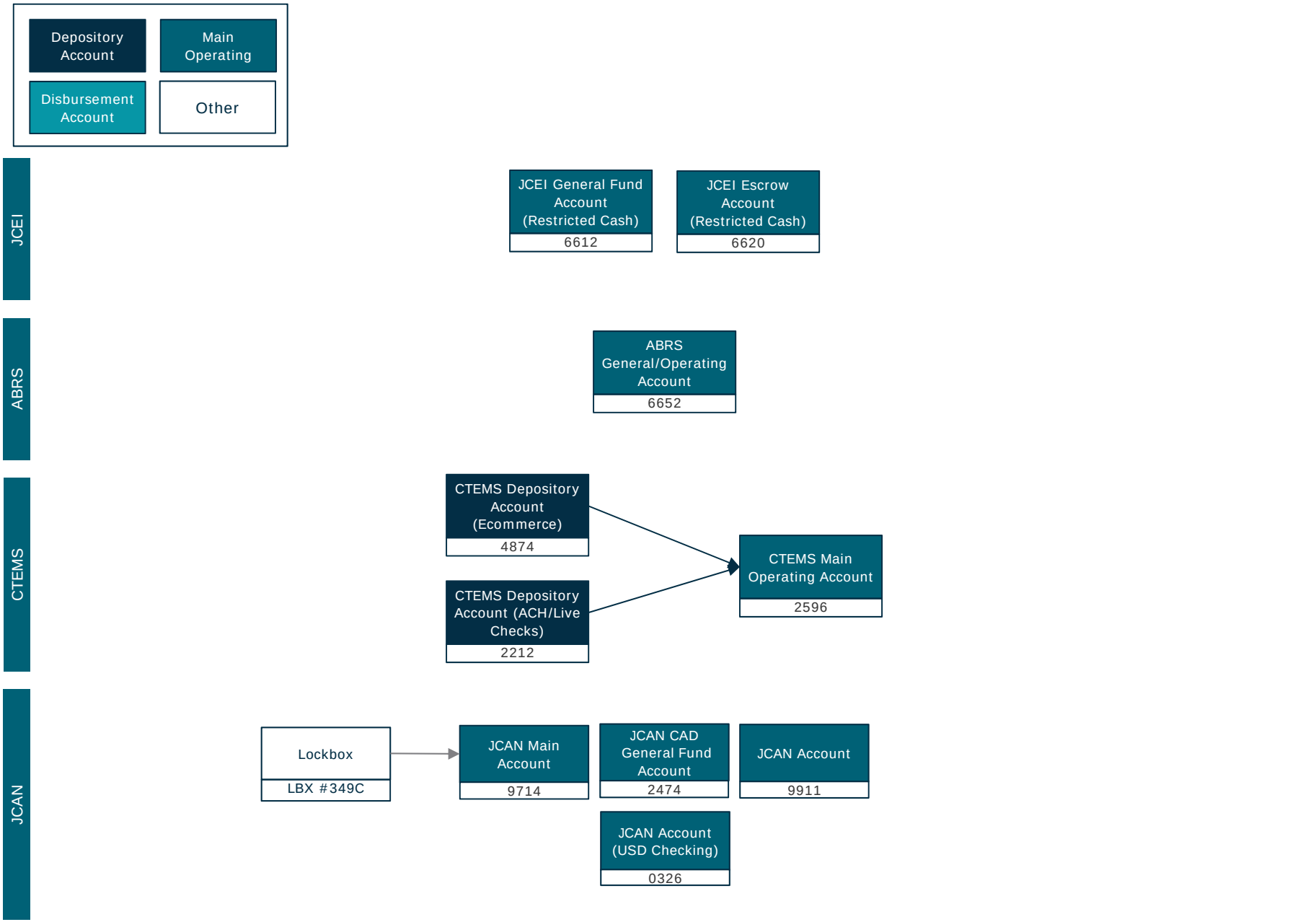
Exhibit B

Final Order

Exhibit C

Cash Management System Schematic


Depository Account
Main Operating
Disbursement Account
Other
Wells Fargo Capital Finance Line of Credit
Wire upon borrower's request
JCT
NAAT
JCL
Dallas, TX Lockbox
LBX #7100
JCT Depository Account
5975
JCT Main Operating Account
7106
Disbursement Account (JCT Flexible Benefit Plan)
7205
Disbursement Account (JCT)
6849
Disbursement Account (AHC)
6868
Lockbox
LBX #7832
NAAT Depository Account
7894
NAAT Main Operating Account
7886
NAAT Disbursement Account
9847
NAAT Owner/Operator Reserve Acct
6523
Lockbox
LBX #4710
Lockbox
LBX #4714
JCL Depository Account
2064
AXIS Depository Account
6030
JCRS Depository Account
5772
CT Services Depository Account
6055
JCL Main Operating Account
2072
JCRS Disbursement Account
0488
AXISLS Main Operating Account
6155
JCCS Main Operating Account
5764
CT Services Main Operating Account
6048
Note
• U.S. Wells Fargo accounts are subject to cash dominion as of July 25, 2019. Accounts at Bank of America, TD Bank, and Scotiabank are not subject to cash dominion


Depository Account
Main Operating
Disbursement Account
Other
JCEI
JCEI General Fund Account (Restricted Cash)
6612
JCEI Escrow Account (Restricted Cash)
6620
ABRS
ABRS General/Operating Account
6652
CTEMS
CTEMS Depository Account (Ecommerce)
4874
CTEMS Depository Account (ACH/Live Checks)
2212
CTEMS Main Operating Account
2596
JCAN
Lockbox
LBX #349C
JCAN Main Account
9714
JCAN CAD General Fund Account
2474
JCAN Account
9911
JCAN Account (USD Checking)
0326

This is Exhibit "W" referred to in the

Affidavit of Waleed Malik, solemnly affirmed before me,

this 8th day of August, 2019

.....

A Commissioner for Taking Affidavits

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	)	Chapter 11
JACK COOPER VENTURES, INC., *et al.*,[1]	)	Case No. 19-62393 (PWB)
Debtors.	)	(Joint Administration Requested)

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING (A) THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF TRADE AND LIEN CLAIMANTS AND (B) PROCEDURES RELATED THERETO, AND (II) GRANTING RELATED RELIEF

1. The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion:

[1] 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.

Relief Requested[2]

2. By this motion, the Debtors request entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the "Interim Order" and the Final Order," respectively), (a) authorizing, but not directing, the Debtors to pay certain prepetition claims in an amount not to exceed $6,260,000 (the "Vendor Claims Cap") of (i) critical vendors (collectively, the "Critical Vendors" whose claims shall be identified herein collectively as the "Critical Vendor Claims"), (ii) foreign vendors (collectively, the "Foreign Vendors" whose claims shall be identified herein collectively as the "Foreign Vendor Claims"), and (iii) Logistics Claimants (as defined below); and (b) granting related relief.

Jurisdiction and Venue

3. The United States Bankruptcy Court for the Northern District of Georgia has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

4. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The statutory bases for the relief requested herein are sections 105(a), 363(b), 503(b)(9), 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and *General Order 26-2019, Procedures for Complex Chapter 11 Cases*, dated February 4, 2019 (the "Complex Case Procedures").

[2] A description of the Debtors' businesses, the reasons for commencing these chapter 11 cases, the relief sought from the Court to allow for a smooth transition into chapter 11, and the facts and circumstances supporting this motion are set forth in the *Declaration of Greg May, the Debtors' Chief Financial Officer, in Support of First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith. Capitalized terms used in this Relief Requested section of the Motion but not otherwise defined therein shall have the meanings ascribed to such terms later in the Motion, and any other capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the First Day Declaration.

Critical Vendor Claims

6. In order to operate their businesses, the Debtors depend on select Critical Vendors who can supply the necessary quality and type of goods and services in a timely fashion to enable the Debtors to provide top quality services to their customer base. Any interruption in the provision of goods or services by the Critical Vendors—however brief—would disrupt the Debtors' operations and could cause irreparable harm to the Debtors' businesses, goodwill, employees, customer base, and market share.

7. The Debtors have thoroughly reviewed their business relationships and identified the Critical Vendors, the loss of whose particular goods or services would cause immediate and irreparable harm to the Debtors' businesses. The Debtors also reviewed their accounts payable and prepetition vendor lists to identify the Critical Vendors using the following criteria: (a) which suppliers were sole source or limited source suppliers, without whom the Debtors could not continue to operate without disruption, (b) the Debtors' ability to find alternative sources of supply and the potential disruption or lost revenues while a new supplier was resourced, (c) which suppliers would be prohibitively expensive to replace, (d) which suppliers would present an unacceptable risk to the Debtors' operations given the volume of essential services or products that such suppliers provide, (e) the extent to which suppliers may have an administrative expense claim pursuant to section 503(b)(9) of the Bankruptcy Code, and (f) whether a vendor meeting the foregoing criteria is able or likely to refuse to ship product to the Debtors postpetition if its prepetition balances are not paid, considering, for example, whether the particular vendor is under a contractual obligation to perform.

8. The Critical Vendor Claims include, but are not limited to, claims against the Debtors by:

A. Fuel Vendors

9. In the operation of the Debtors' car hauling business, the Debtors rely on number of fuel vendors (the "Fuel Vendors") to enable the Debtors' to perform under their customer contracts to transport and deliver vehicles across the country. The Debtors' Fuel Vendors are divided into three categories:

- Primary Fuel Vendors: These Fuel Vendors consist of several large fuel providers that specialize in servicing drivers and vehicles in the long-haul trucking industry. The Primary Fuel vendors account for approximately 83% of the fuel the Debtors purchase. The Debtors' pricing arrangements with each Primary Fuel Vendor provide significant price discounts to the retail price for fuel. The Debtors pay certain of the Primary Fuel Vendors directly and others through a payment intermediary.

- Secondary Fuel Vendors: These Fuel Vendors consist of approximately 225 medium-sized gas station chains that provide the Debtors with some discounts on pricing. The Debtors' pricing arrangements with the Secondary Fuel Vendors provide significant price discounts to the retail price for fuel. The Secondary Fuel Vendors account for approximately 13% of the fuel the Debtors purchase. All Secondary Fuel Vendors are paid through a payment intermediary.

- Out of Network Fuel Vendors: These Fuel Vendors consist of a wide variety of small gas station chains that provide the Debtors with minimal pricing discounts. The Out of Network Fuel Vendors account for approximately 4% of the fuel the Debtors purchase. The Debtors have no contract with Out of Network Fuel Vendors and purchase gas at the retail price.

10. **Primary Fuel Vendors:** Certain of the Debtors' Primary Fuel Vendors are specialty service stations that operate travel centers in the United States and Canada with state of the art facilities to care for long-haul truckers such as the Debtors' employees. The Debtors have direct contracts with certain of these Primary Fuel Vendors that provide the Debtors with

significant discounts to the retail price of gas. The contracts provide the Debtors with pricing equal to the better of (a) the cost of gas plus a spread and (b) the retail price of gas minus a spread. Given the Debtors' anticipated fuel usage, these contracts provide the Debtors with significant benefits and savings. As the terms of certain of the contracts are month-to-month, the applicable Primary Fuel Vendors may take actions to prevent a renewal of their respective contracts and deny the Debtors these discounts if the Debtors do not honor their respective obligations to the Primary Fuel Vendors. The Debtors do not believe any replacement vendors would offer the Debtors comparable pricing on gas, along with the added value of the Primary Fuel Vendors' experience with the trucking industry provides. Without satisfying the Critical Vendor Claims of the Primary Fuel Vendors with whom the Debtors have direct contracts, the Debtors will lose the substantial monetary benefits provided by these relationships. Further, were the Debtors to seek out comparable pricing from another provider, the Debtors would deny their employees access to the foremost trucking centers to the detriment of employee morale.

11. **Fuel Payment Intermediaries**: For Fuel Vendors that the Debtors do not have direct contracts with, including Primary Fuel Vendors, Secondary Fuel Vendors and Out of Network Fuel Vendors, the Debtors utilize the services of fuel payment intermediaries to pay the fuel costs of their drivers. The fuel payment intermediaries provide the Debtors' drivers with cards that can be used to pay for fuel, oil, antifreeze and certain other trucking necessities at Fuel Vendors. As with the relationship with the Primary Fuel Vendors, the Debtors receive pricing discounts through using the fuel payment intermediaries. If the Debtors were to lose access to the fuel payment intermediaries programs, they would have no viable means to pay for their employees' fuel. Under the collective bargaining agreements that govern the Debtors'

relationships with their drivers, any expenses the drivers incur must be reimbursed within twenty-four hours of being *incurred*, not when an expense report is submitted. Without the fuel payment intermediaries, the Debtors would be unable to meet this obligation for long-haul truckers who are on the road and not in constant communication. Alternatively, the Debtors could provide each employee with cash or a credit card to pay for fuel, but the logistics behind this, including monitoring the expenses and the risks that an employee would lose access to the funds, would create administrative obligations that vastly dwarf the Critical Vendor Claims of the fuel payment intermediaries.

12. **Bulk Fuel**: The Debtors' utilize the services of certain providers to supply bulk fuel to their trucking fleet. These bulk fuel providers come several times per week to certain of the Debtors' terminal locations and to fuel and service the trucks located there. Certain of these terminals are in remote locations, and no other service providers exist that will service the Debtors' trucks and provide fuel services, and there is no ongoing contract to ensure continued postpetition services. The Debtors would incur significant incremental expenses if they do not satisfy the Critical Vendor Claims of the bulk fuel providers and must make alternative arrangements for fuel service at these terminals.

B. Lodging Claims

13. The Debtors utilize lodging payment intermediaries to pay claims related to the lodging expenses of their drivers when they are on the road and make overnight stops, and then reimburse the lodging payment intermediaries. As with the fuel payment intermediaries programs, the Debtors are unable to feasibly reimburse their drivers for business expenses incurred without breaching the collective bargaining agreements. It would also be logistically

impossible for the Debtors to establish a program to prepay the drivers' lodging expenses. Moreover, paying using the lodging payment intermediaries to book lodging for the Debtors' drivers allows the Debtors to take advantage of favorable pricing discounts. The failure to maintain the relationship with the lodging payment intermediaries would result in a loss to the Debtors significantly greater than the lodging payment intermediaries' Critical Vendor Claims, both in the terms of pricing discounts and administrative burdens.

C. Debtors' Broker Business

14. The Debtors provide brokerage services to manage supply and demand for vehicle shipments between third party suppliers and other carriers (the "Broker Business"). When the Debtors do not have the capacity to transport vehicles themselves, they act as an intermediary and place the order with a third party, collecting payment from the shipper and paying the transporter, while earning a fee in the process. In certain instances, the Debtors manage dispatching through an industry-wide platform called Central Dispatch ("CD"). When the Debtors use CD to source business, they are subject to a performance rating system, where each transaction counterparty rates the Debtors on their brokerage services. A negative rating on CD could have a significant impact on the future business and revenue of the Debtors. If the Debtors were to not make payments related to the Broker Business, they would be subject to significant reputational harm that could disproportionately impact future revenue relative to the subject claim. Because these are all one-off transactions and the market is very competitive, these relationships are not protected by contract or the automatic stay, and failure to satisfy a claim related to the Broker Business would cause significant harm to the Debtors' estates in an amount

greater than the Broker Business Critical Vendor Claim and possibly including the failure of the Debtors' Broker Business and the loss of the related revenue stream.

D. Spare Parts Vendors

15. When the Debtors require replacement parts for their trucks, the parts are ordered and delivered through a spare parts intermediary (the "Spare Parts Vendors") that in turn collects payment of the claim on behalf of the manufacturer. Over 90% of the Debtors' fleet of rigs consists of vehicles manufactured by Sterling, Freightliner, Detroit Diesel and Mercedes, who issue spare parts through a limited number of suppliers. All of these suppliers exclusively use the Spare Parts Vendors to supply these necessary spare parts, and without the Spare Parts Vendors, the Debtors have no alternative on any meaningful time frame to obtain spare parts. If the Debtors were to not satisfy the claims of the Spare Parts Vendors, they would have incredible difficulty obtaining a reliable alternative for these unique spare parts, and during that time, their estates would suffer irreparable harm in the form of lost revenue and future revenue from the disruption to their business as necessary rigs are off the road. The potential loss in revenue under such circumstances greatly exceeds the amount of the Spare Parts Vendors' Critical Vendor Claims.

16. **Component Parts Vendors**: The Debtors provide supply chain services to third party purchasers that include the assembly and testing of highly technical and specialized parts for the automobile industry. Because the Debtors' customers require highly specialized and unique parts produced with components that have been pre-approved for certain uses and are acceptable to the customers in all respects, the Debtors may only assemble these products with parts produced according to very technical specifics supplied by vendors pre-approved by the

Debtors' customers (the "Component Parts Vendors"). If the Debtors do not utilize the services of the Component Parts Vendors, the products they produce will be unacceptable to their customers and those customers will not purchase them and will take their business to another supplier, resulting in the failure of the Debtors' specialty parts line of business.

17. If the Critical Vendors are not paid, their resulting unwillingness to continue to provide products or services even for a short period of time would cause an interruption of the Debtors' operations. Such an interruption would cause the Debtors irreparable harm, which would jeopardize the Debtors' restructuring efforts. Relatedly, paying the Critical Vendors would permit the Debtors to maintain the value of the businesses and maximize value for the benefit of their creditors and stakeholders. Therefore, the Debtors seek authorization to pay Critical Vendor Claims to ensure the Debtors' continued receipt of goods and services and favorable credit terms from the Critical Vendors.

18. The Debtors estimate that, as of the Petition Date, the aggregate amount of the Critical Vendor Claims is approximately $6,010,000, all of which will be due and owing within twenty-one (21) days after the Petition Date.

Foreign Vendor Claims

19. In the ordinary course of business, the Debtors incur various obligations to foreign vendors, suppliers, and other entities, including vendors in China, Malaysia and the United Kingdom. These vendors provide specialty parts to the suppliers for the Debtors' specialty parts business, which provides value-added supply chain services such as engineering design, product assembly and testing of specific parts for the electric car segment of the automobile industry.

20. Many of the Foreign Vendors who supply these essential goods and services may argue that they are not subject to the jurisdiction of this Court or the provisions of the Bankruptcy Code that would otherwise protect the Debtors' assets and business operations, and take actions that would disrupt the Debtors' business operations. Moreover, there is a risk that Foreign Vendors could sue the Debtors in foreign courts and attempt to recover prepetition amounts owed to them if the Foreign Vendor Claims remain unpaid. If the Foreign Vendors were successful in obtaining judgments against the Debtors, the Foreign Vendors could seek to exercise post-judgment remedies, including withholding vital supplies from the Debtors. The Debtors would have no practical ability to remedy this situation (absent payment of amounts sought) and their business operations would be irreparably harmed to the detriment of their estate and their creditors.

21. The Debtors are making every effort to avoid interruptions in their supply chain and the adverse effects that even a temporary disruption could have on their business in order to maximize the value of their assets. In connection therewith, the Debtors must have the ability to continue to fund the Foreign Vendors on an uninterrupted basis.

22. The Debtors estimate that, as of the Petition Date, the aggregate amount of the Foreign Vendor Claims is approximately $30,000, all of which will be due and owing within twenty-one (21) days after the Petition Date.

Logistics Claims

23. The next category of claims is comprised of: (a) the claims of shippers and warehousemen who the Debtors determine, in the exercise of their business judgement, must be paid to obtain the delivery and release of goods, parts, components, materials, equipment,

customer property or other items; and (b) the claims of third parties who may have the ability to assert liens on the Debtors' and their customers' property if the Debtors fail to pay for goods or services rendered.

I. Shippers and Warehousemen

24. In the normal course of their business, the Debtors use and make payments to (i) delivery services, trucking, freight terminal operators, carriers, shippers, and other transportation service providers (collectively, the "Shippers") that ship, transport, store, engage in customs business, and otherwise facilitate the movement of parts, materials, customer property and other goods used in ordinary course of the Debtors' operations; (ii) the warehousemen, bailees, storage facilities, and other storage providers; and (iii) customs brokers and various governmental agencies that collect custom duties (collectively, the "Warehousemen") who, among other things, store goods in transit and collect applicable customs duties, including in respect of customer property. For several important reasons, the Debtors seek to pay the prepetition shipping and warehousing charges with respect goods and property in transit (collectively, the "Shipping and Warehousing Claims"). The services provided by the Shippers and Warehousemen are essential to the Debtors' day-to-day operations in that they are necessary for the Debtors obtain necessary materials to repair their fleet of transportation vehicles, storage of customer property, and the transportation of customer property. Therefore, certain Shippers and Warehousemen currently possess goods and provide services that are vital to the Debtors' operations and the maintenance of their customer relationships.

25. Further, if the Shipping and Warehouse Claims are not paid, Shippers and Warehousemen may refuse to perform additional services for the Debtors. In such event, the

Debtors would incur significant additional expenses, such as premium replacement shipping and warehousing costs, that would likely exceed the amount of unpaid prepetition shipping and warehousing charges that the Debtors request the authority to pay hereunder. Further, if the Debtors were unable to promptly locate suitable replacements for the Shippers and Warehousemen, the Debtors' operations would face substantial hardship.

26. Moreover, under certain state laws, to the extent the Debtors have not paid for such services, a Shipper or Warehouseman may have a lien on the goods in its possession, which secures the charges or expenses incurred in connection with the transportation or storage of the goods.[3] In addition, pursuant to section 363(e) of the Bankruptcy Code, the Shippers and Warehouseman, as bailees, may be entitled to adequate protection for any valid possessory lien.

27. In light of these circumstances, the Shippers and Warehousemen may assert that they have possessory liens on goods currently in their possession for transportation or storage costs and may refuse to deliver or release those goods, including customer property, in their possession until their invoices are paid and their liens redeemed. Some Shippers and Warehousemen may be unwilling to release the goods in their possession on which they may be entitled to assert liens for fear of releasing security for their prepetition claims. Moreover, Shippers and Warehousemen simply refusing to deliver the Debtors' or customer's property if they are not paid could severely disrupt the Debtors' operations and cause the Debtors to lose a substantial amount of revenue and future business. Accordingly, because the Debtors are

[3] For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." U.C.C. § 7-703(a) (2003)

dependent on these Shippers and Warehousemen, it is essential that the commencement of these cases not give any Shippers and Warehousemen reason or excuse to cease performing their obligations. As of the Petition Date, the Debtors estimate that approximately $50,000 on account of Shipping and Warehousing Claims remain outstanding.

II. Lien Claimants

28. The Debtors also seek to pay the prepetition charges of certain contractors, repairmen, and other third-party service providers (collectively, the "Third-Party Providers") that repair, maintain, and otherwise service necessary equipment and machinery used in the Debtors' operations. Many of these Third-Party Providers may be able to assert trade or mechanics' liens over the Debtors' essential parts, machinery and other equipment. To safely and efficiently operate their businesses, the Debtors require highly-customized and industry-specific equipment, including car-hauling tractors and trailers, and must repair or replace machine parts and make on-the-spot repairs to the Debtors' equipment on little or no notice. Any disruption in the flow of such goods or services immediately affects on-time delivery, a key component on which customer satisfaction is measured. Further, any disruption in the flow of goods or services causes the Debtors immediate and substantial economic harm and erodes their valuable customer base.

29. Because the Debtors use specialize equipment, the available pool of experienced service providers is therefore limited. While the Debtors themselves employ on-site mechanics to repair and maintain all the specialized equipment, tractors and trailers, the Company cannot employ mechanics to repair and maintain all the specialized equipment in all possible locations in which the Debtors operate. Accordingly, the Debtors have, over the years, nurtured and

developed their relationships with the Third-Party Providers and have come to rely on the high quality and priority service they receive. It is essential to the continuity of the Debtors' operations that they maintain their relationships with these essential maintenance service providers.

30. Certain Third-Party Providers may not have been paid in full for prepetition services they provided because in many instance payment is not due until completion of the work that may only recently have been performed. To the extent the Debtors have not yet paid for repair, maintenance, construction, installation, or similar services, the corresponding Third-Party Providers may be entitled, under applicable state law, to assert mechanics' liens against property of the Debtors to secure payment of the prepetition amount owed to such Third-Party Providers, whether or not the property remains in their possession or control.

31. As noted above, the Debtors routinely transact business with a number of Third-Party Providers who may be able to assert liens against the Debtors and their property (such as equipment) if the Debtors fail to pay for the good delivered or services rendered (the "Lien Claimants" and collectively with the Shippers and Warehousemen, the "Logistics Claimants"). Although the Debtors generally make timely payments to their Lien Claimants, as of the Petition Date, a substantial number of Lien Claimants may not have been paid for certain prepetition goods or services. As a result, many of the Lien Claimants may have a rights to assert and perfect mechanics' or artisans' liens (collectively, the "Miscellaneous Liens") against the Debtors' relevant facilities or the Debtors' goods or equipment, notwithstanding the automatic stay under section 362 of the Bankruptcy Code. In fact, pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such Miscellaneous Liens, to the extent consistent with

section 546(b) of the Bankruptcy Code, or to the extent the act is accomplished within the 30-day period set forth in section 547(e)(2)(A) of the Bankruptcy Code, is expressly excluded from the automatic stay.

32. Unless the Lien Claimants are paid for outstanding prepetition amounts, the Debtors believe Lien Claimants may refuse to perform their ongoing obligations with the Debtors; may assert Miscellaneous Liens on equipment in the Debtors' possession; or may refuse to release finished goods in their possession. Moreover, the value of the goods in the possession of the Lien Claimants generally exceeds the value of their respective prepetition claims. The Debtors estimate that approximately $170,000 on account of claims held by the Lien Claimants (the "Lien Claims" and, collectively with the Shipping and Warehousing Claims, the "Logistics Claims") have accrued as of the Petition Date.

33. In light of the foregoing, the Debtors seek authority, but not direction, in their reasonable business judgment, to pay and discharge the claims of Lien Claimants that have or may assert a lien against the materials, goods, and facilities of the Debtors, regardless of whether such Lien Claimants have already perfected their interests. Notwithstanding the authority requested herein, the Debtors will not pay a Lien Claimant on account of any prepetition claims unless the Lien Claimant has perfected or, in the Debtors' business judgment, is or may be capable of perfecting one or more liens in respect of such claim irrespective of the automatic stay, nor shall payment of a Lien Claimant's prepetition claim be deemed to be a waiver of rights regarding the extent, validity, perfection, or possible avoidance of such liens. The Debtors expect that they will pay only prepetition claims to the Lien Claimants when they believe, in their business judgment, the benefits to making such payments would exceed the costs, delays,

and disruption associated with brining an action to compel the turnover of goods held by the Lien Claimant or otherwise discharging the lien in question.

Prepetition Purchase Orders

34. Finally, the Debtors request, out of an abundance of caution, that the Court (a) confirm the administrative expense priority status of the Debtors' undisputed obligations for the postpetition delivery of goods and provision of services and (b) authorize the Debtors to satisfy such obligations in the ordinary course of business. As noted above, in the ordinary course of the Debtors' business, numerous vendors and service providers provide the Debtors with goods and services that are integral to the Debtors' ongoing business operations. As of the Petition Date, the Debtors had outstanding prepetition purchase orders (collectively, the "Outstanding Orders") with numerous suppliers and vendors (collectively, the "Suppliers") for such goods and services.

35. As a result of the commencement of these chapter 11 cases, the Debtors believe that the Suppliers may perceive a risk that they will be treated as prepetition general unsecured creditors for the cost of any shipments made or services provided after the Petition Date pursuant to the Outstanding Orders. As a result, the Suppliers may refuse to ship such goods to the Debtors or provide such services to the Debtors unless the Debtors issue substitute postpetition purchase orders or provide other assurances of payment. Issuing substitute purchase orders on a postpetition basis would be disruptive, administratively burdensome, time-consuming, and counterproductive to the Debtors' restructuring. Authorizing the Debtors to pay the Outstanding Orders pursuant to the terms set forth herein should eliminate the burden on this Court and the

Debtors arising from numerous individual motions requesting payment on account of the Outstanding Orders.

36. Accordingly, to prevent any disruption to the Debtors' business operations, and given that goods and services provided after the Petition Date are afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors seek relief that: (a) grants administrative expense priority under section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors arising from the acceptance of goods or services subject to Outstanding Orders; and (b) authorizes the Debtors to satisfy such obligations in the ordinary course of business.

Customary Trade Terms

37. In return for paying the claims of the Critical Vendors, Foreign Vendors and Logistics Claimants (each, a "Vendor" and collectively, the "Vendors"), the Debtors will use commercially reasonable efforts, in consultation with the Junior Term Loan Lenders to require the applicable Vendor to provide favorable trade terms in line with historical practice for the go-forward delivery of goods and services. The Debtors therefore request authority to condition payment upon such party's written agreement to continue supplying goods or services to the Debtors in accordance with trade terms at least as favorable to the Debtors as those practices and programs (including credit limits, pricing, timing of payments, availability, and other terms) in place prior to the Petition Date (collectively, the "Customary Trade Terms").

38. To the extent that the Debtors, in consultation with the Junior Term Loan Lenders, determine, in their business judgment, to condition the payment of a Critical Vendor Claim, Foreign Vendor Claim or Logistics Claim on the agreement of the applicable Vendor to

continue supplying goods and/or services to the Debtors on the Customary Trade Terms, the Debtors propose that a letter (a "Vendor Letter") be sent to the Vendor, along with a copy of any order granting this Motion (the "Vendor Order"), including, without limitation, the following terms:

a. The amount of the Vendor's estimated prepetition claim, after accounting for any setoffs, other credits and discounts thereto, shall be as mutually determined in good faith by the Vendor and the Debtors (but such amount shall be used only for purposes of the Vendor Order and shall not be deemed a claim allowed by the Court, and the rights of all parties in interest to object to such claim shall be fully preserved until further order of the Court);

b. The amount and timing of any payment agreed to be paid in satisfaction of such estimated prepetition claim by the Debtors, subject to the terms and conditions as set forth in the Vendor Order;

c. The Vendor's agreement to provide goods and services to the Debtors based upon the Customary Trade Terms (including, but not limited to, credit limits, pricing, cash discounts, timing of payments, allowances, rebates, normal product mix and availability and other applicable terms and programs), or such other trade terms as are agreed to by the Debtors and the Vendor, and the Debtors' agreement to pay the Vendor in accordance with such terms;

d. The Vendor's agreement not to file or otherwise assert against any of the Debtors, their estates or any of their respective assets or property (real or personal) any lien (a "Lien") (regardless of the statute or other legal authority upon which such Lien is asserted) related in any way to any remaining prepetition amounts allegedly owed to the Vendor by the Debtors arising from goods and services provided to the Debtors prior to the Petition Date, and that, to the extent that the Vendor has previously obtained such a Lien, the Vendor shall immediately take all necessary actions to release such Lien;

e. The Vendor's acknowledgment that it has reviewed the terms and provisions of the Vendor Letter and consents to be bound thereby;

f. The Vendor's agreement that it will not separately assert or otherwise seek payment of any reclamation claims; and

g. If a Vendor that has received payment of a prepetition claim subsequently refuses to provide goods and/or services to the Debtors on Customary Trade Terms or such other trade terms as are agreed to by the Debtors and the Vendor, or seeks to discontinue, terminate, or modify any contractual agreement with the Debtors, then, without the need for any further order of the Court, any payments received by the Vendor on account of such prepetition claim shall be deemed to have been in payment of any then outstanding postpetition obligations owed to such Vendor, and such Vendor shall immediately repay to the Debtors any payments received on account of its prepetition claim to the extent that the aggregate amount of such payments exceed the postpetition obligations then outstanding to such Vendor, without the right of setoff, recoupment or reclamation, and the Vendor's prepetition claim shall be reinstated as a prepetition claim in these chapter 11 cases and subject to the terms of any bar date order entered in these chapter 11 cases.

39. Any such Vendor Letter, once agreed to by the Debtors and a Vendor, shall be the agreement between the parties that governs their post-petition trade relationship (the "Trade Agreement"). The Debtors request that they be authorized, but not required, in their discretion, to enter into Trade Agreements with the Vendors to the extent that the Debtors determine that such agreements are appropriate under the circumstances of their business relationship with such Vendor.

40. If a Vendor fails to comply with any Trade Agreement, or, in the event that a Trade Agreement is terminated, the Debtors reserve all rights to recover sums paid in excess of post-petition obligations owing to the particular vendor.

Basis for Relief

I. Payment of the Critical Vendor Claims and Foreign Vendor Claims is Warranted Under Section 363(b)(1) of the Bankruptcy Code and the Doctrine of Necessity

41. Courts have authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting authority to pay prepetition

wages); *Armstrong World Indus., Inc.* v. *James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (granting authority to pay prepetition claims of suppliers); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (granting authority to pay prepetition claims to certain vendors).

42. Further, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may permit preplan payments of prepetition obligations when essential to the continued operation of a debtor's business. Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity").

43. The "doctrine of necessity" or the "necessity of payment" rule has been recognized by bankruptcy courts across the country as critical to the rehabilitation of a debtor in reorganization cases. *See Ionosphere*, 98 B.R. at 175–76. Today, the rationale for the necessity of payment rule—the rehabilitation of a debtor in reorganization cases—is "the paramount policy and goal of Chapter 11." *Id.*; *see also In re Just For Feet*, 242 B.R. 821, 824–25 (D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was "essential to the survival of the debtor during the chapter 11 reorganization"); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) ("[P]ayment by a debtor-in-possession of pre-petition claims

outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code," but "[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment."); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as "necessary to avert a serious threat to the Chapter 11 process"); *Burchinal* v. *Cent. Wash. Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of "unequal treatment of pre-petition debts when necessary for rehabilitation" is appropriate); *Mich. Bureau of Workers' Disability Comp.* v. *Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition worker's compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts "is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately"); 2 COLLIER ON BANKRUPTCY, 105.02[4][a] (16th ed. rev. 2015) (discussing cases in which courts have relied on the "doctrine of necessity" or the "necessity of payment" rule to pay prepetition claims immediately).

44. Additionally, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *CoServ*, 273 B.R. at 497. Implicit in the fiduciary duties of any debtor in possession is the obligation to "protect and preserve the estate, including an operating business's going-concern value." *Id.* Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty "only . . . by the pre-plan satisfaction of a prepetition claim." *Id.* The court in

CoServ specifically noted the pre-plan satisfaction of prepetition claims would be a valid exercise of the debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate . . . ." *Id.*

45. Consistent with a debtor's fiduciary duties, courts have also authorized payment of prepetition obligations under section 363(b) of the Bankruptcy Code where a sound business purpose exists for doing so. *See Ionosphere*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of prepetition wages); *Armstrong*, 29 B.R. at 397–98 (relying on section 363 of the Bankruptcy Code to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors).

46. Courts have permitted postpetition payment of prepetition claims pursuant to section 105(a) in situations where nonpayment of a prepetition obligation would trigger a withholding of services essential to the debtors' business reorganization plan. *See In re UNR Indus., Inc.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors' successful reorganization); *Ionosphere*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

47. This flexible approach is particularly critical where a prepetition creditor provides vital services to a debtor that would be unavailable if the debtor did not satisfy its prepetition obligations. In *In re Structurlite Plastics Corp.*, the bankruptcy court stated that "a bankruptcy court may exercise its equity powers under §105(a) [of the Bankruptcy Code] to authorize

payment of pre-petition claims where such payment is necessary 'to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.'" 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988) (citation omitted). The court explained that "a *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code." *Id.* at 932.

48. As explained above, the goods and services provided by the Critical Vendors and Foreign Vendors are essential to ensure that there is no disruption in the operation of the Debtors' business. The Debtors submit that the total amount to be paid to the Critical Vendors and Foreign Vendors is minimal compared to the importance and necessity of the Debtors' uninterrupted receipt of the necessary goods and services provided by such vendors. Moreover, the Debtors do not believe there are cost-effective or readily accessible alternatives to the Critical Vendors and Foreign Vendors.

49. Bankruptcy courts in this district and across the country frequently authorize the debtor to pay the claims of prepetition critical vendors and otherwise grant relief similar to that requested herein. *See, e.g.*, *In re Peach State Rests., LLC*, Case No. 13-63081 (JRS) (Bankr. N.D. Ga. July 25, 2013) [Docket No. 44]; *In re Caraustar Indus., Inc.*, Case No. 09-73830 (MGD) (Bankr. N.D. Ga. June 4, 2009) [Docket No. 73]; *In re Blue Thunder Auto Transport, Inc.*, Case No. 07-61268 (PWB) (Bankr. N.D. Ga. Feb. 1, 2007) [Docket No. 32]; *In re Dan River Inc.*, Case No. 04-10990 (WHD) (Bankr. N.D. Ga. Apr. 12, 2004) [Docket No. 120]; *see also In re Hexion Holdings LLC*, Case No. 19-10684 (KG) (Bankr. D. Del. May 1, 2019) [Docket No. 293]; *In re Fuse, LLC*, Case No. 19-10872 (KG) (Bankr. D. Del. Apr. 24, 2019) [Docket No. 56]; *In re Windstream Holdings, Inc.*, Case No. 19-22312 (RDD) (Bankr. S.D.N.Y.

Apr. 22, 2019) [Docket No. 377]; *In re Fuhu, Inc.*, Case No. 15-12465 (CSS) (Bankr. D. Del. Jan. 5, 2016) [Docket No. 217]; *In re Simply Wheelz LLC*, Case No. 13-03332 (EE) (Bankr. S.D. Miss. Nov. 7, 2013) [Docket No. 41]; *In re Titlemax Holdings, LLC*, Case No. 09-40805 (LWD) (Bankr. S.D. Ga. Aug. 14, 2009) [Docket No. 263].[4]

II. Payment of the Logistics Claims Is Warranted Under Section 363(b)(1) of the Bankruptcy Code and the Doctrine of Necessity

50. The relief requested herein with respect to the Logistics Claims is appropriate and warranted under both sections 105(a) and 363(b) of the Bankruptcy Code. The authority to satisfy the Logistics Claims in the initial days of these cases without disrupting the Debtors' operations will send a clear signal to the marketplace, including key suppliers and customers, that the Debtors are willing and, importantly, able to conduct business as usual during their chapter 11 cases. Indeed, where debtors have shown that the payment of prepetition claims is critical to maximize the value of their estates, courts in this district and others in this circuit have routinely authorized payments to shippers, warehousemen, and other lien claimants under similar circumstances. *See In re The Fairbanks Company*, Case No. 18-41768 (PWB) (Bankr. N.D. Ga. Aug. 3, 2018) [Docket No. 22] (authorizing payment to shippers and customs brokers); *In re Beaulieu Group, LLC*, Case No. 17-41677 (PWB) (Bankr. N.D. Ga. July 20, 2017) [Docket No. 46] (authorizing payment to shippers, warehousemen, brokers, and other miscellaneous lien claimants); *In re Astroturf, LLC*, Case No. 16-41504 (PWB) (Bankr. N.D. Ga. Jul. 8, 2016) [Docket No. 62] (authorizing payment to certain shippers and other lien claimants); *In re Cagle's, Inc. and Cagle's Farms, Inc.*, Case No. 11-80202 (JB) (Bankr. N.D. Ga. Oct. 20, 2011)

[4] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

[Docket No. 26] (authorizing payment to shippers, warehousemen, and other lien claimants); *In re SW Recreational Indus. Inc.*, Case No. 04-40656 (PWB) (Bankr. N.D. Ga. Feb. 26, 2004) [Docket No. 82] (authorizing payment to shippers, warehousemen, materialmen, and other lien claimants); *see also In re Fibrant, LLC,* Case No. 18-10274 (SDB) (Bankr. S.D. Ga. Mar. 8, 2018) [Docket No. 112] (authorizing payment to shippers); *In re Walter Energy, Inc.*, Case No. 15-02741 (TOM) (Bankr. N.D. Ala. Jul. 16, 2015) [Docket No. 70] (authorizing payment to shippers, storage providers, and service providers); *In re Patriot Coal Corporation*, Case No. 15-32450 (KLP) (Bankr. E.D. Va. Jun. 4, 2015) [Docket No. 236] (authorizing payment to creditors who provide shipping, warehousing, and other services and claims related to customs duties); *In re Bruno's Supermarkets, LLC*, Case No. 09-00634 (BGC) (Bankr. N.D. Ala. Feb. 13, 2009) [Docket No. 117] (authorizing payment to beer and wine suppliers); *In re All American Semiconductor, Inc.*, Case No. 07-12963 (RAM) (Bankr. S.D. Fla. May 1, 2007) [Docket No. 74] (authorizing payment to shippers).[5]

51. Failure to pay the prepetition claims of Logistics Claimants could materially jeopardize the Debtors' performance and reliability. The Debtors' business is dependent on the timely delivery of services and equipment to and from the areas in which it operates. Any disruption to the Debtors' ability to timely procure equipment, repairs and/or materials would have deleterious effects on the Debtors' business. If the Logistics Claimants are unwilling to provide the Debtors with goods or services postpetition because of their outstanding prepetition claims, the Debtors' operations would suffer, compromising the value of the Debtors' estates to the detriment of all parties in interest. A lack of vital third-party transportation services, and

[5] Because of the voluminous nature of the orders cited herein, such orders have not been attached to this Motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

access to a limited universe of specialized service providers could substantial impair the Debtors' operations. Similarly, a lack of key equipment, supplies, parts and components to maintain the Debtors' fleet of car-hauling tractors and trailers would also force an interruption in operations.

52. Moreover, and as noted above, certain Logistics Claimants may be entitled under applicable non-bankruptcy law to assert certain possessory liens on the Debtors' assets in their possession (notwithstanding the automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their prepetition claim. As described above, under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay.[6] As a result, the Debtors anticipate that certain of the Logistics Claimants may assert and/or perfect liens; simply refuse to turn over goods in their possession; or stop performing their ongoing obligations. Even absent a valid lien, to the extent certain Logistics Claimants have possession of the Debtors' customer property or inbound inventory parts or materials, mere possession or retention could severely disrupt the Debtors' operations.

53. Based on the dire consequences that could potentially arise if the Logistics Claimants ceased providing goods and services, the Debtors submit that the relief requested herein represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, and is therefore justified under sections 105(a) and 363(b) of the Bankruptcy Code.

[6] See 11 U.S.C. § 546(b)(1)(A) (providing that a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection").

III. The Court Should Confirm That Outstanding Orders Are Administrative Expense Priority Claims and That the Payment of Such Claims Is Authorized

54. Pursuant to section 503(b) of the Bankruptcy Code, most obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expense priority claims because they benefit the estate postpetition. Thus, the granting of the relief sought herein with respect to the Outstanding Orders will not provide the Suppliers with any greater priority than they would otherwise have if the relief requested herein were not granted, and will not prejudice any other party in interest

55. Absent such relief, however, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide the suppliers with assurance of such administrative priority. The attendant disruption to the continuous and timely flow of goods and services to the Debtors could result in substantial delays in the Debtors' operations, which could lead to dissatisfied customers and reduced revenues. Accordingly, the Debtors submit that the Court should confirm the administrative expense priority status of the Outstanding Orders and should authorize the Debtors to pay the Outstanding Orders in the ordinary course of business.

Processing of Checks and Electronic Fund Transfers Should be Authorized

56. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral. Also, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment made to obligations on account of Critical Vendor Claims, Foreign Vendor Claims, and Logistics Claims. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and

that this Court should authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein.

Emergency Consideration

57. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." Here, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

58. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Reservation of Rights

59. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' or any party in interest's rights to dispute and/or contest any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their right to contest any claim related to the relief sought herein. Likewise, if the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtors' or any party in interest's rights to subsequently dispute and/or contest such claim.

Notice

60. The Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the Northern District of Georgia; (b) the Debtors' thirty (30) largest unsecured creditors; (c) counsel to the Prepetition Secured Parties; (d) counsel to the administrative agents for the Debtors' prepetition credit facilities; (e) counsel to the administrative agents for the Debtors' debtor-in-possession financing facilities; (f) the United States Securities and Exchange Commission; (g) the Internal Revenue Service; (h) the Georgia Department of Revenue; (i) the Attorney General for the State of Georgia; (j) the United States Attorney for the Northern District of Georgia; (k) the state attorneys general for states in which the Debtors conduct business; (l) the Pension Benefit Guaranty Corporation; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

61. No prior request for the relief sought in this motion has been made to this or any other court.

[*Remainder of page intentionally left blank*]

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request entry of the Interim Order and Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, (a) granting the relief requested herein, and (b) granting such other relief as is just and proper.

Dated: August 6, 2019
Atlanta, Georgia

/s/ Sarah R. Borders

Sarah R. Borders
Georgia Bar No. 610649
Leia Clement Shermohammed
Georgia Bar No. 972711
Britney Baker
Georgia Bar No. 625752
KING & SPALDING LLP
1180 Peachtree Street NE
Atlanta, Georgia 30309
Telephone: (404) 572-4600
Email: sborders@kslaw.com
Email: bbaker@kslaw.com

-and-

Kelley A. Cornish (*pro hac vice* pending)
New York Bar No. 1930767
Brian S. Hermann (*pro hac vice* pending)
New York Bar No. 2810232
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Email: kcornish@paulweiss.com
Email: bhermann@paulweiss.com

Proposed Counsel for the Debtors in Possession

Exhibit A

Interim Order

Exhibit B

Final Order

This is Exhibit "X" referred to in the

Affidavit of Waleed Malik, solemnly affirmed before me,

this 8th day of August, 2019

.....

A Commissioner for Taking Affidavits

David Rundle

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	)	Chapter 11
JACK COOPER VENTURES, INC., *et al.*,[1]	)	Case No. 19-62393 (PWB)
Debtors.	)	(Joint Administration Requested)

DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR AND JUNIOR SECURED SUPERPRIORITY POSTPETITION FINANCING; (II) GRANTING (A) LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS AND (B) ADEQUATE PROTECTION TO CERTAIN PREPETITION LENDERS; (III) AUTHORIZING USE OF CASH COLLATERAL; (IV) MODIFYING THE AUTOMATIC STAY; (V) SCHEDULING A FINAL HEARING; AND (VI) GRANTING RELATED RELIEF

By this motion, the above-captioned debtors and debtors in possession (collectively, the "Debtors") seek entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "Interim Order"), and a final order (a) authorizing the Debtors to obtain senior and junior secured, superpriority, postpetition financing (the "DIP Financing"); (b) authorizing the Debtors to use Cash Collateral (as defined below); (c) granting liens and affording superpriority

[1] The Debtors in these chapter 11 cases (the "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.

claims status with respect to such postpetition financing; (d) approving the form of adequate protection to be provided by the Debtors to certain prepetition secured creditors; (e) modifying the automatic stay to the extent necessary to effectuate the terms of the Proposed Orders (as defined below) and the DIP Loan Documents (as defined below); (f) scheduling a final hearing (the "Final Hearing") to consider entry of a final order (the "Final Order" and, together with the Interim Order, the "Proposed Orders") approving the DIP Financing on a final basis; and (g) granting related relief in connection with the DIP Financing. In support of this Motion, the Debtors have filed contemporaneously herewith (a) the *Declaration of Adam Dunayer in Support of the Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Senior and Junior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Lenders; (III) Authorizing Use of Cash Collateral; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief* (the "Dunayer Declaration" and, together with the First Day Declaration (as defined below), the "Declarations"), a copy of which is attached hereto as **Exhibit B**, and (b) the First Day Declaration, each of which are incorporated herein by reference.

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Northern District of Georgia has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105, 361, 362, 363, 364(c), 364(d)(1), 364(e), 503 and 507 of the Bankruptcy Code, rules 2002, 4001, 6003, 6004 and

9014 of the Bankruptcy Rules, and General Order 26-2019, Procedures for Complex Chapter 11 Cases, dated February 4, 2019 (the **"**Complex Case Procedures").

Relief Requested[2]

4. By this Motion, the Debtors request entry of the Proposed Orders:

A. Authorizing Jack Cooper Holdings Corp. and certain of its Debtor subsidiaries (in such capacity, the "DIP Revolver Borrowers") to enter into, and certain of the other Debtors (collectively, the "DIP Revolver Guarantors") to guaranty, a senior secured super-priority asset-based revolving credit facility (the "Revolver Facility"), including Canadian Revolver Commitments for the Canadian Borrowers (as defined in the Revolver DIP Agreement referred to below) (the "Canadian DIP Sub-Facility"), on the terms and conditions set forth in the Senior Secured Superpriority Debtor-in-Possession Credit Agreement, substantially in the form annexed hereto as **Exhibit C** (as the same may be amended, restated, amended and restated, supplemented, waived, extended or otherwise modified from time to time, the "Revolver DIP Agreement," and, together with any other related agreements, documents, security agreements, or pledge agreements, including the Proposed Orders, collectively, the "Revolver DIP Documents"), by and among the DIP Revolver Borrowers, the DIP Revolver Guarantors, Wells Fargo Capital Finance, LLC ("Wells") as administrative agent (in such capacity, the "Revolver Administrative Agent"), and the lenders from time to time party thereto (in such capacity, the "Revolver Lenders" and, together with the Revolver Administrative Agent, the "Revolver Secured Parties"), in an aggregate

[2] A description of the Debtors' businesses, the reasons for commencing these chapter 11 cases, the relief sought from the Court to allow for a smooth transition into chapter 11, and the facts and circumstances supporting this motion are set forth in the *Declaration of Greg May, the Debtors' Chief Financial Officer, in Support of First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith. Capitalized terms used in this Relief Requested section of the Motion but not otherwise defined therein shall have the meanings ascribed to such terms later in the Motion, and any other capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the First Day Declaration or the DIP Credit Agreements, as applicable.

principal amount (subject to availability) of (i) up to (x) $85 million in revolving commitments available for borrowing by the U.S. Borrowers (as defined in the Revolver DIP Agreement, and, such commitments, the "U.S. Revolving Commitments") (of which up to $5 million shall be available for the issuance of U.S. letters of credit) minus (y) outstanding Canadian Revolving Loans (as defined below), and (ii) up to $5 million in revolving commitments available for borrowing by the Canadian Borrowers (such commitments, the "Canadian Revolving Commitments" and, together with the U.S. Revolving Commitments, the "Revolving Commitments," and the loans outstanding under the Revolving Commitments from time to time, collectively, the "Revolving Loans") (of which up to $500,000 shall be available to the Canadian Borrowers for the issuance of Canadian letters of credit);

B. Authorizing Jack Cooper Ventures, Inc. (in such capacity, the "DIP Term Borrower" and, together with the DIP Revolver Borrowers, the "DIP Borrowers") to enter into, and the other Debtors (in such capacity, collectively, the "DIP Term Guarantors" and, together with the DIP Revolver Guarantors, the "DIP Guarantors") to guaranty, a junior secured super-priority multi-draw term loan credit facility (the "DIP Term Loan Facility," and, together with the Revolver Facility, collectively, the "DIP Facilities"), on the terms and conditions set forth in the Debtor-in-Possession Credit Agreement, substantially in the form annexed hereto as **Exhibit D** (as the same may be amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, the "DIP Term Loan Agreement," and, together with the Revolver DIP Agreement, collectively, the "DIP Credit Agreements" and the DIP Term Loan Agreement, together with any other related agreements, documents, security agreements, or pledge agreements, including the Proposed Orders, collectively, the "DIP Term Documents," and, together with the Revolver DIP Documents, the "DIP Loan Documents"), by and among the DIP

Term Borrower, the DIP Term Guarantors, Wilmington Trust, National Association, as administrative agent (in such capacity, the "DIP Term Administrative Agent" and, together with the Revolver Administrative Agent, the "DIP Agents"), and the lenders party thereto from time to time (the "DIP Term Lenders" and, together with the DIP Term Administrative Agent, the "DIP Term Secured Parties," and the DIP Term Lenders, together with the Revolver Lenders, the "DIP Lenders," and, together with the DIP Agents, the "DIP Secured Parties"), having an aggregate principal amount of $15 million in term loan commitments (the "DIP Term Loan Commitment" and, together with the DIP Revolving Commitments, the "DIP Commitments") which shall be available as term loans (the "DIP Term Loans" and, together with the Revolving Loans, the "DIP Loans") to the DIP Term Borrower upon entry of the Interim Order and satisfaction of the other conditions set forth therein in an amount not to exceed $7 million (the "Initial DIP Term Loan"), with up to an additional $3 million available prior to the entry of the Final Order, and the remainder available upon satisfaction of certain conditions as provided for in the DIP Term Loan Agreement and the entry of the Final Order;

C. Authorizing the Debtors to execute, deliver, and enter into the DIP Loan Documents and to perform all of the Debtors' respective obligations thereunder, and such other and further acts as may be required in connection with the DIP Loan Documents;

D. Authorizing the Debtors to pay all amounts, obligations, and liabilities owing or payable to the DIP Secured Parties 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, and disbursements of the respective DIP Secured Parties (including the reasonable and documented fees and expenses of each of the DIP Secured Parties' attorneys, advisors, accountants and other

consultants), 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 payable by the Debtors under the DIP Loan Documents (such obligations as to the Revolver Facility, the "Revolver Obligations," and such obligations as to the DIP Term Loan Facility, the "DIP Term Loan Obligations," and, collectively, the "DIP Obligations");

E. Authorizing the Debtors, immediately upon entry of the Interim Order and subject to the terms thereof, to use proceeds of the DIP Facilities (collectively the "DIP Loan Proceeds") as expressly provided in the DIP Loan Documents and in accordance with the applicable Approved Budget (as defined below) (subject to permitted variances and other exclusions set forth in the DIP Loan Documents) to: (A) pay costs, premiums, fees, and expenses related to the above-captioned cases (collectively, the "Cases") and in connection with the DIP Facilities; (B) immediately use borrowings under the Revolver Facility to repay the Prepetition ABL Obligations in full; (C) make adequate protection payments in respect of the Prepetition Obligations (as defined below) as provided for in the Proposed Orders; and (D) provide financing for working capital, to fund these Chapter 11 Cases, and for other general corporate or permitted purposes in accordance with the Approved Budget (subject to permitted variances and other exclusions set forth in the DIP Loan Documents);

F. Granting, in each case subject to the Carve Out (as defined below), superpriority administrative expense claim status, pursuant to sections 364(c)(1), 503(b)(1), and 507(b) of title 11 of the United States Code (the "Bankruptcy Code"), to the DIP Agents, for the benefit of themselves and the other DIP Secured Parties, in respect of all DIP Obligations;

G. Granting the DIP Secured Parties valid, enforceable, non-avoidable, automatically and fully perfected DIP Liens to secure the DIP Obligations, which DIP Liens shall be subject to the relative rankings and priorities described herein and in the Interim Order, including Exhibit D thereto;

H. Authorizing the Debtors to use, among other things, in accordance with the Proposed Orders and the Approved Budget (subject to permitted variances and other exclusions set forth in the DIP Loan Documents), any "Cash Collateral" (as that term is defined in section 363(a) of the Bankruptcy Code) in which any of the Prepetition Secured Parties (as defined below), including, for the avoidance of doubt, the Prepetition First Lien Secured Parties (as defined below), may have a lien on or security interest in, and the granting of adequate protection solely to the extent of any postpetition diminution in the value of their respective interests in the Prepetition Collateral, including without limitation, the Cash Collateral, as a result of (i) the incurrence of the DIP Obligations, (ii) the Debtors' use of Cash Collateral as set forth in the Proposed Orders, (iii) the subordination of the Prepetition Secured Obligations to the Carve Out, (iv) any other diminution in value of the Prepetition Collateral arising from the Debtors' use, sale or disposition of Prepetition Collateral or the proceeds thereof, (v) the priming of the Prepetition Liens to the extent set forth in the Interim Order, including Exhibit D thereof, and (vi) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, "Diminution in Value");

I. Authorizing the Debtors, upon entry of the Interim Order and the satisfaction or waiver of all other closing conditions in the Revolver DIP Agreement, without any further action by the Debtors or any other party, to immediately borrow under the Revolver DIP Agreement the full amount necessary to fully and immediately repay all Prepetition ABL

Obligations (the "ABL Refinancing"), and continue all Bank Products, Cash Management Services, and Letters of Credit (each as defined in the Prepetition ABL Credit Agreement) as outstanding under the Revolver DIP Agreement and all obligations under or in connection therewith as Revolver Obligations;

J. Modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Proposed Orders and the other DIP Loan Documents;

K. Granting a waiver of the Debtors' ability to surcharge against any DIP Collateral or, subject to entry of the Final Order, Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtors with regard to the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

L. Waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of the Interim Order;

M. Scheduling an interim hearing (the "Interim Hearing") on the Motion to be held before this Court to consider entry of the Interim Order, pursuant to rule 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules");

N. Scheduling a final hearing on the Motion (the "Final Hearing") to consider entry of the Final Order granting the relief requested in the Motion on a final basis, and approving the form of notice with respect to the Final Hearing; and

O. Granting the Debtors such other and further relief as is just and proper.

Concise Summary of Terms of DIP Facilities

5. Under the disclosure requirements of Bankruptcy Rule 4001(b), (c) and (d) and Section G.1.b of the Complex Chapter 11 Procedures, the following tables concisely summarize the significant terms of the DIP Facilities and the Interim Order:[3]

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
Borrowers *Bankruptcy Rule 4001(c)(1)(B)*	**DIP Term Loan Borrower:** Jack Cooper Ventures, Inc. ***See* DIP Term Loan Credit Agreement Schedule 1.1 (Definition of "Borrower")** **Revolver Borrowers:** Domestic Borrowers Jack Cooper Holdings Corp. Auto Handling Corporation Jack Cooper Logistics, LLC Jack Cooper Transport Company, Inc. Jack Cooper CT Services, Inc. Axis Logistic Services, Inc. Jack Cooper Rail and Shuttle, Inc. CTEMS, LLC North America Auto Transportation Corp. Canadian Borrowers Jack Cooper Transport Canada Inc. Jack Cooper Canada 1 Limited Partnership Jack Cooper Canada 2 Limited Partnership ***See* Revolver DIP Agreement Schedule 1.1 (Definition of "Borrower")**
Guarantors *Bankruptcy Rule 4001(c)(1)(B)*	All Debtors, other than the relevant Borrowers. ***See* DIP Credit Agreements Schedule 1.1 (Definition of "Guarantor")**
DIP Agents *Bankruptcy Rule 4001(c)(1)(B)*	Wilmington Trust, N.A., as DIP Term Administrative Agent ***See* DIP Term Loan Credit Agreement § 1.01 (Definition of "Agent")**

[3] This summary, including the defined terms it uses (whether or not defined within the summary), is qualified in its entirety by the provisions of the DIP Loan Documents and the Interim Order, as applicable. To the extent that there are any conflicts between this summary, on the one hand, and any DIP Loan Document or the Interim Order, as applicable, on the other, the terms of such DIP Loan Document or the Interim Order, as applicable, shall govern.

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
	Wells Fargo Capital Finance, LLC, as Revolver Administrative Agent ***See* Revolver DIP Agreement § 1.01 (Definition of "Agent")**
DIP Lenders *Bankruptcy Rule 4001(c)(1)(B)*	**DIP Term Loan Lenders** Those certain banks, financial institutions and other entities party thereto from time to time as lenders ***See* DIP Term Loan Credit Agreement Schedule 1.1 (Definition of "Lender")** **Revolver Lenders** Wells Fargo Capital Finance, LLC, Fifth Third Bank, and any other banks, financial institutions and other entities party thereto from time to time as lenders and consented to by the Company. ***See* Revolver DIP Agreement Schedule 1.1 (Definition of "Lender")**
Amount and Facilities *Bankruptcy Rule 4001(c)(1)(B)*	**DIP Term Loan Facility** A junior secured super-priority multi-draw term loan credit facility in an aggregate principal amount of $15 million in term loan commitments, which shall be available as term loans upon entry of the Interim Order and satisfaction of the other conditions set forth therein in an initial amount not to exceed $7 million, with up to an additional $3 million available prior to the entry of the Final Order, and the remainder available upon entry of the Final Order. ***See* DIP Term Loan Credit Agreement § 2.1; Interim Order ¶ (1)(b).** **Revolver Facility** A senior secured debtor-in-possession credit facility consisting of (i) up to (x) $85 million in revolving commitments available for borrowing by the U.S. Borrowers (as defined in the Revolver DIP Agreement) (of which up to $5 million shall be available for the issuance of letters of credit) minus (y) outstanding Canadian Revolving Loans (as defined below), and (ii) up to $5 million in revolving commitments available for borrowing by the Canadian Borrowers (of which $500,000 shall be available to the Canadian Borrowers for the issuance of letters of credit). ***See* Revolver DIP Agreement § 2.1 (Loans) and Schedule 1; Interim Order ¶ (1)(a).**
Funding Use of Proceeds *Bankruptcy Rule 4001(c)(1)(B)*	Subject to the DIP Budget (as defined below) and Permitted Disbursement Variances (as defined in the DIP Credit Agreements) and other exclusions, the DIP Term Facilities shall be available to (a) pay transactional fees, costs, and expenses incurred in connection with this DIP Loan Documents and the transactions contemplated thereby, (b) fund general corporate needs, including, without limitation, working capital needs, (c) pay administrative

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
	expenses of the Chapter 11 Cases and the CCAA Proceedings, including fees and expenses of professionals, and (d) solely in the case of the Revolver Facility, to complete the ABL Refinancing. ***See* DIP Credit Agreements § 6.13 (Use of Proceeds)**
Interest and Fees *Bankruptcy Rule 4001(c)(1)(B)*	Under the DIP Loan Documents, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agents and the DIP Lenders. In particular, the Debtors have agreed to pay: • ***DIP Term Loan Interest Rate***: The loans under the DIP Term Loan Facility will bear interest at a fixed rate equal to the 1-month LIBOR, as of the initial closing, plus 9%. If any principal of or interest on any term loans under the DIP Term Loan Documents are not paid when due, such overdue amounts will bear interest at an additional 2.00% per annum. • ***DIP Term Commitment Fee***: A commitment fee equal to 1.00% per annum multiplied by the average daily unused amount of commitments in respect of the DIP Term Loan Facility. • ***DIP Revolver Loan Interest Rate***: The loans under the Revolver Facility will bear interest at either (i) LIBOR (as defined in the Revolver DIP Agreement) plus an applicable margin of 3.50% or (ii) the Base Rate (as defined in the Revolver DIP Agreement) plus an applicable margin of 2.50%. During the continuance of an event of default under the Revolver DIP Documents, overdue amounts will bear interest at an additional 2.00% per annum. • ***DIP Revolver Commitment Fee***: A commitment fee equal to 0.250% per annum multiplied by the aggregate amount of commitments under the DIP Revolver Facility less the average daily balance of the revolver usage during the immediately preceding month. • ***DIP Revolver Closing Fee***: A closing fee due on the closing of the DIP Revolver Facility of $637,500. • ***DIP Revolver Annual Servicing Fee***: An annual fee of $50,000. ***See* DIP Credit Agreements § 2.6 (Interest Rates and Fees); DIP Term Loan Credit Agreement § 2.8; Revolver DIP Agreement § 2.10(b)**
Maturity *Bankruptcy Rule 4001(c)(1)(B)*	**DIP Term Loan Facility** The maturity date of the DIP Term Loans under the DIP Term Loan Facility is the earliest to occur of: (i) December 31, 2019; (ii) substantial consummation of a plan of reorganization filed in the Chapter 11 Cases; (iii) the acceleration of the loans and the termination of the commitments with respect to the DIP Facilities in accordance with the DIP Loan Documents; and (iv) a sale of all or substantially all of the DIP Collateral pursuant to section 363 of the Bankruptcy Code or Section 36 of the CCAA.

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
	***See* DIP Term Loan Credit Agreement § 3.3 (Maturity) and Schedule 1.1 (Definition of "Maturity Date")** **<u>Revolver Facility</u>** The earliest of: (a) December 31, 2019; (b) the substantial consummation of a plan of reorganization filed in the Chapter 11 Cases; (c) the acceleration of the Revolving Loans and the termination of the commitments in accordance with Section 8 of the Revolver Credit Agreement; and (d) a sale of all or substantially all of the assets of the Debtors, pursuant to Section 363 of the Bankruptcy Code or Section 36 of the CCAA, as applicable. ***See* Revolver DIP Agreement § 3.3 (Maturity) and Schedule 1.1 (Definition of "Maturity Date")**
Mandatory Prepayments *Bankruptcy Rule 4001(c)(1)(B)*	**<u>DIP Term Loan Facility</u>** Asset sale proceeds in excess of $1 million and Proceeds from the incurrence of any debt not permitted by the DIP Loan Documents. Prepayments shall be subject to Section 18.1 of the DIP Term Loan Credit Agreement and the terms of the Intercreditor Agreement. ***See* DIP Term Loan Credit Agreement § 2.4(d)(ii) (Payments; Reductions of Commitments; Prepayments)** **<u>Revolver Facility</u>** If at any time the amount of outstanding Revolving Loans plus letter of credit usages exceeds the lesser of (1) the applicable Maximum Revolver Amount and (2) the applicable borrowing base (as reflected in the most recent Borrowing Base Certificate delivered by the Debtors to the Revolver Agent), the Debtors shall pay the amount of such excess. ***See* Revolver DIP Agreement § 2.5 (Overadvances; Promises to Pay)**
Security and Priority *Bankruptcy Rule 4001(c)(1)(B)(i)*	The DIP Secured Parties are being granted, as security for the prompt payment of the DIP Facilities and all other obligations of the Debtors under the DIP Loan Documents, subject to the priority described in <u>Exhibit D</u> to the Interim Order, superpriority perfected security interests in and liens upon all property and assets of the Debtors, including, but not limited to, a valid and perfected security interest in and lien upon all of the now or hereafter arising or acquired: • Prepetition ABL Priority Collateral (as defined below) (whether in existence on the Petition Date or hereafter arising), • Prepetition Term Loan Priority Collateral (as defined below) (whether in existence on the Petition Date or hereafter arising), • The Canadian Collateral (as defined below), • any assets of the Debtors that are not otherwise subject to valid, perfected, enforceable, and unavoidable security interests, on the Petition Date, and

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
	• subject to entry of the Final Order, the proceeds (the "Avoidance Proceeds") of any claim or cause of action arising under or pursuant to chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law (including any other avoidance actions under the Bankruptcy Code) (collectively, the "Avoidance Actions")). With respect to the foregoing: • The Prepetition ABL Priority Collateral includes certain of the Debtors' property, including (i) all accounts receivable (except to the extent such accounts receivable constitutes identifiable proceeds of Prepetition Term Loan Priority Collateral) (the "ABL A/R"), (ii) all inventory, (iii) instruments, chattel paper and other contracts, in each case, evidencing, or substituted for the ABL A/R, (iv) guarantees, letters of credit, security and other enhancements, in each case for the ABL A/R, (v) claims and causes of actions (including commercial tort claims) relating to inventory or the ABL A/R, (vi) deposit accounts and security accounts not used exclusively to hold Prepetition Term Loan Priority Collateral (including all cash and other funds on deposit therein, except to the extent constituting identifiable proceeds of Prepetition Term Loan Priority Collateral), (vii) all tax refunds (other than tax refunds relating to Prepetition Term Loan Priority Collateral), (viii) all documents, books and records, accounting systems, general intangibles and supporting obligations related to any the foregoing (other than (A) intellectual property and (B) pledged stock), (ix) all books and records relating to any of the foregoing (including all books, databases, customer lists, and records, whether tangible or electronic, which contain any information relating to any of the foregoing), and (x) all substitutions, replacements, accessions, products, or proceeds of the foregoing (such property, whether now existing or hereafter arising or acquired, in clauses (i) through (x), collectively, the "Prepetition ABL Priority Collateral"). • The Prepetition Term Loan Priority Collateral includes certain of the Debtors' property, including (i) pledged stock, subject to any relevant exclusions set forth in the Prepetition Revolving Financing Documents, (ii) certain real estate assets, including fixtures related thereto, (iii) equipment (including vehicles), (iv) intellectual property, (v) pledged debt instruments, (vi) all general intangibles, instruments, documents, chattel paper, letters-of-credit rights, books and records, and supporting obligations related to the foregoing and proceeds of the foregoing (except to the extent any of the foregoing constitute Prepetition ABL Priority Collateral or Excluded Collateral (as defined in the relevant Prepetition Documents (as defined below)); (vii) all other goods and assets not constituting Prepetition ABL Priority Collateral, whether tangible or intangible, (viii) all books and records relating to any of the foregoing (including all books, databases,

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
	customer lists, and records, whether tangible or electronic, which contain any information relating to any of the foregoing), and (ix) proceeds of the foregoing (such property, whether now existing or hereafter arising or acquired, in clauses (i) through (ix), collectively, the "Prepetition Term Loan Priority Collateral"). • The Canadian Collateral includes substantially all of the assets of those Debtors organized under the laws of Canada or any province thereof (such Debtors, the "Canadian Debtors," and such collateral, whether now existing or hereafter arising or acquired, the "Canadian Collateral"). The DIP Liens shall have the priority as set forth on Exhibit D to the Interim Order. ***See* DIP Credit Agreements Schedule 1.1 (Definition of "Collateral") and DIP Term Loan Credit Agreement § 18.1 (Priority and Liens); Interim Order ¶¶ F(vi), 2.1, and Exhibit D**
DIP Budget *Bankruptcy Rule 4001(c)(1)(B)*	The use of proceeds of the DIP Facilities are subject to an agreed upon 13-week budget as extended in accordance with the DIP Documents (as updated from time to time, the "DIP Budget"), subject to permitted variances (the "Permitted Disbursement Variances") and other permitted exclusions as set forth in the DIP Loan Documents. ***See* DIP Credit Agreements § 6.13 (Use of Proceeds) and Schedule 1.1 (Definition of "DIP Budget"); Interim Order ¶ F(v)**
Reporting *Bankruptcy Rule 4001(c)(1)(B)*	The DIP Credit Agreement requires compliance with certain periodic reporting covenants including monthly and quarterly financial statements, the DIP Budget, variance reports, and borrowing base certificates. ***See* DIP Credit Agreements § 5.1 (Financial Statements, Reports, Certificates)**
Borrowing Conditions *Bankruptcy Rule 4001(c)(1)(B)*	The DIP Credit Agreements include customary conditions of borrowing, the satisfaction of which are a condition precedent to the obligations of each DIP Lender to make DIP Loans. ***See* DIP Credit Agreements §§ 3.1 and 3.2 (Conditions Precedent)**
Stipulations as to Prepetition Claims and Liens *Bankruptcy Rule 4001(c)(1)(B)(iii)*	After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree to certain stipulations regarding the validity and extent of the Prepetition Secured Parties' claims and liens, but subject to the "Challenge Provisions" described below. ***See* Interim Order ¶ E**
Effect of Stipulations *Bankruptcy Rule 4001(c)(1)(B)(iii)*	The Debtors' Stipulations shall be binding on the Debtors in all circumstances upon entry of the Interim Order. The Debtors' Stipulations shall be binding on each other party in interest following the expiration of the Challenge

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
	Period, including, without limitation, the Committee (if any), unless, and solely to the extent that a Challenge Proceeding is commenced prior to the expiration of the Challenge Period. ***See* Interim Order ¶ 4.1**
Adequate Protection *Bankruptcy Rule 4001(c)(1)(B)(ii)*	The Prepetition Term Loan Secured Parties are entitled, pursuant to sections 361, 363(e), and 364(d)(1) of the Bankruptcy Code and *nunc pro tunc* to the Petition Date, to adequate protection of their respective interests in the Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate Diminution in Value of the Prepetition Term Loan Secured Parties' respective interests in the Prepetition Collateral from and after the Petition Date (each such Prepetition Term Loan Secured Party's claim, a "Prepetition Term Loan Adequate Protection Claim"). On account of such Prepetition Term Loan Adequate Protection Claims, the Prepetition Term Loan Secured Parties are being granted the following, in each case subject to the Carve Out (collectively, the "Adequate Protection"): • Prepetition Term Loan Adequate Protection Liens. The Prepetition Term Loan Secured Parties are being granted (effective and perfected upon the date of the Interim Order and without the necessity of any Perfection Act) valid and perfected postpetition replacement security interests in and liens upon the DIP Collateral (other than the Canadian Collateral) (the "Prepetition Term Loan Adequate Protection Liens"), which liens shall have the priorities set forth in Exhibit D to the Interim Order. • Adequate Protection Payments. The Debtors are authorized and directed to pay to the Prepetition First Lien Secured Parties on the last business day of each calendar month after the entry of the Interim Order, in each case in an amount equal to all accrued and unpaid prepetition or postpetition interest (at the non-default rate), fees, and costs under the Prepetition First Lien Credit Agreement. For the avoidance of doubt, the payment of interest shall be without prejudice to the rights of the Prepetition First Lien Secured Parties to assert claims for payment of interest at the default rate in accordance with the Prepetition First Lien Credit Agreement. • Section 507(b) Claim. The Prepetition Term Loan Adequate Protection Claims granted to the Prepetition Term Loan Secured Parties shall also be allowed superpriority administrative expense claims pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code (the "Superpriority Claim"), which Superpriority Claim shall be an allowed claim against each of the Debtors (jointly and severally), with priority (except as otherwise provided in the Interim Order) over any and all administrative expenses and all other claims against the Debtors now existing or hereafter arising, of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and all other administrative expenses or other claims arising under

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
	any other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 327, 328, 330, 331, 503(b), 507(a), 507(b), or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment. The Superpriority Claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors, subject to the Carve Out and the priorities set forth in Exhibit D to the Interim Order. • Reporting. The Debtors shall timely provide the Prepetition Secured Parties with (x) reasonable access to the Debtors' facilities, management, books, and records required under the Prepetition Documents and (y) copies of all financial reporting provided to the DIP Lenders pursuant to the DIP Documents substantially simultaneously with such delivery to the DIP Lenders. • Fees and Expenses. The Debtors are authorized and directed to pay: (i) on the date of the first advance under the DIP Facilities, all outstanding prepetition reasonable and documented fees and expenses of counsel and financial advisors to those certain Prepetition Secured Parties represented by Schulte Roth & Zabel LLP; and (ii) on an ongoing basis, from time to time after the Petition Date, and without duplication, all reasonable and documented fees and out-of-pocket expenses incurred by the Prepetition Secured Parties and required to be paid by the Debtors under the Prepetition Agreements (but no more than one set of primary counsel for each of the Prepetition First Lien Secured Parties (taken as a whole) and the Prepetition Junior Lien Secured Parties (taken as a whole)). ***See* DIP Interim Order ¶¶ F(xi) and 2.4**
Covenants *Bankruptcy Rule 4001(c)(1)(B)*	Affirmative Covenants: Usual and customary for financings of this type, including, without limitation, (a) reporting requirements, (b) delivery of certain compliance certificates, notices, reports and filings, (c) preservation of existence, (d) compliance with applicable laws, (e) payment of post-petition obligations, (f) maintenance of property and insurance, (g) keeping of books and records, (h) use of proceeds, (i) further assurances regarding collateral and guarantors, (j) compliance with the Milestones (as defined below), and (k) delivery of the DIP Budget and variance reporting. ***See* DIP Credit Agreements Art. 5 (Affirmative Covenants)** Negative Covenants: Usual and customary for financings of this type, including, without limitation, restrictions on: (a) indebtedness, (b) liens and guaranties, (c) investments, (d) disposal of assets, (e) restricted payments and payments in respect of other indebtedness, (f) transactions with affiliates, (g) use of proceeds, (h) post-petition claims, and (i) compliance with the DIP Budget (subject to permitted variances and exclusions). ***See* DIP Credit Agreements Art. 6 (Negative Covenants)**

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
Events of Default *Bankruptcy Rule 4001(c)(1)(B)*	The DIP Credit Agreements and Interim Order contain events of default that are usual and customary for debtor-in-possession financings, including without limitation, termination of the RSA, the failure to comply with the Budget covenants, and any Milestone. ***See* DIP Credit Agreements Art. 8 (Events of Default) and DIP Interim Order ¶ 3.1**
DIP Termination Date *Bankruptcy Rule 4001(c)(1)(B)*	The Interim Order contains termination events, including the occurrence of an Event of Default under the DIP Credit Agreements, the occurrence of the Maturity Date under the DIP Credit Agreements, or the violation, breach, or default of the Interim Order a ("DIP Termination Event"). During the period covered by the Interim Order, after five (5) calendar days following the delivery of a written notice of the occurrence of and during the continuance of a DIP Termination Event (the "Remedies Notice Period"), the DIP Agents shall each be entitled to independently take any act or exercise any right or remedy as provided in the Interim Order or any DIP Loan Document, as applicable, including, without limitation: • declare all DIP Obligations owing under their respective DIP Loan Documents to be immediately due and payable; • terminate, reduce, or restrict any commitment to extend additional credit to the Debtors to the extent any such commitment remains (including provision of any Letters of Credit); • terminate the DIP Facilities and any DIP Loan Document as to any future liability or obligation of the DIP Secured Parties, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations; • terminate and/or revoke the Debtors' right, if any, under the Interim Order and the other DIP Loan Documents to use any Cash Collateral and all authority to use Cash Collateral shall cease; • invoke the right to charge interest at the default rate under the DIP Loan Documents; and/or • stop lending. Notwithstanding the foregoing, any termination of the DIP Term Loan Facility or cessation of lending or exercise of remedies thereunder shall be subject to the funding of the Carve Out Cap in accordance with the terms of Section 2.3 of the Interim Order. For the avoidance of doubt, notwithstanding the foregoing, during the Remedies Notice Period, the Debtors may use Cash Collateral in amounts that the Debtors have determined in good faith are necessary to the preservation of the Debtors and their Estates, including funding payroll and paying other administrative expenses in accordance with

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
	the Approved Budget, or otherwise been approved in advance in writing by the applicable DIP Lenders. ***See* DIP Interim Order ¶¶ 3.1, 3.4**
Carve Out *Bankruptcy Rule 4001(c)(1)(B)*	The Interim Order provides a "Carve Out" equal to the sum of: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (ii) all reasonable fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (the "Chapter 7 Trustee Carve Out"); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees, costs, disbursements and expenses (the "Allowed Professional Fees") incurred or earned by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code or Canadian counsel for the Debtors (the "Debtor Professionals") and the Committee pursuant to sections 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by either of the DIP Agents of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to, on or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $1,000,000 incurred after the first business day following delivery by either of the DIP Agents of the Carve Out Trigger Notice (such date, the "Trigger Date"), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve Out Trigger Notice Cap" and such amounts set forth in clauses (i) through (iv), the "Carve Out Cap"); *provided* that nothing herein shall be construed to impair any party's ability to object to court approval of the fees, expenses, reimbursement of expenses or compensation of any Professional Person. ***See* Interim Order ¶ 2.3**
Milestones *Bankruptcy Rule 4001(c)(1)(B)(v) and (vi)*	The Debtors shall comply with certain case milestones (each of which may be extended with the written consent of the requisite parties), including, without limitation: • obtain entry of an order by the Companies' Creditors Arrangement Act court recognizing the Interim Order no later than 5 calendar days after entry of the Interim Order; • obtain entry by the Bankruptcy Court of the Final DIP Order by no later than 25 calendar days after the Petition Date;

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
	• obtain entry by the Bankruptcy Court of an order approving bidding procedures for the Sale Transaction by no later than 25 calendar days after the Petition Date; • Obtain ratification of a new collective bargaining agreement no later than September 23, 2019; • obtain entry by the Bankruptcy Court of the an order approving the Sale Transaction by no later than 65 calendar days after the Petition Date; and • cause the closing of the Sale Transaction to occur no later than 75 calendar days after the Petition Date. ***See* DIP Term Loan Credit Agreement ¶ 5.2 (Restructuring Milestones); DIP Revolving Credit Agreement ¶ 5.20 (Bankruptcy Transaction Milestones)**
506(c) Waiver *Bankruptcy Rule 4001(c)(1)(B)(x)*	No costs or expenses of administration which have been or may be incurred in these Cases at any time (including, without limitation, any costs and expenses incurred in connection with the preservation, protection, or enhancement of value by the DIP Agents or the DIP Lenders upon the DIP Collateral, or by the Prepetition Secured Parties upon the Prepetition Collateral, as applicable) shall be charged against any of the DIP Agents, DIP Lenders, or Prepetition Secured Parties, or any of the DIP Obligations or Prepetition Obligations or the DIP Collateral or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise without the prior express written consent of the affected DIP Secured Parties and/or affected Prepetition Secured Parties, in their sole discretion, and no such consent shall be implied, directly or indirectly, from any other action, inaction, or acquiescence by any such agents or creditors (including, without limitation, consent to the Carve Out or the approval of any budget hereunder). Notwithstanding the foregoing, the waiver provided in Section 5.11 of the Interim Order as to the Prepetition Secured Parties, the Prepetition Obligations, and the Prepetition Collateral is subject to the entry of a Final Order providing such relief. ***See* Interim Order ¶ 5.11**
Section 552(b) Waiver *Bankruptcy Rule 4001(c)(1)(B)(x)*	The Debtors have agreed as a condition to obtaining financing under the DIP Facilities and using Cash Collateral that, subject to entry of the Final Order, the Prepetition Secured Parties are and shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and that the "equities of the case" exception under section 552(b) shall not apply to the DIP Agents, the DIP Lenders, the DIP Obligations, and, subject to entry of the Final Order, the Prepetition Secured Parties or the Prepetition Obligations. ***See* Interim Order ¶ 5.12**

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
Liens on Avoidance Actions *Bankruptcy Rule 4001(c)(1)(B)(xi)*	Subject to entry of the Final Order, the DIP Liens and the Adequate Protection Liens shall attach to the proceeds of claims and causes of action under chapter 5 of the Bankruptcy Code ("Avoidance Proceeds"). ***See* Interim Order ¶ F(vi)**
Waiver of Marshaling *Bankruptcy Rule 4001(c)(1)(B)(x)*	Subject to entry of the Final Order, the Debtors have agreed as a condition to obtaining financing under the DIP Facilities and using Cash Collateral that in no event shall the DIP Agents, the DIP Lenders, or, subject to the entry of the Final Order, the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable, and all proceeds shall be received and applied in accordance with the DIP Loan Documents and the Prepetition Credit Agreements, as applicable. Notwithstanding anything to the contrary in the Interim Order, but subject in all respects to the priorities set forth on Exhibit D to the Interim Order and the DIP Intercreditor Agreement, 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. ***See* Interim Order ¶ 5.13**
Indemnification *Bankruptcy Rule 4001(c)(1)(B)(ix)*	The Debtors are authorized to indemnify and hold harmless the DIP Agents, each DIP Lender, and, solely in their capacities as such, each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders and employees, past, present and future, and their respective heirs, predecessors, successors and assigns (each, an "Indemnified Party"), in accordance with, and subject to, the DIP Loan Documents. Subject to the expiration of the Challenge Period, the Debtors are also authorized to indemnify and hold harmless the Prepetition Secured Parties in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining the requisite approvals of the DIP Facilities and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens. ***See* Interim Order ¶¶ E(x), 1.6*;* DIP Credit Agreements § 10.3 (Indemnification)**
Automatic Stay Waiver/Modification *Bankruptcy Rule 4001(c)(1)(B)(iii)*	The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are modified without further notice, application, or order of the Court to the extent necessary to • permit the DIP Agents to perform any act authorized or permitted under or by virtue of the Interim Order, the DIP Credit Agreements,

Summary of Relevant Provisions	
Material Terms	**DIP Facilities**
	or the other DIP Loan Documents, as applicable, including, without limitation, (A) to implement the postpetition financing arrangements authorized by the Interim Order, (B) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the DIP Collateral, (C) to assess, charge, collect, advance, deduct and receive payments with respect to the Prepetition Obligations and DIP Obligations (or any portion thereof), including, without limitation, all interests, fees, costs, and expenses permitted under any of the DIP Loan Documents and apply such payments to the Prepetition Obligations, and (D) subject to the Remedies Notice Period, to take any action and exercise all rights and remedies provided to it by the Interim Order, the DIP Loan Documents, or applicable law; and • permit the Purchaser to terminate the Stalking Horse Agreement in accordance with its terms and to deliver any notice or election contemplated thereunder. Notwithstanding the foregoing, the DIP Agents shall provide notice to the Prepetition Agents at least five (5) calendar days prior to the exercise of the actions outlined in clause (D) of the above. ***See* Interim Order ¶ 3.5**
Waiver/Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens *Bankruptcy Rule 4001(c)(1)(B)(vii)*	The Interim Order provides for a customary waiver/modification of applicability of nonbankruptcy law to the perfection or enforcement of liens. ***See* Interim Order ¶¶ E(viii), 2.1(d)**

Provisions to Be Highlighted

6. The Debtors hereby disclose the below provisions (collectively, the "Highlighted Provisions") pursuant to Complex Case Procedures (G)(1)(a):

- **Cross-Collateralization Provisions**: No such provision is contained in the Interim Order. *See* Complex Case Procedures (G)(1)(a)(i).

- **Findings of Fact**: Pursuant to paragraph E of the Interim Order, the Debtors have provided the Debtors' Stipulations concerning the Prepetition Financing Documents, the Prepetition Obligations, and the Prepetition Liens, and a release and indemnification of the Prepetition Secured Parties, among other things. The stipulations are subject to challenge by parties in interest (other than the Debtors), subject to the limitations set forth in paragraph 4.1 of the Interim Order, and will not be binding upon any such parties in interest until the

conclusion of the Challenge Period. The Challenge Period extends until the earliest of (a) if no Committee has been appointed, 75 days after the Petition Date, (b) if a Committee has been appointed, 60 days after the date of formation of such Committee, or (c) the date of objections to the Sale Transaction are due. *See* Complex Case Procedures (G)(1)(a)(ii).

- **506(c) Waiver**: Pursuant to paragraph 5.11 of the Interim Order, the Debtors are seeking approval of a waiver of rights under Bankruptcy Code section 506(c) against the DIP Collateral and, upon entry of the Final Order, the Prepetition Collateral. Accordingly, parties will have notice of (and an opportunity to object to) the Debtors' proposed waiver. *See* Complex Case Procedures (G)(1)(a)(iii).

- **Liens on Avoidance Actions**: Pursuant to paragraph 2.2 of the Interim Order, the Debtors are seeking approval to grant liens on the proceeds of Avoidance Actions upon entry of the Final Order. Accordingly, parties will have notice of (and an opportunity to object to) the liens. *See* Complex Case Procedures (G)(1)(a)(iv).

- **Provisions Authorizing "Roll Up" or Repayment of Prepetition Debt**: Paragraph 1.4 of the Interim Order authorizes the Debtors to refinance in full the Prepetition ABL Obligations using proceeds of the initial borrowing under the DIP Revolver Agreement upon entry of the Interim Order and the satisfaction or waiver of all other closing conditions in the Revolver DIP Agreement, without any further action by the Debtors or any other party. *See* Complex Case Procedures (G)(1)(a)(v).

- **Disparate Treatment of Debtor and Creditors' Committee Professionals in Carve Out**: No such provision is contained in the Interim Order. *See* Complex Case Procedures (G)(1)(a)(vi).

- **Non-Consensual Priming of Prepetition**: While the DIP Facilities do provide for "priming" liens, as discussed below, the priming liens are on a consensual basis. *See* Complex Case Procedures (G)(1)(a)(vii).

- **552(b) Waiver**: Pursuant to Section 5.12 of the Interim Order, the DIP Secured Parties and, subject to entry of the Final Order, the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Secured Parties and the Prepetition Secured Parties with respect to the proceeds, product, offspring, or profits of any of the DIP Collateral and the Prepetition Collateral, as applicable. *See* Complex Case Procedures (G)(1)(a)(viii).

The Debtors' Prepetition Capital Structure

7. As of the Petition Date, the Debtors' capital structure consisted of the following:

I. Prepetition ABL Facility

8. Jack Cooper Holdings Corp. and certain of its affiliates designated therein, as borrowers, certain other parties designated as "Guarantors" thereto (such parties, collectively, the "Prepetition ABL Obligors"), the financial institutions from time to time party thereto (collectively, the "Prepetition ABL Lenders"), and Wells, as administrative agent (in such capacity, the "Prepetition ABL Agent" and, together with the Prepetition ABL Lenders, the "Prepetition ABL Secured Parties"), are parties to 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, the "Prepetition ABL Credit Agreement" and, together with all other agreements, documents, and instruments executed and/or delivered with, to or in favor of the Prepetition ABL Secured Parties, including, without limitation, all security agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements, documents, and instruments, including any fee letters, executed and/or delivered in connection therewith or related thereto, the "Prepetition Revolving Financing Documents"). The Prepetition ABL Credit Agreement provided the Prepetition ABL Obligors with an asset-based credit facility (the "Prepetition ABL Facility") with $85.0 million of maximum aggregate availability to the borrowers thereunder, including a $5 million Canadian Revolver Commitment (the "Prepetition ABL Canadian Sub-Facility"), as applicable, subject to a domestic borrowing base and a Canadian borrowing base (and, in each case, as reduced by reserves), as set forth in the Prepetition ABL Credit Agreement. As of the Petition Date, approximately $49,831,585.15 in principal was outstanding under the Prepetition ABL Facility in the form of "Revolving Loans" (as defined under the Prepetition ABL Credit Agreement), plus letters of credit in the approximate

stated amount of approximately $350,000, plus interest accrued and accruing at the rates set forth in the Prepetition ABL Credit Agreement (together with any other amounts outstanding under the Prepetition ABL Facility as provided in the Prepetition ABL Credit Agreement, including obligations in respect of cash management, cash collateral for letters of credit, purchase charge cards, purchase card services, fees, expenses, and indemnity, the "Prepetition ABL Obligations").

9. The Prepetition ABL Facility is secured by (a) first priority security interests in and liens on the Prepetition ABL Priority Collateral; and (b) fourth priority security interests in and lien on the Prepetition Term Loan Priority Collateral (such liens and security interests in clauses (a) and (b), the "Prepetition ABL Liens"); *provided* that the Prepetition ABL Canadian Sub-Facility is secured by a first priority security interest in substantially all of the assets of those Debtors organized under the laws of Canada or any province thereof (such Debtors, the "Canadian Debtors," and such collateral, whether now existing or hereafter arising or acquired, the "Canadian Collateral").

II. Prepetition First Lien Term Loan Facility

10. On June 28, 2018, Jack Cooper Ventures, Inc., as borrower, certain other domestic affiliates designated as "Guarantors" thereto (such parties, collectively, the "Prepetition First Lien Term Loan Obligors"), the financial institutions from time to time party thereto (collectively, the "Prepetition First Lien Lenders"), and Cerberus Business Finance Agency, LLC ("Cerberus"), as agent (in such capacity, the "Prepetition First Lien Agent" and, together with the Prepetition First Lien Lenders, the "Prepetition First Lien Secured Parties"), are parties to 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 "Prepetition First Lien Credit Agreement"). The Prepetition First Lien Credit Agreement provided the Prepetition First Lien Term Loan Obligors with term loan facilities in an aggregate principal amount of approximately $196 million (the

"Prepetition First Lien Term Loan Facility") and under which approximately $188,650,000 in principal amount was outstanding as of the Petition Date (together with any other amounts outstanding under the Prepetition First Lien Term Loan Facility as provided in the Prepetition First Lien Credit Agreement, including interest, fees, and expenses, the "Prepetition First Lien Obligations").

11. The Prepetition First Lien Term Loan Facility is secured by (a) first priority security interests in and liens on the Prepetition Term Loan Priority Collateral and (b) second priority security interests in and liens on the Prepetition ABL Priority Collateral (such liens and security interests in clauses (a) and (b), the "Prepetition First Lien Term Loan Liens").

III. Prepetition 1.5 Lien Term Loan Facility

12. On June 28, 2018, Debtor Jack Cooper Ventures, Inc., as borrower, certain other domestic affiliates designated as "Guarantors" thereto (such parties, collectively, the "Prepetition 1.5 Lien Term Loan Obligors"), the financial institutions from time to time party thereto (collectively, the "Prepetition 1.5 Lien Lenders"), and Wilmington Trust, N.A. ("Wilmington"), as agent (in such capacity, the "Prepetition 1.5 Lien Agent" and, together with the Prepetition 1.5 Lien Lenders, the "Prepetition 1.5 Lien Secured Parties"), entered into 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, the "Prepetition 1.5 Lien Credit Agreement"). The Prepetition 1.5 Lien Credit Agreement provided the Prepetition 1.5 Lien Term Loan Obligors with term loan facilities in an aggregate initial principal amount of $41 million (the "Prepetition 1.5 Lien Term Loan Facility") and under which approximately $45,515,729.68 in principal amount was outstanding as of the Petition Date (together with any other amounts outstanding under the Prepetition 1.5 Lien Term Loan Facility as provided in the

Prepetition 1.5 Lien Credit Agreement, including interest, fees, and expenses, the "Prepetition 1.5 Lien Obligations").

13. The Prepetition 1.5 Lien Term Loan Facility is secured by (a) second priority security interests in and liens on the Prepetition Term Loan Priority Collateral and (b) third priority security interests in and liens on the Prepetition ABL Priority Collateral (such liens and security interests in clauses (a) and (b), the "Prepetition 1.5 Lien Term Loan Liens").

IV. Prepetition Second Lien Term Loan Facility

14. On June 28, 2018, Debtor Jack Cooper Ventures, Inc., as borrower, certain other domestic affiliates designated as "Guarantors" thereto (such parties, collectively, the "Prepetition Second Lien Term Loan Obligors," and, together with the Prepetition ABL Obligors, the Prepetition First Lien Obligors, and the Prepetition 1.5 Lien Obligors, collectively, the "Prepetition Obligors"), the financial institutions from time to time party thereto (collectively, the "Prepetition Second Lien Lenders," and, together with the Prepetition ABL Lenders, the Prepetition First Lien Lenders, and the Prepetition 1.5 Lien Lenders, collectively, the "Prepetition Lenders"), and Wilmington, as agent (in such capacity, the "Prepetition Second Lien Agent" and, together with the Prepetition Second Lien Lenders, the "Prepetition Second Lien Secured Parties," and, together with the Prepetition 1.5 Lien Secured Parties, the "Prepetition Junior Lien Secured Parties," and the Prepetition Second Lien Agent, together with the Prepetition First Lien Agent and the Prepetition 1.5 Lien Agent, the "Prepetition Term Loan Agents," and the Prepetition Second Lien Secured Parties, together with the Prepetition First Lien Secured Parties and the Prepetition 1.5 Lien Secured Parties, the "Prepetition Term Loan Secured Parties" and, together with the Prepetition ABL Secured Parties, the "Prepetition Secured Parties"), entered into 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, the "Prepetition

Second Lien Credit Agreement," and, together with the Prepetition ABL Credit Agreement, the Prepetition First Lien Credit Agreement, and the Prepetition 1.5 Lien Credit Agreement, collectively, the "Prepetition Credit Agreements"). The Prepetition Second Lien Credit Agreement provided the Prepetition Second Lien Obligors with term loan facilities in an aggregate principal amount of $261.625 million (the "Prepetition Second Lien Term Loan Facility," and, together with the Prepetition First Lien Term Loan Facility, and the Prepetition 1.5 Lien Term Loan Facility, collectively, the "Prepetition Term Loan Facilities," and, together with the Prepetition ABL Facility, collectively, the "Prepetition Credit Facilities") and under which approximately $291,413,174.61 in principal amount was outstanding as of the Petition Date (together with any other amounts outstanding under the Prepetition Second Lien Term Loan Facility as provided in the Prepetition Second Lien Credit Agreement, including interest, fees, and expenses, the "Prepetition Second Lien Obligations," and, together with the Prepetition First Lien Obligations, and the Prepetition 1.5 Lien Obligations, the "Prepetition Term Loan Obligations" and, together with the Prepetition ABL Obligations, the "Prepetition Obligations").

15. The Prepetition Second Lien Term Loan Facility is secured by (a) third priority security interests in and liens on the Prepetition Term Loan Priority Collateral and (b) fourth priority security interests in and liens on the Prepetition ABL Priority Collateral (such liens and security interests in clauses (a) and (b), the "Prepetition Second Lien Term Loan Liens" and, together with the Prepetition First Lien Term Loan Liens and the Prepetition 1.5 Lien Term Loan Liens, the "Prepetition Term Loan Liens," and, together with the Prepetition ABL Liens, the "Prepetition Liens").

V. Intercreditor Agreement

16. Wells, in its capacity as Prepetition ABL Agent, Cerberus, in its capacity as Prepetition First Lien Agent, and Wilmington, in its capacity as the Prepetition 1.5 Lien Agent and

Prepetition Second Lien Agent, are parties to that certain Intercreditor Agreement, dated as of June 28, 2018 (the "Prepetition Intercreditor Agreement").

The Negotiation of the Proposed DIP Facilities

17. As set forth in detail in the Dunayer Declaration and the First Day Declaration, the Debtors commenced these Chapter 11 Cases to consummate a value maximizing sale of their businesses to the highest or otherwise best bidder (the "Sale Transaction"). First Day Decl. ¶ 3. The Debtors have executed that certain Restructuring Support Agreement, dated as of August 6, 2019 (collectively with the schedules and exhibits thereto, the "RSA") with certain of their key stakeholders to effect the Sale Transaction in connection with these Chapter 11 Cases. *Id.* The RSA contemplates that the Debtors will obtain entry of an order approving the Sale Transaction no later than 65 days after the Petition Date, and close the Sale Transaction shortly thereafter, and that JC Buyer Company, Inc., as the designated buyer in the Sale Transaction (in such capacity, the "Purchaser"), will act as the stalking horse bidder in the Sale Transaction. *Id.* at ¶ 5. However, the Debtors' businesses will not generate sufficient levels of operating cash flow in the ordinary course of business to cover the projected costs of the Chapter 11 Cases. Dunayer Decl. ¶ 9.

18. On March 30, 2019, the Debtors engaged Houlihan Lokey, Inc. ("Houlihan") to assist management with its review of various strategies, including sale alternatives. Dunayer Decl. ¶ 8. After the Debtors and their advisors determined that pursuing sale transaction through a section 363 sale process was the best path forward, Houlihan began to investigate available sources of financing for the Debtors to pursue this strategy. *Id.* at ¶ 12. Houlihan concluded that the Debtors' options to obtain debtor-in-possession were limited because the going-concern value of the Debtors' assets could not support additional debt, and that the Prepetition ABL Lenders and the Prepetition First Lien Lenders would not consent to the priming of their security interests by

any postpetition financing. Dunayer Decl. ¶ 11. Similarly, the Prepetition 1.5 Lien Lenders and the Prepetition Second Lien Lenders would not agree to allow a third-party to prime the Prepetition 1.5 Lien Term Loan Liens and the Prepetition Second Lien Term Loan Liens. *Id.* In other words, no third-party lenders would be willing to provide debtor-in-possession financing to the Debtors because no third party would (a) lend on a junior basis as to all the Prepetition Obligations as there are insufficient unencumbered assets to secure financing of the size needed for the Debtors to consummate the Sale Transaction, (b) provide any financing on a nonconsensual, priming basis as it would require expensive and protracted litigation, and (c) provide a facility that refinances the Debtors' existing secured debt and provides incremental liquidity. Dunayer Decl. ¶ 12.

19. Following extensive, good faith, arm's-length negotiations with the Debtors' secured creditors and other parties-in-interest, (a) the DIP Term Lenders agreed to provide the Debtors with DIP financing in the form of a $15 million new-money multi-draw term loan facility and (b) Wells agreed to provide the Debtors with an $85 million revolving facility. *Id.* at ¶ 11. Importantly, the proposals did not require the Debtors to seek to prime any prepetition secured creditors on a non-consensual basis. The Debtors' board of directors determined that the DIP financing proposals from the DIP Lenders, when evaluated in the context of the sale of the Debtors' assets and the DIP Term Lenders agreement to credit bid their claims under the DIP Term Facility rather than require repayment of the obligations thereunder at the close of the Sale Transaction, was the most attractive and executable financing proposal for these Chapter 11 Cases. *Id.* at ¶ 15.

20. In parallel, the Debtors, with the assistance of Houlihan, approached ten potential third-party DIP providers. Dunayer Decl. ¶ 12. Houlihan targeted its outreach efforts to a group of sophisticated lenders that in Houlihan's judgment could be expected to show interest in providing the Debtors with postpetition financing. *Id.* Ultimately, none of these parties agreed to

enter into non-disclosure agreements with the Debtors or submit a competing proposal, including on a junior basis as to the Prepetition Obligations, presumably because there are insufficient unencumbered assets to secure adequate postpetition financing and no party was interested in engaging in a protracted priming fight. *Id.*

21. For these reasons, and for the reasons set forth below, in the Dunayer Declaration, and in the First Day Declaration, the Debtors believe that entering into the DIP Facilities is the best option available to the Debtors and will maximize the value of the Debtors' estates by allowing the Debtors to operate in the ordinary course while pursuing the Sale Transaction during the pendency of the Chapter 11 Cases, and therefore is a sound exercise of the Debtors' business judgment. Accordingly, the Debtors respectfully request that the Court enter the Proposed Orders.

BASIS FOR RELIEF

I. The Debtors Should Be Authorized To Obtain Post-Petition Financing on a Senior Secured and Superpriority Basis

22. The Debtors meet the requirements for relief under section 364 of the Bankruptcy Code, which permit a debtor to obtain post-petition financing and, in return, to grant superpriority administrative status and liens on its property. Specifically, section 364(c) of the Bankruptcy Code provides as follows:

> If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt:
>
> (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
>
> (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
>
> (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

23. Further, section 364(d) of the Bankruptcy Code provides:

> (1) The court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if:
>
> (A) the trustee is unable to obtain such credit otherwise; and
>
> (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.
>
> (2) In any hearing under this subsection, the trustee has the burden of proof on the issue of adequate protection.

11 U.S.C. § 364(d).

24. Provided that an agreement to obtain secured credit is consistent with the provisions of, and policies underlying, the Bankruptcy Code, courts grant a debtor considerable deference in exercising its sound business judgment in obtaining such credit. *See, e.g.*, *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *In re Barbara K. Enters., Inc.*, Case No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest"); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus.*,

Inc., 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) (noting that approval of post-petition financing requires, *inter alia,* an exercise of "sound and reasonable business judgment").

25. In determining whether the Debtors have exercised sound business judgment in deciding to enter into the DIP Loan Documents, the Court may appropriately take into consideration non-economic benefits to the Debtors offered by a proposed post-petition facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York held that:

> Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including noneconomic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and established allegiances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

Case No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009).

26. Here, given all the facts and circumstances present in the Chapter 11 Cases, the Debtors have amply satisfied the necessary conditions under sections 364(c) and (d) of the Bankruptcy Code for authority to enter into the DIP Facilities. The Debtors exercised proper business judgment in securing the DIP Facilities on terms that are fair and reasonable and the best available to them under the circumstances and in the current market. Moreover, given the circumstances described above, the Debtors could not obtain credit on an unsecured or administrative expense basis or without the limited priming contemplated by the Interim Order, including Exhibit D thereof. For all the reasons discussed further below, the Debtors respectfully

submit that the Court should grant the Debtors' request to enter into the DIP Financing pursuant to sections 364(c) and (d) of the Bankruptcy Code.

A. The Debtors Exercised Sound and Reasonable Business Judgment in Deciding to Enter into the DIP Financing

27. Based on the facts of the Chapter 11 Cases, the DIP Financing represents a proper exercise of the Debtors' business judgment. As noted above, bankruptcy courts routinely defer to a debtor's business judgment on most business decisions, including decisions about whether and how to borrow money. *See, e.g.*, *In re L.A. Dodgers LLC*, 457 B.R. at 313; *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving post-petition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re Ames Dep't Stores, Inc.*, 115 B.R. at 40; *In re Curlew Valley Assocs.*, 14 B.R. 506, 511–13 (Bankr. D. Utah 1981); *Grp. of Institutional Investors v. Chi., Milwaukee, St. Paul & Pac. R.R.*, 318 U.S. 523, 550 (1943); *In re Farmland Indus., Inc.*, 294 B.R. at 882 ("Business judgments should be left to the board room and not to this Court.") (quoting *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985)); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983). "More exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

28. Specifically, to determine whether a debtor has met this business judgment standard, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Dura Auto. Sys., Inc.*, No. 06-11202, 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (quoting *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006)); *see also In re Stanziale v. Nachtomi (In re Tower Air, Inc.)*, 416 F.3d 229,

239 (3d Cir. 2005); *In re AbitibiBowater*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is "not a difficult standard to satisfy"). Under the business judgment rule, "management of a corporation's affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code." *In re Farmland Indus., Inc.*, 294 B.R. at 881 (citing *In re United Artists Theatre Co.*, 315 F.3d 217, 233 (3d Cir. 2003), *Richmond Leasing Co.*, 762 F.2d at 1309, and *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)); *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n. 16 (8th Cir. 1997) ("Where the [debtor's] request is not manifestly unreasonable or made in bad faith, the court should normally grant approval as long as the proposed action appears to enhance the debtor's estate" (citing *Richmond Leasing Co.*, 762 F.2d at 1309)); *In re Farmland Indus. Inc.*, 294 B.R. at 913 (approving the rejection of employment agreements and noting that "[u]nder the business judgment standard, the question is whether the [proposed action] is in the Debtors' best economic interests, based on the Debtors' best business judgment in those circumstances." (citations omitted)).

29. Courts defer to a debtor's decision to borrow money unless such decision is arbitrary or capricious. *See In re Trans World Airlines, Inc*., 163 B.R. at 974. Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. at 886; *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen McLean Oil Co., Inc.*), 65 B.R. 358, 365 n.7 (W.D.

Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to acquire funds for its reorganization).

30. The Debtors' management team negotiated the terms and conditions of the DIP Loan Documents with the DIP Lenders in good faith, at arms' length, and with the active involvement and assistance of their experienced legal and financial advisors. Dunayer Decl. at ¶ 14. The Debtors believe that they have obtained the best financing available to them under the circumstances. Moreover, access to the DIP Financing is necessary to allow the Debtors to administer these Chapter 11 Cases and pursue the sale transaction. *See* Dunayer Decl. ¶ 16. Consequentially, the Debtors' determination to move forward with the DIP Facilities is a sound exercise of their business judgment following a careful evaluation of alternatives. Indeed, the Debtors believe that the terms of the DIP Facilities are favorable in the context of the market for financings of this type, as the DIP Lenders have offered attractive financing terms overall. *Id.* at ¶ 19. The pricing, fees and covenants provided for in the proposed DIP Facilities are favorable, particularly for a severely distressed borrower with an urgent need for liquidity. *Id.* The milestones in the DIP Facilities are tailored to comport with the timeline of the Debtors' sale of substantially all of their assets as set forth in the Sale Motion. Further, entry into postpetition financing arrangements with certain of their prepetition secured lenders will allow the Debtors to avoid a costly, distracting and destructive adequate protection fight at the outset of these Chapter 11 Cases that would jeopardize the Debtors' ability to consummate the Sale Transaction and would be extremely difficult to win. *Id.* at ¶ 12. Accordingly, the Court should authorize the Debtors' entry into the DIP Loan Documents and the borrowings contemplated therein as it is a reasonable exercise of the Debtors' business judgment.

B. The Debtors Meet the Conditions Necessary Under Section 364(c) and (d) to Obtain Postpetition Financing on a Senior Secured and Superpriority Basis

31. The Debtors propose to obtain financing under the DIP Facilities by providing superpriority claims and liens pursuant to sections 364(c) and 364(d)(1) of the Bankruptcy Code. The Debtors propose to provide the Revolver Secured Parties and the DIP Term Secured Parties with liens on and security interests in the DIP Collateral, including Prepetition ABL Priority Collateral (whether existing on or arising after the Petition Date), Prepetition Term Priority Collateral (whether existing on or arising after the Petition Date), Canadian Collateral (whether existing on or arising after the Petition Date), any other assets of the Debtors that were not subject to any validly perfected liens or security interest as of the Petition Date, and, subject to entry of the Final Order, the Avoidance Proceeds (in each case subject to the Carve Out and certain permitted senior liens), subject in all respects to the priorities set forth in Exhibit D to the Interim Order.

32. In evaluating proposed postpetition financing under sections 364(c) and 364(d)(1) of the Bankruptcy Code, courts perform a qualitative analysis and consider whether (a) unencumbered credit or alternative financing without superpriority status is available to the debtor, (b) the credit transactions are necessary to preserve assets of the estate, and (c) the terms of the credit agreement are fair, reasonable, and adequate. *See, e.g.*, *In re Los Angeles Dodgers LLC*, 457 B.R. at 312; *In re Aqua Assoc*., 123 B.R. 192, 195–99 (Bankr. E.D. Pa. 1991); *In re St. Mary Hosp.*, 86 B.R. 393, 401–02 (Bankr. E.D. Pa. 1988); *In re Crouse Group, Inc.*, 71 B.R. 544, 549-551 (Bankr. E.D. Pa. 1987); *see also Bland v. Farmworker Creditors*, 308 B.R. 109, 113–14 (S.D. Ga. 2003); *In re Ames Dep't Stores*, 115 B.R. at 37-40.

(i) The Debtors Are Unable To Obtain Financing on More Favorable Terms Than the DIP Facilities

33. In order to satisfy this test, a debtor need only demonstrate "by a good faith effort that credit was not available without" the protections afforded to potential lenders by sections 364(c) or 364(d) of the Bankruptcy Code. *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986) ("The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable"); *In re Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584–85 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense); *In re Ames Dep't Stores, Inc.*, 115 B.R. at 40 (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain less onerous terms where debtor approached four lending institutions, was rejected by two and selected the least onerous financing option from the remaining two lenders); *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992). This is especially true where time is of the essence. *See In re Reading Tube Indus.*, 72 B.R. 329, 332 (Bankr. E.D. Pa. 1987).

34. Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom. Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Snowshoe Co.*, 789 F.2d at 1088 (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that the requirements of section 364 of the Bankruptcy Code were met); *In*

re Ames Dep't Stores, 115 B.R. at 37–39 (debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b) of the Bankruptcy Code).

35. As noted above and discussed in greater detail in the Declarations, the Debtors and the DIP Lenders negotiated the principal terms of the DIP Facilities in connection with broader negotiations regarding the Chapter 11 Cases and the Sale Transaction. *See generally* Dunayer Decl. After obtaining commitments from the DIP Lenders to provide the DIP Facilities (which commitments were not binding on the Debtors), the Debtors, together with their advisors, engaged with other potential sources of postpetition financing to determine whether the Debtors could obtain debtor-in-possession financing on better terms. *Id.* at ¶ 12. However, no other third-party lender was willing to provide financing. *Id.*

36. Notwithstanding the Debtors' lack of alternative financing options, the terms of the DIP Facilities are the product of extensive and good faith negotiations between the Debtors, the DIP Lenders, the DIP Agents, and the Prepetition Secured Parties, among others, each of whom was represented by experienced counsel and financial advisors. *Id.* at ¶ 15. Through these vigorous negotiations, the Debtors were able to secure the most favorable terms possible for the DIP Facilities. *Id.* The Debtors were unable to obtain financing on equal or better terms from the DIP Lenders, or any other source, without granting the liens securing the DIP Loans and providing the DIP Lenders with superpriority claims. *Id.* at ¶ 16. Simply put, the DIP Facilities provide the Debtors with the liquidity they need, at the lowest cost available. *Id.* at ¶ 19. Based on the negotiation history of the DIP Facilities and the marketing efforts undertaken by the Debtors and Houlihan, the DIP Facilities represents the Debtors' best available postpetition financing option. *Id.* at ¶ 20.

(ii) The DIP Facilities Are Necessary to Preserve the Value of the Debtors' Estates

37. The Debtors, as debtors in possession, have a fiduciary duty to protect and maximize their estates' assets. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The Debtors immediate access to postpetition financing is essential to the Debtors' ability to effectively carry out that duty. Without the proceeds of the DIP Facilities, the Debtors would be unable to fund critical payments, including obligations such as employee payroll and vendor payments in the ordinary course of business that are essential to the Debtors' operational viability.

(iii) The Terms of the DIP Facilities Are Fair, Reasonable, and Adequate under the Circumstances

38. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. at 886; *see also In re Ellingsen MacLean Oil Co.*, 65 B.R. at 365 (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009), Hr'g Tr. 740:4-6 ("[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions [of the DIP] reasonable here and now.").

39. Here, the terms of the DIP Facilities are fair, appropriate, reasonable, adequate under the circumstances, and in the best interests of the Debtors, their estates, and their creditors. As set forth in the Dunayer Declaration, the covenants and milestones included in the DIP Facilities are reasonable under the circumstances and are not designed to make the Debtors disproportionately susceptible to a breach of such terms. Dunayer Decl. ¶ 15. Moreover, the DIP Lenders agreed to provide the DIP Facilities on favorable terms as part of an overall agreement to support the Debtors' Chapter 11 Cases and the Sale Transaction. *Id.* at ¶ 13.

40. All of the terms of the DIP Facilities were strenuously negotiated by the Debtors and their advisors to ensure that the terms were as favorable to the Debtors as possible under the circumstances, and the Debtors believe that such terms represent fair consideration for the critical financing being provided by the DIP Lenders. *See Id.* at ¶ 19. In particular, the fees and rates provided for under the DIP Facilities and described above are reasonable and within market practice for debtor-in-possession financings of this size and type, and therefore the Court should authorize the Debtors to pay the fees, interest, and other amounts provided under and in accordance with the terms of the DIP Loan Documents. *Id.* As is also customary, the DIP Facilities contain certain case controls *(e.g.,* milestones) and other bankruptcy-related terms. *Id.* at ¶ 15. The Debtors believe that these terms provide sufficient flexibility for the Debtors to maximize the value of their estates. *Id.*

C. The Adequate Protection Is Appropriate

41. Although the Bankruptcy Code does not define "adequate protection," section 361 of the Bankruptcy Code delineates a non-exhaustive list of the available types of adequate protection, which include periodic cash payments, additional liens, replacement liens and the "indubitable equivalent of such entity's interest in such property." 11 U.S.C. § 361. The focus of the requirement is to protect a secured creditor from the diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) ("The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.") (internal citations omitted). When priming of liens is sought under section 364(d), courts also examine whether the prepetition secured creditors are being provided adequate protection for the value of their liens. *See In re Utah 7000, LLC*, No. 08-21869, 2008 WL 2654919, at *3 (Bankr. D. Utah July 3, 2008); *In re Beker Indus. Corp.*, 58 B.R. 725, 737 (Bankr. S.D.N.Y. 1986).

42. The Prepetition Term Loan Secured Parties are entitled to adequate protection for, among other reasons, the use of Cash Collateral and other Prepetition Collateral and the limited consensual priming of their liens by the Carve Out and the Revolver Facility, to the extent of any aggregate diminution in value of their interest in the Prepetition Collateral, including Cash Collateral, from and after the Petition Date. Such Prepetition Term Loan Adequate Protection Claims (as defined in the Interim Order) will be secured by postpetition replacement security interests in and liens upon the DIP Collateral, subject to the priorities set forth on Exhibit D to the Interim Order.

43. Additionally, the Prepetition First Lien Secured Parties shall receive monthly payments of interest at the non-default contract rate plus any fees, costs and expenses, including professional fees that have or will hereafter accrue under the Prepetition First Lien Credit Agreement. Finally, the Prepetition Secured parties shall also receive the same financial reporting that the Debtors provide to the DIP Secured Parties and reasonable access to the Debtors' facilities, management, books, and records as required under the Prepetition Documents.

44. These terms are fair and customary for debtor-in-possession financings of this type. Dunayer Decl. ¶ 19.

D. The Refinancing of the Prepetition Revolving Debt Is Appropriate

45. The proposed refinancing of the Prepetition Revolving Debt is also justified under the circumstances. *First,* the Revolver Secured Parties specifically negotiated for the ABL Refinancing in the context of their commitment to provide the Revolver Facility on the terms described herein and in the Interim Order. *Id.* at ¶ 17. The Debtors, on the one hand, and the Revolver Secured Parties, on the other, engaged in arm's-length negotiations and ultimately agreed to the ABL Refinancing as consideration for, among other things, the Revolver Secured Parties consenting to make millions of dollars available to the Debtors to fund these Chapter 11 Cases.

Id. Indeed, the ABL Refinancing is a condition of the Revolver Facility, without which the Revolver Secured Parties would not have agreed to provide the Revolver Facility or to allow the Debtors to use Cash Collateral. *Id.*

46. *Second*, the ABL Refinancing will not prejudice the Debtors' stakeholders. The Prepetition Revolving Lenders are substantially oversecured. *Id.* As such, the ABL Refinancing does not harm the Debtors' stakeholders, including the general unsecured creditors, because the only variable is timing, not certainty, of repayment. Courts place particular importance on whether a prepetition secured creditor is oversecured in determining whether to approve a roll-up. *See, e.g.*, *In re Real Industry, Inc.*, No. 17-12464 (KJC) (Bankr. D. Del. Nov. 20, 2017), Hr'g Tr. 39:9-19 ("So, let's talk about the roll-up. I had the same issue on Friday and I did something that, as you might imagine, a Court would be reluctant to do, and I approved the roll-up on the first day, and I did it in those circumstances in which there didn't seem to be any dispute over whether that lender that was the beneficiary of the roll-up was over-secured."); *In re Velocity Holding Company, Inc.*, No. 17-12442 (KJC) (Bankr. D. Del. Nov. 17, 2017), Hr'g Tr. 38:1-2 (court remarking that whether a secured creditor is oversecured "directly affects whether they should have a roll-up"); *In re Pac. Sunwear of Ca., Inc.*, No. 16-10882 (LSS) (Bankr. D. Del. Apr. 8, 2016), Hr.'g Tr. 65:7-17 ("[A]s noted in the colloquia of counsel, Wells Fargo has the first [lien] on all the current assets and they are, it has been represented to me, over-secured. So in that event I don't see the harm in letting this [roll-up of prepetition obligations] go out on first day."). Furthermore, the ABL Refinancing is subject to a review and challenge under the Interim DIP Order by any third party with requisite standing.

47. *Third*, the refinancing of the Prepetition Revolving Debt through the Revolver Facility is effectively a continuation of the prepetition status quo and will not layer any additional

debt onto the top of the Debtors' capital structure. Further, it will not reshuffle the relative priorities of creditors in any way. *Id.* at ¶ 17.

48. *Fourth*, the proposed refinancing will lower the Debtors' debt service costs, in the aggregate, relative to the scenario in which the Prepetition Revolving Debt was not refinanced. *Id.* If the Prepetition Revolving Debt remained outstanding, the Prepetition Revolving Secured Parties, as oversecured creditors, would unquestionably be entitled to postpetition interest, and possibly default interest under section 506(b) of the Bankruptcy Code. Because the Revolver Facility provides for interest at a rate 1.25% per annum lower than the default rate under the Prepetition Revolving Credit Agreement, the ABL Refinancing provides the Debtors with incremental savings.

49. Finally, roll-ups and repayments of prepetition debt are a common feature of debtor-in-possession financings and have been approved in a variety of cases, including pursuant to interim financing orders, both in this and other districts. *See In re Beaulieu Group, LLC*, No. 17-41677 (MGD) (Bankr. N.D. Ga. July 19, 2017); *In re Friedman's Inc., et al.*, Case No. 05-40129 (Bankr. S.D. Ga. Jan. 28, 2005); *In re Allied Holdings, Inc.*, No. 05-12515 (CRM) (Bankr. N.D. Ga. Aug. 1, 2005); *In re Checkout Holding Corp.*, No. 18-12794 (KG) (Bankr. D. Del. Dec. 13, 2018) (authorizing debtor-in-possession financing that included roll-up under the interim order); *In re Remington Outdoor Co., Inc.*, No. 18-10684 (BLS) (Bankr. D. Del. Mar. 28, 2018) (same); *In re The Bon-Ton Stores, Inc.*, No. 18-10248 (MFW) (Bankr. D. Del. Feb. 6, 2018) (same); *In re Charming Charlie LLC*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 13, 2017) (same); *In re American Apparel, Inc.*, No. 15-12055 (BLS) (Bankr. D. Del. Oct. 6, 2015) (same); *In re RadioShack Corp.*, No. 15-10197 (BLS) (Bankr. D. Del. Feb. 10, 2015) (same); *In re Scovill Fasteners Inc.*, Case No. 11-21650 (JRS) (Bankr. N.D. Ga. Apr. 25, 2011) (same); *In re Allied*

Holdings, Inc., Case No. 05-12515 (WHD) (Bankr. N.D. Ga. Aug. 1, 2005) (same); *In re Dan River Inc.*, Case No. 04-10990 (WHD) (Bankr. N.D. Ga. Apr. 1, 2004) (same); *In re Rhodes, Inc.*, Case No. 04-78434 (MGD) (Bankr. N.D. Ga. Nov. 8, 2004) (same).

II. The Debtors Should Be Authorized to Use Cash Collateral

50. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor in possession to use Cash Collateral with the consent of the secured party. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses Cash Collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g.*, *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (explaining that the "determination of whether there is adequate protection is made on a case by case basis").

51. Here, the DIP Lenders and the Prepetition Lenders consent or are deemed to consent to the Debtors' use of the Cash Collateral, subject to the terms and limitations set forth in the Interim Order. Further, as set forth above, the proposed adequate protection is appropriate, fair and customary for debtor-in-possession financings of this type. Dunayer Decl. ¶ 19.

III. The DIP Agents and the DIP Lenders Should Be Afforded Good-Faith Protection Under Section 364(e) of the Bankruptcy Code

52. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides as follows:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

53. The DIP Facilities are the result of (a) the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain vital postpetition financing and (b) extensive arm's-length, good-faith negotiations between the Debtors and the DIP Lenders. *Id.* at ¶¶ 14–15. The Debtors submit that the terms and conditions of the DIP Facilities are reasonable and appropriate under the circumstances, and the proceeds of the DIP Facilities will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to the DIP Agents, the DIP Lenders, or any other party to the DIP Loan Documents other than as described herein. Accordingly, the Court should find that the obligations arising under the DIP Facilities and other financial accommodations made to the Debtors have been extended by the DIP Agents and the DIP Lenders in "good faith" within the meaning of section 364(e) of the Bankruptcy Code and, therefore, the DIP Agents and the DIP Lenders are entitled to all of the protections afforded thereby.

IV. The Automatic Stay Should Be Modified on a Limited Basis

54. The Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to (i) permit the DIP Agents to perform any act authorized or permitted under or by virtue of the Interim Order, the DIP Credit Agreements, or the other DIP Loan Documents, as applicable, including, without limitation, (a) to implement the postpetition financing arrangements authorized by the Interim Order, (b) to take any act to create, validate,

evidence, attach or perfect any lien, security interest, right or claim in the DIP Collateral, (c) to assess, charge, collect, advance, deduct and receive payments with respect to the Prepetition Obligations and DIP Obligations (or any portion thereof), including, without limitation, all interests, fees, costs, and expenses permitted under any of the DIP Loan Documents and apply such payments to the Prepetition Obligations, and (d) subject to the Remedies Notice Period, to take any action and exercise all rights and remedies provided to it by the Interim Order, the DIP Loan Documents, or applicable law; and (ii) permit the Purchaser to terminate the Stalking Horse Agreement in accordance with its terms and to deliver any notice or election contemplated thereunder.

55. Stay modifications of this kind are ordinary features of debtor-in-possession financing arrangements, and, in the Debtors' business judgment, are reasonable and fair under the circumstances of the Chapter 11 Cases. *See, e.g.*, *In re Eastern Outfitters, LLC,* Case No. 17-10243 (LSS) Bankr. D. Del. Feb. 8, 2017); *In re Basic Energy Servs., Inc.*, Case No. 16-12320 (KJC) (Bankr. D. Del. Oct. 26, 2016); *In re Verso Corp.*, Case No. 16-10163 (Bankr. D. Del. Jan. 27, 2016); *In re the Standard Register Co.*, No. 15-10541 (BLS). (Bankr. D. Del. Apr. 16, 2015) (modifying automatic stay as necessary to effectuate the terms of the order); *In re Cache, Inc.*, No. 15-10172 (MFW) (Bankr. D. Del. May 20, 2015) (same); *In re S. Reg'l Health Sys. Inc.*, No. 1564266 (WLH) (Bankr. N.D. Ga. Aug. 26, 2015) (modifying the automatic stay to permit exercise of remedies by DIP lender upon event of default); *In re TMP Directional Mktg., LLC*, No. 11-13835 (MFW) (Bankr. D. Del. Jan. 17, 2012) (modifying automatic stay as necessary to effectuate the terms of the order); *In re Cagle's, Inc.*, No. 11-80202 (JB) (Bankr. N.D. Ga. Oct. 21, 2011) (modifying the automatic stay to permit exercise of remedies by DIP lender upon event of default); *In re Broadway 401 LLC*, No. 10-10070 (KJC) (Bankr. D. Del. Feb. 16, 2010)

(modifying automatic stay as necessary to effectuate the terms of the order); *In re Haights Cross Commc'ns, Inc.*, No. 10-10062 (BLS) (Bankr. D. Del. Feb. 8, 2010) (same).

V. The Scope of the Carve Out Is Appropriate

56. The Interim Order subjects the security interests and administrative expense claims of the DIP Lenders and the Prepetition Secured Parties to the Carve Out. Such carve outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee appointed can reimburse their professionals in certain circumstances following an event of default under the terms of the debtor's postpetition financing. *See In re Ames Dep't Stores, Inc.*, 115 B.R. at 40. Neither the Interim Order nor the DIP Financing directly or indirectly deprives the Debtors' estates or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in these cases. *See id.* at 38 (observing that courts insist on carve outs for professionals representing parties-in-interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve Out protects against administrative insolvency during the course of the Chapter 11 Cases by ensuring that assets remain for the payment of the U.S. Trustee's fees and professional fees of the Debtors and any statutory committee notwithstanding the grant of priming liens, superpriority claims, and adequate protection liens and claims.

57. Courts routinely approve carve outs agreed to by the debtors and their DIP financing lenders. *See, e.g., In re Eastern Outfitters, LLC,* Case No. 17-10243 (LSS) (Bankr. D. Del. Feb. 8, 2017); *In re Modular Space Holdings, Inc.*, Case No. 1612825 (KJC) (Bankr. D. Del. Dec. 22, 2016); *In re Basic Energy Servs., Inc.*, Case No. 16-12320 (KJC) (Bankr. D. Del. Oct. 26, 2016); *In re Halcón Resources Corp.,* Case No. 16-11724 (BLS) (Bankr. D. Del. July 29, 2016); *In re RCS Capital Corp.,* Case No. 16-10223 (MFW) (Bankr. D. Del. Feb. 3, 2016) *In re Verso*

Corp., Case No. 16-10163 (KG) (Bankr. D. Del. Jan. 27, 2016); *In re Swift Energy Co.*, Case No. 15-12670 (Bankr. D. Del. Jan. 5, 2016).

VI. Failure to Obtain Immediate Interim Access to the DIP Facilities Would Cause Immediate and Irreparable Harm

58. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

59. The Debtors request that the Court hold and conduct a hearing to consider entry of the Interim Order authorizing the Debtors, from and after entry of the Interim Order until the Final Hearing, to withdraw and borrow funds under the DIP Facilities to the extent permitted in the Interim Order. The Debtors require access to the DIP Facilities prior to the Final Hearing and entry of the Final Order to continue operating in the ordinary course by paying their administrative expenses and implementing the relief requested in the Debtors' other "first day" motions. This and such other relief is necessary for the Debtors to avoid immediate and irreparable harm to the Debtors' estates and to preserve and maximize value for the benefit of all parties in interest.

Emergency Consideration

60. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case "to the extent that relief is necessary to avoid immediate and irreparable harm." Here, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore, the failure to

receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

Request for Final Hearing

61. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

62. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

63. The Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the Northern District of Georgia; (b) the Debtors' thirty (30) largest unsecured creditors; (c) counsel to the Prepetition ABL Agent and the Revolver Administrative Agent, Buchalter, P.C., 1000 Wilshire Boulevard, 15th Floor, Los Angeles, California 90017, Attn: Ariel Berrios and Julian Gurule; (d) counsel to the DIP Term Loan Lenders, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Marc Kieselstein and Alexandra Schwarzman, and 601 Lexington Avenue, New York, New York 10022, Attn: Jonathan S. Henes; (e) counsel to the Prepetition First Lien Secured Parties, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, New York 10022, Attn: Adam C. Harris and Lucy F. Kweskin; (f) the United States Securities

and Exchange Commission; (g) the Internal Revenue Service; (h) the Georgia Department of Revenue; (i) the Attorney General for the State of Georgia; (j) the United States Attorney for the Northern District of Georgia; (k) the state attorneys general for states in which the Debtors conduct business; and (l) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

64. No prior request for the relief sought in the motion has been made to this or any other court.

[*Remainder of Page Intentionally Left Blank*]

WHEREFORE, the Debtors respectfully request (a) entry of the Interim Order, substantially in the form attached hereto as **Exhibit A**, (b) granting the relief requested herein, (c) scheduling the Final Hearing to consider entry of the Final Order, and (d) granting such other relief as is just and proper.

Dated: August 6, 2019
Atlanta, Georgia

/s/ Sarah R. Borders

Sarah R. Borders
Georgia Bar No. 610649
Leia Clement Shermohammed
Georgia Bar No. 972711
Britney Baker
Georgia Bar No. 625752
KING & SPALDING LLP
1180 Peachtree Street NE
Atlanta, Georgia 30309
Telephone: (404) 572-4600
Email: sborders@kslaw.com
Email: lshermohammed@kslaw.com
Email: bbaker@kslaw.com

-and-

Kelley A. Cornish (*pro hac vice* pending)
New York Bar No. 1930767
Brian S. Hermann (*pro hac vice* pending)
New York Bar No. 2810232
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, New York 10019
Telephone: (212) 373-3000
Email: kcornish@paulweiss.com
Email: bhermann@paulweiss.com

Proposed Counsel for the Debtors in Possession

Exhibit A

The Interim Order

Exhibit B

The Dunayer Declaration

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	)	Chapter 11
JACK COOPER VENTURES, INC., *et al.*,[1]	)	Case No. 19-62393(PWB)
Debtors.	)	(Joint Administration Requested)

DECLARATION OF ADAM DUNAYER IN SUPPORT OF DEBTORS' MOTION FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR AND JUNIOR SECURED SUPERPRIORITY POSTPETITION FINANCING; (II) GRANTING (A) LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS AND (B) ADEQUATE PROTECTION TO CERTAIN PREPETITION LENDERS; (III) AUTHORIZING USE OF CASH COLLATERAL; (IV) MODIFYING THE AUTOMATIC STAY; (V) SCHEDULING A FINAL HEARING; AND (VI) GRANTING RELATED RELIEF

I, Adam Dunayer, pursuant to 28 U.S.C. § 1764, hereby declare and state:

1. I am a Managing Director at Houlihan Lokey Capital, Inc. ("Houlihan"). Together with my team from Houlihan, I have served as financial advisor to the Debtors since March 20, 2019. I submit this Declaration in support of the *Debtors' Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Senior and Junior Secured Superpriority*

[1] 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.

Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Lenders; (III) Authorizing Use of Cash Collateral; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief (the "DIP Motion").[2]

2. Houlihan is an internationally recognized investment banking and financial advisory firm, with twenty-two offices worldwide and more than 950 professionals. Houlihan's Financial Restructuring Group, which has more than 225 professionals, is one of the leading advisors and investment bankers to unsecured and secured creditors, debtors, acquirers, and other parties-in-interest involved with financially troubled companies both in and outside of bankruptcy. Houlihan has been, and is, involved in some of the largest restructuring cases in the United States, including representing debtors in Murphy Energy Corporation (a global oil and gas production company), Mark IV Industries, Buffets Holdings, Inc., Bally Total Fitness Holding Corp., XO Communications, Inc., Six Flags, Inc., Granite Broadcasting Corp., and MS Resorts, and representing official committees in Lehman Brothers Holdings Inc., Arcapita Bank B.S.C(c)., Enron Corp., WorldCom, Inc., Delta Air Lines, Inc., General Growth Properties, and Capmark.

3. I am a member of Houlihan's Financial Restructuring Group. I have over 25 years of experience consummating transactions and providing strategic advice to companies and creditors in connection with in- and out-of-court special situations, mergers, acquisitions, and dispositions. I also have extensive experience raising debt and equity capital in public and private markets. My experience spans industries including energy and oilfield services, consumer products, food, healthcare, building products, general industrial, telecom, and technology. My

---

[2] Capitalized terms used but not otherwise defined herein have the meaning given to them in the DIP Motion.

recent engagements include Parker Drilling (unsecured noteholders), Preferred Proppants (secured creditors), Montco Offshore (company), AFGlobal Corporation (secured creditors), US Well Services (company), Key Energy Services (unsecured noteholders), Permian Holdings (secured creditors), Stallion Oilfield Services (company), Seventy Seven Energy (unsecured noteholders), Globe Energy Services (company), Signal International (secured creditors), Platinum Energy Solutions (company), Ciber Inc. (company), Forest Park Medical Center (company), Smile Brands (secured creditors), Quicksilver Resources (company), Allen Systems Group (secured creditors), and Sadler's Smokehouse (company). I speak frequently on trends and issues in special situations and other topics. I have also testified as an expert witness on a variety of bankruptcy and special situations issues.

4. Before joining Houlihan, I was a Managing Director with Bear, Stearns & Co. In addition, I was an Executive Vice President and Chief Financial Officer with Miller Industries, where I also served as President of the company's largest subsidiary, which had over 2,000 trucks and provided nationwide towing and transportation services, which had over 2,000 trucks and provided nationwide towing and transportation services.

5. All facts and opinions set forth in this declaration are based upon: (a) my personal knowledge; (b) information learned from my review of relevant documents; (c) information supplied to me or verified by the company or other members of my team at Houlihan; and/or (d) my experience and knowledge concerning financial restructuring, mergers, acquisitions and dispositions, leveraged buyouts, and capital-raising activities.

6. If called upon to testify, I would testify competently to the facts and opinions set forth herein.

7. The above-captioned debtors-in-possession (the "Debtors") commenced voluntary cases (the "Bankruptcy Cases") under chapter 11 of the Bankruptcy Code by the filing of petitions in the Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court") on August 6, 2019 (the "Petition Date").

Houlihan's Retention

8. On March 20, 2019, Houlihan was engaged by the Debtors to act as their financial advisor charged with assisting and advising the Debtors with the analysis, evaluation, pursuit and effectuation of a financial restructuring, sale, or reorganization transaction. Houlihan agreed to: (i) assist the Debtors in the development and distribution of selected information, documents and other materials; (ii) assist the Debtors in evaluating indications of interest and proposals regarding any transaction from current and/or potential lenders, purchasers, equity investors, and/or strategic partners; (iii) assist the Debtors with the negotiation of any transaction(s), including participating in negotiations with creditors and other parties involved in any transaction(s); (iv) provide expert advice and testimony regarding financial matters related to any transaction(s), if necessary; (v) attend meetings of the Debtors' Board of Directors, creditor groups, official constituencies, and other interested parties; and (vi) provide such other financial advisory services as may be required by the Debtors.

The Debtors' Need for DIP Financing

9. As described in the *Declaration of Greg May, the Debtors' Chief Financial Officer, in Support of First Day Motions* (the "First Day Declaration") and the DIP Motion, the Debtors require immediate access to additional liquidity to continuing operating during the Chapter 11 Cases and preserve the value of their estates for the benefit of all parties in interest. Specifically, based on the Debtors' forecast, the Debtors will be unable to generate sufficient

levels of operating cash flow in the ordinary course of business to cover the projected costs of the Chapter 11 Cases without debtor-in-possession financing.

10. The Debtors intend to pursue a sale of all or substantially all of their assets pursuant to section 363 of the Bankruptcy Code (the "Section 363 Sale") to JC Buyer Company, Inc. (the "Stalking Horse Bidder"). As described in the DIP Motion, the Stalking Horse Bidder has committed to purchase substantially all of the Debtors' assets for an aggregate purchase price composed of a credit bid and the assumption of certain of the Debtors' liabilities, as set forth in that certain asset purchase agreement included in Exhibit A to the Sale Motion, by and among the Debtors and the Stalking Horse Bidder (the "Stalking Horse Bid").

Negotiation and Terms of Debtor-in-Possession Financing

11. The Debtors' prepetition capital structure is described in detail in the First Day Declaration. The Debtors' substantial prepetition secured indebtedness informs the negotiation and terms of the Debtors' proposed $15 million junior secured super-priority multi-draw term loan credit facility (the "DIP Term Facility") and $85 million senior secured super-priority revolving credit facility, which includes a $5 million Canadian sub-facility, subject to a domestic borrowing base and a Canadian borrowing base (and as reduced by reserves) (the "DIP Revolving Facility" and, together with the DIP Term Facility, the "DIP Facilities"). Houlihan has concluded that the going-concern value of the Debtors' assets falls significantly short of the Prepetition Obligations. In addition, I understand that the Prepetition ABL Lenders and the Prepetition First Lien Lenders will not consent to the priming of their security interests by any postpetition financing. Similarly, the Prepetition 1.5 Lien Lenders and the Prepetition Second Lien Lenders will not agree to allow a third-party to prime the Prepetition 1.5 Lien Term Loan Liens and the Prepetition Second Lien Term Loan Liens.

12. Given these predicates, it is a certainty that no third-party lender would be willing to provide debtor-in-possession financing to the Debtors. First, no third party would lend on a junior basis as to all of the Prepetition Obligations because there are insufficient unencumbered assets to secure postpetition financing of the size needed to permit the Debtors to successfully operate their businesses throughout the pendency of these Chapter 11 Cases. Second, a third party would not finance a nonconsensual, priming postpetition financing (as would be required here given the Prepetition Secured Parties' unwillingness to consent to priming by a third party), as such an attempt would require time and resources by the lender, would be expensive to litigate, and would be unlikely to succeed. Third, a third party would be unlikely to provide a facility that refinanced the Debtors' existing secured debt and provided incremental liquidity. Moreover, I believe that any such outside financing would expose the Debtors to the execution risk associated with a new lender transaction and necessarily involve the payment of substantial additional fees, including professional fees. As a result, I do not believe that third-party postpetition financing would be available or prudent given the realities imposed by the Debtors' existing secured debt obligations. To confirm the foregoing, Houlihan reached out to ten potential third party providers of debtor-in-possession financing, and none were willing to pursue a transaction with the Debtors.

13. Moreover, for several months, the Debtors, working with Houlihan, have been party to extensive negotiations both with the Prepetition Secured Parties, the Central States, Southeast and Southwest Areas Pension Plan (the "Central States Pension Fund"), and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America regarding the terms of a transaction that would deleverage the Debtors' capital structure and address its labor costs. Ultimately, both the Prepetition Secured Parties and the Central States

Pension Fund agreed to support the Section 363 Sale, and the Prepetition Secured Parties agreed to provide and/or support the DIP Revolving Facility and the DIP Term Facility.

The DIP Facilities Were Negotiated in Good Faith and at Arm's Length

14. I assisted the Debtors, together with their other advisors, with the negotiation of the terms and provisions of the DIP Facilities. The DIP Facilities are the product of lengthy, good faith, arm's length negotiations that continued right up to the Petition Date. The Debtors, with the assistance of their advisors, engaged in multiple rounds of negotiations with the DIP Lenders, resulting in improved terms.

15. In negotiations with the DIP Lenders, the Debtors focused on obtaining the best terms available. All negotiations between the Debtors and the DIP Lenders, who were represented by experienced counsel and financial advisors, were conducted in good faith and on an arm's-length basis. The Debtors' management team and legal and financial advisors, including Houlihan, were actively involved throughout the process. Those negotiations led to improvements in terms for the Debtors, including, among other things, the reduction of certain fees and material modifications to the initially proposed covenants, events of default, milestones, and conditions precedent to borrowing. Notably, as a result of these negotiations, the DIP Term Lenders agreed to credit bid their claims under the DIP Term Facility rather than require repayment of the obligations thereunder at the close of the Sale Transaction, which will provide a significant benefit to the Debtors and their estates. As a result of these arm's-length negotiations, the parties agreed upon, and the Debtors presently request authority to enter into, the DIP Facilities.

The DIP Facilities Are the Best Postpetition Financing Arrangements Presently Available to the Debtors

16. Based upon my understanding of the Debtors' liquidity needs, the current state of the debt markets, the non-existence of financing alternatives, and the terms of the Section 363 Sale, I believe the DIP Facilities, when considered in tandem with the Stalking Horse Bid, are the best financing option available to the Debtors under the circumstances. I do not believe alternative sources of financing are available to the Debtors (whether unsecured or secured) on better or comparable terms to the DIP Facilities. The proposed DIP Facilities will provide the Debtors with immediate access to liquidity that is necessary to ensure that the Debtors' businesses are stabilized, chapter 11 administrative costs are paid, and value is preserved during the course of the Chapter 11 Cases. Additionally, I do not believe it would be prudent, or even possible, to administer the Debtors' chapter 11 estates on a "cash collateral" only basis. Without access to the DIP Facilities, the Debtors would have extremely limited cash on hand and, even if the Debtors had the Prepetition Secured Parties' consent to use Cash Collateral, I do not expect the Debtors to be able to generate sufficient levels of operating cash flow in the ordinary course of business to cover their working capital needs and the projected administrative costs of these chapter 11 cases.

17. The Revolver Lenders also required the ABL Refinancing as a condition to their commitment to provide the Revolver Facility and to permit the use of Cash Collateral. As set forth in the DIP Motion, the interest rate under the proposed Revolver Facility is lower than the default interest rate that would otherwise accrue during these Chapter 11 Cases under the Prepetition ABL Facility if the ABL Refinancing does not occur. It should also be noted that upon the ABL Refinancing, the Revolver Facility will be available to the Debtors to address their working capital needs, so the ABL Refinancing will have no negative impact on the Debtors'

liquidity. The ABL Refinancing will also not affect the Revolver Lenders' position as secured creditors of the Debtors to the detriment of any other stakeholders or the estates. The Prepetition ABL Facility is an asset-based lending facility that requires that the aggregate amount of loans extended to the Debtors, along with any other obligations of the Debtors under the Prepetition ABL Facility, never exceeds the value of the Revolver Lenders' collateral, namely accounts receivable. Accordingly, the Revolver Lenders are oversecured as of the Petition Date and the Debtors therefore believe that the ABL Refinancing will not result in the Revolver Lenders receiving any greater recovery in the Chapter 11 Cases than would otherwise be the case.

18. Moreover, as the Debtors' prepetition ABL lender, Wells Fargo is familiar with the Debtors and their businesses, including serving as their cash management bank and providing the Debtors with the vast majority of their critical banking and cash management services, and replacing Wells Fargo in these capacities would present significant operational challenges. Wells Fargo has also historically had a supportive relationship that is valued by the Debtors.

19. Finally, I believe that the financial terms proposed under the DIP Facilities are customary and usual for debtor-in-possession financings of this type. Specifically, the contemplated pricing, fees, interest rate, and other economic terms of the DIP Facilities were all negotiated at arm's length and are generally consistent with the cost of debtor-in-possession financings in comparable circumstances.

20. Based on the foregoing, it is my belief that the proposed DIP Facilities represent the best option available to address the Debtors' immediate liquidity needs and that the terms and conditions of the DIP Facilities are reasonable and appropriate under the circumstances.

21. Accordingly, I believe that the proposed DIP Facilities should be approved on the terms and conditions described in the DIP Credit Agreements and the Interim DIP Order and that entry into the DIP Facilities reflects a sound exercise of the Debtors' business judgment.

Dated: August 6, 2019

/s/ Adam Dunayer
Name: Adam Dunayer
Title: Managing Director

Exhibit C

Revolver DIP Agreement

SENIOR SECURED SUPERPRIORITY
DEBTOR-IN-POSSESSION
CREDIT AGREEMENT

by and among

JACK COOPER VENTURES, INC.

as Parent,

JACK COOPER HOLDINGS CORP.

and certain of its Subsidiaries, as Borrowers,

THE LENDERS THAT ARE SIGNATORIES HERETO

as the Lenders,

and

WELLS FARGO CAPITAL FINANCE, LLC

as the Lead Arranger, Sole Bookrunner, and Administrative Agent

Dated as of August [__], 2019

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF CONTENTS
(continued)

EXHIBITS AND SCHEDULES

SENIOR SECURED SUPERPRIORITY
DEBTOR-IN-POSSESSION CREDIT AGREEMENT

THIS SENIOR SECURED SUPERPRIORITY DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "Agreement" or the "Agreement"), is entered into as of August [__], 2019, by and among the lenders identified on the signature pages hereof (each of such lenders, together with their respective successors and permitted assigns, are referred to hereinafter as a "Lender", as that term is hereinafter further defined), **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), **JACK COOPER VENTURES, INC.,** a Delaware corporation, as parent (the "Parent"), **JACK COOPER HOLDINGS CORP.,** a Delaware corporation ("Holdings"), the Domestic Subsidiaries of Parent identified on the signature pages hereof (such Domestic Subsidiaries, together with Holdings, are referred to hereinafter each individually as a "Domestic Borrower", and individually and collectively, jointly and severally, as the "Domestic Borrowers") and the Canadian Subsidiaries of Parent identified on the signature pages hereof (such Canadian Subsidiaries are referred to hereinafter each individually as a "Canadian Borrower", and individually and collectively, jointly and severally, as the "Canadian Borrowers"). The Domestic Borrowers and the Canadian Borrowers are referred to hereinafter each individually as a "Borrower," and collectively as the "Borrowers."

RECITALS

A. Domestic Borrowers, the lenders from time to time party thereto and the Agent have entered into that certain Second Amended and Restated Credit Agreement, dated as of February 15, 2018 (as amended, supplemented, or modified from time to time prior to the date hereof, the "Existing Credit Agreement").

B. On August 6, 2019 (the "Petition Date"), the Borrowers and the Guarantors (in such capacity, each a "Debtor" and, collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the Bankruptcy Court commencing their chapter 11 cases (the "Chapter 11 Cases").

C. The Canadian Loan Parties will be debtors in the Chapter 11 Cases, and, within five (5) calendar days following the entry of the Interim Order, Parent, in its capacity as foreign representative on behalf of the Loan Parties (the "Foreign Representative"), will commence a recognition proceeding under Part IV of the CCAA in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") to recognize the Chapter 11 Cases as "foreign main proceedings" (the "Recognition Proceedings").

D. The Borrowers have requested that the Lenders provide the Borrowers with a debtor-in-possession, superpriority, senior secured revolving loan facility in an aggregate principal amount of up to $85,000,000 (the "DIP ABL Facility") in Commitments and Loans from the Lenders, which shall be comprised of (i) commitments available for borrowing by the Domestic Borrowers of up to $85,000,000 (of which up to $5,000,000 shall be available for the issuance of

letters of credit) and (ii) commitments available for borrowing by the Canadian Borrowers of up to $5,000,000 (of which up to $500,000 shall be available for the issuance of letters of credit).

NOW, THEREFORE, in consideration of the mutual conditions and agreements set forth in this Agreement, and for good and valuable consideration, the receipt of which is hereby acknowledged, Lenders, Agent, and Borrowers hereby agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

Definitions**.** Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1.

1.1 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, however, that if any Borrower notifies Agent that such Borrower requests an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Interim Facility Effective Date or in the application thereof on the operation of such provision (or if Agent notifies any Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent and such Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and such Borrower after such Accounting Change conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. When used herein, the term "financial statements" shall include the notes and schedules thereto. Whenever the term "Parent" "Borrower" or "Borrowers" is used in respect of a financial covenant or a related definition, it shall be understood to mean Parent, Borrowers and their Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary herein, any lease existing as of the Interim Facility Effective Date that constitutes an operating lease in accordance with GAAP as in effect as of the Interim Facility Effective Date shall be deemed not to be a Capital Lease hereunder, and any future lease, if it were in effect on the Interim Facility Effective Date, that would be treated as an operating lease for purposes of GAAP as of the Interim Facility Effective Date shall be treated as an operating lease for all purposes hereunder.

1.2 Code and PPSA. Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, however, that (a) to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern, and (b) to the extent applicable, any such terms used in this Agreement that are defined in the PPSA shall have the meanings ascribed to such terms in the PPSA when used in relation to Collateral subject to the PPSA.

1.3 Construction. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has,

except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. Any reference to "province" or like terms in the Loan Documents shall be construed to include "territory" and like terms. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (a) the payment or repayment in full in immediately available funds in the Applicable Currency of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans, (ii) all Lender Group Expenses that have accrued and are unpaid regardless of whether demand has been made therefor, (iii) all fees or charges that have accrued hereunder or under any other Loan Document (including Letter of Credit Fees and the unused line fee) and are unpaid, (b) in the case of contingent reimbursement obligations with respect to Domestic Letters of Credit and Canadian Letters of Credit, providing Letter of Credit Collateralization in the Applicable Currency, (c) in the case of obligations with respect to Bank Products (other than Hedge Obligations), providing Bank Product Collateralization, (d) the receipt by Agent of cash collateral in order to secure any other contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including reasonable and documented attorneys fees and out-of-pocket legal expenses of outside counsel), such cash collateral to be in such amount as Agent reasonably determines is appropriate to secure such contingent Obligations, (e) the payment or repayment in full in immediately available funds of all other outstanding Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Hedge Agreements provided by Hedge Providers) other than (i) unasserted contingent indemnification Obligations, (ii) any Bank Product Obligations (other than Hedge Obligations) that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized, and (iii) any Hedge Obligations that, at such time, are allowed by the applicable Hedge Provider to remain outstanding without being required to be repaid, and (f) the termination of all of the Commitments of the Lenders. Any reference herein to any Person shall be construed to include such Person's successors and permitted assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.4 Schedules and Exhibits. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

1.5 Exchange Rates; Currency Equivalents; Applicable Currency.

(a) For purposes of this Agreement and the other Loan Documents, references to the applicable outstanding amount of Advances, Letters of Credit, Revolver Usage or Letter of Credit Usage shall be deemed to refer to the Dollar Equivalent thereof, unless the context requires otherwise.

(b) For purposes of this Agreement and the other Loan Documents, the Dollar Equivalent of any Advances, Letters of Credit, other Obligations and other references to amounts denominated in an Applicable Currency or any other currency other than Dollars shall be determined in accordance with the terms of this Agreement. Such Dollar Equivalent shall become effective as of such Revaluation Date for such Advances, Letters of Credit and other Obligations and shall be the Dollar Equivalent employed in converting any amounts between the Applicable Currencies until the next Revaluation Date to occur for such Advances, Letters of Credit and other Obligations. Except as otherwise expressly provided herein, the applicable amount of any currency for purposes of the Loan Documents (including for purposes of financial statements and all calculations in connection with the covenants, including the financial covenants) shall be the Dollar Equivalent thereof.

(c) Wherever in this Agreement and the other Loan Documents in connection with a borrowing, conversion, continuation or prepayment of an Advance or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Advance or Letter of Credit is denominated in CAD, such amount shall be the same absolute number but in Canadian Dollars.

1.6 [Reserved]

1.7 Québec Matters. For purposes of any assets, liabilities or entities located in the Province of Québec and for all other purposes pursuant to which the interpretation or construction of this Agreement may be subject to the laws of the Province of Québec or a court or tribunal exercising jurisdiction in the Province of Québec, (a) "personal property" shall include "movable property", (b) "real property" or "real estate" shall include "immovable property", (c) "tangible property" shall include "corporeal property", (d) "intangible property" shall include "incorporeal property", (e) "security interest", "mortgage" and "lien" shall include a "hypothec", "right of retention", "prior claim" and a resolutory clause, (f) all references to filing, perfection, priority, remedies, registering or recording under the UCC or a PPSA shall include publication under the CCQ, (g) all references to "perfection" of or "perfected" liens or security interest shall include a reference to an "opposable" or "set up" lien or security interest as against third parties, (h) any "right of offset", "right of setoff" or similar expression shall include a "right of compensation", (i) "goods" shall include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (j) an "agent" shall include a "mandatary", (k) "construction liens" shall include "legal hypothecs", (l) "joint and several" shall include "solidary", (m) "gross negligence or wilful misconduct" shall be deemed to be "intentional or gross fault", (n) "beneficial ownership" shall include "ownership on behalf of another as mandatory", (o) "easement" shall include "servitude", (p) "priority" shall include "prior claim", (q) "survey" shall include "certificate of location and plan", (r) "state" shall include "province", (s) "fee simple title" shall

include “absolute ownership”, (t) “accounts” shall include “claims”. The parties hereto confirm that it is their wish that this Agreement and any other document executed in connection with the transactions contemplated herein be drawn up in the English language only and that all other documents contemplated thereunder or relating thereto, including notices, may also be drawn up in the English language only. Les parties aux présentes confirment que c’est leur volonté que cette convention et les autres documents de crédit soient rédigés en langue anglaise seulement et que tous les documents, y compris tous avis, envisagés par cette convention et les autres documents peuvent être rédigés en langue anglaise seulement.

2. LOANS AND TERMS OF PAYMENT.

2.1 Revolver Advances.

(a) Domestic Revolver Advances. Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Domestic Lender with a Revolver Commitment agrees (severally, not jointly or jointly and severally) to make revolving loans (“Domestic Advances”) to Domestic Borrowers in an amount at any one time outstanding not to exceed *the lesser of:*

(i) such Domestic Lender’s Revolver Commitment, and

(ii) such Domestic Lender’s Pro Rata Share of an amount equal to *the lesser of:*

(A) the Maximum Revolver Amount *less* the sum of (1) the Dollar Equivalent of the Canadian Revolver Usage at such time (including the Canadian Letter of Credit Usage at such time), *plus* (2) the Domestic Letter of Credit Usage at such time, *plus* (3) the principal amount of Domestic Swing Loans outstanding at such time, and

(B) the Domestic Borrowing Base *less* the sum of (1) the Domestic Letter of Credit Usage at such time, *plus* (2) the principal amount of Domestic Swing Loans outstanding at such time.

(b) **Canadian Advances**. Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Canadian Lender agrees (severally, not jointly or jointly and severally) to make revolving loans in Dollars and CAD (“Canadian Advances”) to Canadian Borrowers in a Dollar Equivalent amount at any one time outstanding not to exceed the lesser of:

(i) such Canadian Lender’s Canadian Revolver Commitment, and

(ii) such Canadian Lender’s Pro Rata Share of an amount equal to the least of:

(A) the amount equal to (1) the Maximum Revolver Amount, *less* (2) the sum of (I) the Domestic Revolver Usage at such time, *plus* (II) the Dollar Equivalent

amount of the Canadian Letter of Credit Usage at such time, *plus* (III) the principal Dollar Equivalent amount of Canadian Swing Loans outstanding at such time,

(B) the amount equal to the Canadian Maximum Revolver Amount *less* the sum of (1) the principal Dollar Equivalent amount of Canadian Swing Loans at such time, and (2) the Dollar Equivalent amount of the Canadian Letter of Credit Usage at such time, and

(C) the amount equal to the Canadian Borrowing Base as of such date, *less* the sum of (1) the principal Dollar Equivalent amount of Canadian Swing Loans at such time, and (2) the Dollar Equivalent amount of the Canadian Letter of Credit Usage at such time.

(c) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Advances, together with interest accrued and unpaid thereon, shall constitute Obligations and shall be due and payable on the Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement. Notwithstanding anything to the contrary in this Agreement, no Canadian Advances will be available until the conditions in clauses 5, 6, 7, and 8 of Schedule 3.6 are fulfilled.

(d) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right (but not the obligation) to establish, increase, reduce, eliminate, or otherwise adjust reserves from time to time against the Domestic Borrowing Base, the Canadian Borrowing Base, the Canadian Maximum Revolver Amount, or the Maximum Revolver Amount in such amounts, and solely with respect to the following matters, as Agent in its Permitted Discretion shall deem necessary or appropriate: (i) reserves in an amount equal to the Bank Product Reserve Amounts, (ii) Canadian Priority Payables Reserves, (iii) upon five (5) Business Days' notice to Administrative Borrower, reserves with respect to the Carve Out and the Administration Charge not to exceed $750,000 (provided that following a Carve Out Trigger Notice, the Lender Group shall fund the amount of such Carve Out reserve into the Carve Out Account, and (iv) upon five (5) Business Days' notice to Administrative Borrower, reserves with respect to (A) sums that Parent or its Subsidiaries are required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay when due, and (B) amounts owing by Parent or its Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than Liens described in clauses (f), (g), (h), (i), (n), (o), (p), (q), (s), (u), (x), (y), (z), (aa), (bb), (cc), (dd) and (ff) of the definition of "Permitted Liens" herein), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for *ad valorem*, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral.

2.2 Repayment of Existing Secured Obligations. Upon the entry of the Interim Order, and subject to the terms thereof, the Debtors shall borrow Loans in an amount sufficient to repay all outstanding Existing Secured Obligations under the Existing Credit Agreement. The Debtors hereby authorize the Agent and Existing Agent to apply the proceeds of the Loans to the

Existing Secured Obligations as part of the funding process upon entry of the Interim Order without actually depositing such proceeds into an account of the Debtors.

2.3 Borrowing Procedures and Settlements.

(a) **Procedure for Borrowing.** Each Borrowing shall be made in accordance with clause (b) of this Section by an Authorized Person of a Domestic Borrower or an Authorized Person of a Canadian Borrower, as applicable, (i) delivered to Agent and received by Agent no later than 10:00 a.m. (California time) (or 11:00 am Chicago time with respect to a Canadian Swing Loan) on the Business Day that is the requested Funding Date in the case of a request for a Swing Loan, (ii) delivered to Agent and received by Agent no later than 10:00 a.m. (California time) on the Business Day that is the requested Funding Date in the case of other Domestic Advances that are Base Rate Loans, (iii) delivered to Agent and received by Agent no later than 11:00 a.m. (Chicago time) on the Business Day that is the requested Funding Date in the case of Canadian Advances that are Base Rate Loans and (iv) delivered to Agent and received by Agent no later than 10:00 a.m. (California time) (or 11:00 a.m. Chicago time with respect to a Canadian Borrowing) on the Business Day that is 3 Business Days (or such shorter time as agreed to by Agent acting at the direction Required Lenders) prior to the requested Funding Date in the case of LIBOR Rate Loans or Canadian CDOR Rate Loans, in each case, specifying (A) the amount of such Borrowing and the Applicable Currency and, in the case of clause (iv), whether such Borrowing is for the account of a Domestic Borrower or a Canadian Borrower, and (B) the requested Funding Date (which shall be a Business Day); provided, that Agent may, in its sole discretion, elect to accept as timely requests that are received later than 10:00 a.m. (California time) (or 11:00 a.m. Chicago time, with respect to a Canadian Borrowing) on the applicable Business Day. At Agent's election, in lieu of delivering the above-described request, any Authorized Person may give Agent telephonic notice of such request by the required time. In such circumstances, Borrowers agree that any such telephonic notice will be confirmed in writing within 24 hours of the giving of such telephonic notice, but the failure to provide such written confirmation shall not affect the validity of the request. Borrowings for the account of a Domestic Borrower shall be denominated in Dollars and Borrowings for a Canadian Borrower shall be denominated in Dollars or Canadian Dollars, as applicable. Requests for LIBOR Rate Loans and Canadian CDOR Rate Loans will also be subject to Section 2.12.

(b) **Advance Requests**. Each Borrowing under this Agreement shall be made by a request by an individual identified by the Administrative Borrower as an authorized person and authenticated through the Agent's electronic platform or portal in accordance with the Agent's procedures for such authentication (an "Authorized Person") delivered to the Agent (which may be delivered through the Agent's electronic platform or portal) subject to the timing requirements and containing the information contemplated with respect thereto in this Agreement. All Borrowing requests which are not made on-line via the Agent's electronic platform or portal shall be subject (and unless the Agent elects otherwise in the exercise of its sole discretion, such Borrowings shall not be made until the completion of) to the Agent's authentication process (with results satisfactory to the Agent) prior to funding of any such requested Loan.

(c) **Making of Swing Loans**.

(i) In the case of a request for a Domestic Advance and so long as either (A) the aggregate amount of Domestic Swing Loans made since the last Settlement Date, minus the amount of Collections or payments applied to Domestic Swing Loans since the last Settlement Date, plus the amount of the requested Domestic Advance does not exceed $10,000,000, or (B) in the case of a Domestic Swing Loan, Domestic Swing Lender, in its sole discretion, shall agree to make a Domestic Swing Loan notwithstanding the foregoing limitation, Domestic Swing Lender shall make a Domestic Advance in the amount of such requested Domestic Borrowing (any such Domestic Advance made solely by Swing Lender pursuant to this Section 2.3(c)(i) being referred to as a "Domestic Swing Loan" and such Domestic Advances being referred to as "Domestic Swing Loans") available to Domestic Borrowers on the Funding Date applicable thereto by transferring immediately available funds to the Domestic Designated Account. Anything contained herein to the contrary notwithstanding, the Domestic Swing Lender may, but shall not be obligated to, make Domestic Swing Loans at any time that one or more of the Domestic Lenders is a Defaulting Domestic Lender. Each Domestic Swing Loan shall be deemed to be a Domestic Advance hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Domestic Advances, except that all payments on any Domestic Swing Loan shall be payable to the Domestic Swing Lender solely for its own account.

(ii) In the case of a request for a Canadian Advance and so long as either (A) the aggregate amount of Canadian Swing Loans made since the last Settlement Date, minus the amount of Collections or payments applied to Canadian Swing Loans since the last Settlement Date, plus the amount of the requested Canadian Advance does not exceed $2,000,000, or (B) in the case of a Canadian Swing Loan, Canadian Swing Lender, in its sole discretion, agrees to make a Canadian Swing Loan in the Applicable Currency notwithstanding the foregoing limitation, Canadian Swing Lender shall make a Canadian Advance (any such Canadian Advance made by Canadian Swing Lender subject to this Section 2.3(c)(ii) being referred to as a "Canadian Swing Loan" and all such Canadian Advances being referred to as "Canadian Swing Loans", and together with the Domestic Swing Loans, collectively, "Swing Loans") available to the Canadian Borrowers, in each case on the Funding Date applicable thereto by transferring immediately available funds to the applicable Canadian Designated Account. Anything contained herein to the contrary notwithstanding, the Canadian Swing Lender may, but shall not be obligated to, make Canadian Swing Loans at any time that one or more of the Canadian Lenders is a Defaulting Lender. Each Canadian Swing Loan shall be deemed to be a Canadian Advance hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Canadian Advances, except that all payments on any Canadian Swing Loan shall be payable to the Canadian Swing Lender solely for its own account.

(iii) Subject to the provisions of Section 2.3(e)(ii), a Swing Lender shall not make and shall not be obligated to make any Swing Loan if Swing Lender has actual knowledge that (i) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (ii) the requested Borrowing would exceed the Domestic Availability or Canadian Availability, as applicable, on such Funding Date. A Swing Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3 have been satisfied on the Funding Date applicable thereto prior to making any Swing Loan. The Domestic Swing Loans shall be secured by Agent's Liens, constitute Domestic Advances and Domestic Obligations hereunder, and bear

interest at the rate applicable from time to time to Domestic Advances that are Base Rate Loans. The Canadian Swing Loans shall be secured by Agent's Liens, constitute Canadian Advances and Canadian Obligations hereunder, and bear interest at the rate applicable from time to time to Canadian Advances that are Base Rate Loans.

(d) **Making of Advances**.

(i) In the event that the applicable Swing Lender is not obligated to make a Swing Loan, then promptly after receipt of a request for a Borrowing pursuant to Section 2.3(a), Agent shall notify the Domestic Lenders and the Canadian Lenders, as applicable, by telecopy, telephone, or other similar form of transmission, of the requested Borrowing, and whether such Borrowing is for the account of a Domestic Borrower or for the account of a Canadian Borrower; such notification, in the case of a Domestic Borrowing that is a Base Rate Loan, to be sent not later than 1:00 p.m. (California time) on the requested Funding Date applicable thereto, not later than 11:00 a.m. (Chicago time) on the requested Funding Date applicable thereto in the case of a Canadian Borrowing that is Base Rate Loan and not later than 11:00 a.m. (California time) 3 Business Days prior to the requested Funding Date in the case of any LIBOR Rate Loan or Canadian CDOR Rate Loan. Each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds in Dollars or CAD, as applicable, to the applicable Agent's Account, not later than **1:00 p.m. (California time)** on the Funding Date applicable thereto. After Agent's receipt of the proceeds of such Advances, Agent shall make the proceeds thereof available to applicable Domestic Borrowers and Canadian Borrowers on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Domestic Designated Account or Canadian Designated Account, as applicable; provided, however, that, subject to the provisions of Section 2.3(e)(ii), Agent shall not request any Lender to make, and no Lender shall have the obligation to make, any Advance if (1) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, or (2) the requested Borrowing would exceed the Domestic Availability (in the case of a Domestic Borrowing) or Canadian Availability (in the case of a Canadian Borrowing) on such Funding Date.

(ii) Unless Agent receives notice from a Lender prior to 9:00 a.m. (California time) on the date of a Borrowing, that such Lender will not make available as and when required hereunder to Agent for the account of Domestic Borrowers or Canadian Borrowers, as applicable, the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds in Dollars or CAD, as applicable, on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Domestic Borrowers or Canadian Borrowers, as applicable, on such date a corresponding amount. If any Lender shall not have made its full amount available to Agent in immediately available funds in Dollars or CAD, as applicable, and if Agent in such circumstances has made available to Domestic Borrowers or Canadian Borrowers, as applicable, such amount, that Lender shall on the Business Day following such Funding Date make such amount available to Agent, together with interest at the Defaulting Lender Rate for each day during such period. A notice submitted by Agent to any Lender with respect to amounts owing under this Section 2.3(d)(ii) shall be conclusive, absent manifest error. If such

amount is so made available, such payment to Agent shall constitute such Lender's Domestic Advance or Canadian Advance, as applicable, on the date of Borrowing for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify the Domestic Borrowers of such failure to fund and, upon demand by Agent, the Domestic Borrowers (in the case of Domestic Advances) and the Canadian Borrowers (in the case of Canadian Advances) of such failure to fund and, upon demand by Agent, the Domestic Borrowers (in the case of Domestic Advances) and the Canadian Borrowers (in the case of Canadian Advances) shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Advances in the Applicable Currency composing such Borrowing.

(e) **Protective Advances and Optional Overadvances**.

(i) Any contrary provision of this Agreement or any other Loan Document notwithstanding, Agent hereby is authorized by Borrowers and the Lenders, from time to time in Agent's sole discretion, (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) at any time that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, Agent hereby is authorized by Borrowers and the Lenders, from time to time, in Agent's sole discretion, to make Domestic Advances to, or for the benefit of, the Domestic Borrowers or Canadian Advances in the Applicable Currency to, or for the benefit of the Canadian Borrowers, in each case on behalf of the applicable Revolving Lenders, that Agent, in its Permitted Discretion, deems necessary or desirable (1) to preserve or protect the Collateral, in the case of Domestic Protective Advances (as defined below) and the Canadian Collateral, in the case of Canadian Protective Advances (as defined below), or in each case any portion thereof, or (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) in the case of Domestic Protective Advances, and Canadian Obligations (other than the Canadian Bank Product Obligations) in the case of Canadian Protective Advances (the Domestic Advances described in this Section 2.3(e)(i) shall be referred to as "Domestic Protective Advances" and the Canadian Advances described in this Section 2.3(e)(i) shall be referred to as the "Canadian Protective Advances"). Notwithstanding the foregoing, the aggregate amount of all Domestic Protective Advances outstanding at any one time shall not exceed the Domestic Borrowing Base by more than 10% of the Maximum Revolver Amount, and the aggregate amount of all Canadian Protective Advances outstanding at any one time shall not exceed the Canadian Borrowing Base by more than 10% of the Canadian Maximum Revolver Amount.

(ii) Any contrary provision of this Agreement or any other Loan Document notwithstanding, the Lenders hereby authorize Agent, Domestic Swing Lender or Canadian Swing Lender, as applicable, and either Agent, Domestic Swing Lender or Canadian Swing Lender, as applicable, may, but is not obligated to, knowingly and intentionally, continue to make Domestic Advances (including Domestic Swing Loans) to the Domestic Borrowers and Canadian Advances (including Canadian Swing Loans) to the Canadian Borrowers notwithstanding that a Domestic Overadvance or Canadian Overadvance, as applicable, exists or thereby would be created, so long as (A) with respect to any such Domestic Advance, (i) after giving effect to such Domestic Advances, the outstanding Domestic Revolver Usage (including any Domestic Protective Advances) does not exceed the Domestic Borrowing Base by more than

10% of the Maximum Revolver Amount, and (ii) after giving effect to such Domestic Advances, the outstanding Domestic Revolver Usage (except for and excluding amounts charged to the Domestic Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Maximum Revolver Amount and (B) with respect to any such Canadian Advances, (i) after giving effect to such Canadian Advances, the Dollar Equivalent of the outstanding Canadian Revolver Usage (including any Canadian Protective Advances) does not exceed the Canadian Borrowing Base by more than 10% of the Canadian Maximum Revolver Amount, and (ii) after giving effect to such Canadian Advances, the Dollar Equivalent of the outstanding Canadian Revolver Usage (except for and excluding amounts charged to the Canadian Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Canadian Maximum Revolver Amount. In addition, the sum of Domestic Overadvances plus Canadian Overadvances may not, at any time, exceed 10% of the Maximum Revolver Amount. In the event Agent obtains actual knowledge that the Revolver Usage exceeds the amounts permitted by the immediately foregoing provisions, regardless of the amount of, or reason for, such excess, Agent shall notify the Lenders as soon as practicable (and prior to making any (or any additional) intentional Overadvances (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) unless Agent determines that prior notice would result in imminent harm to the Collateral or its value, in which case Agent may make such Overadvances and provide notice as promptly as practicable thereafter), and the applicable Lenders with Revolver Commitments thereupon shall, together with Agent, jointly determine the terms of arrangements that shall be implemented with Borrowers intended to reduce, within a reasonable time, the outstanding principal amount of the Advances to Borrowers to an amount permitted by the preceding sentence. In such circumstances, if any Lender with a Revolver Commitment objects to the proposed terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Required Lenders. The foregoing provisions are meant for the benefit of the Lenders and Agent and are not meant for the benefit of Borrowers, which shall continue to be bound by the provisions of Section 2.5. Each Lender with a Revolver Commitment shall be obligated to settle with Agent as provided in Section 2.3(f) (or Section 2.3(h), as applicable) for the amount of such Lender's Pro Rata Share of any unintentional Overadvances by Agent reported to such Lender, any intentional Overadvances made as permitted under this Section 2.3(e)(ii), and any Overadvances resulting from the charging to the Loan Account of interest, fees, or Lender Group Expenses. Agent's and Swing Lender's authorization to make intentional Overadvances may be revoked at any time by the Required Lenders delivering written notice of such revocation to Agent. Any such revocation shall become effective prospectively upon Agent's receipt thereof.

(iii) Each Domestic Protective Advance and each Domestic Overadvance shall be deemed to be a Domestic Advance hereunder and Canadian Protective Advance and each Canadian Overadvance shall be deemed to be a Canadian Advance hereunder, except that no Protective Advance or Overadvance shall be eligible to be a LIBOR Rate Loan or Canadian CDOR Rate Loan. Prior to Settlement therefor, all payments on the Protective Advances shall be payable to Agent solely for its own account. The Protective Advances and Overadvances shall be repayable on demand and in the case of Domestic Protective Advance and Domestic Overadvances, constitute Domestic Obligations hereunder, are secured by Agent's Liens, and constitute Base Rate Loans or, in the case of Canadian Protective Advance and Canadian Overadvance, Canadian Obligations hereunder, are secured by Agent's Liens, and constitute Base

Rate Loans. The ability of Agent to make Protective Advances is separate and distinct from its ability to make Overadvances and its ability to make Overadvances is separate and distinct from its ability to make Protective Advances. For the avoidance of doubt, the limitations on Agent's ability to make Protective Advances do not apply to Overadvances and the limitations on Agent's ability to make Overadvances do not apply to Protective Advances. The provisions of this Section 2.3(e) are for the exclusive benefit of Agent, Swing Lender, and the Lenders and are not intended to benefit Borrowers (or any other Loan Party) in any way.

(f) **Settlement.** It is agreed that each Lender's funded portion of (i) the Domestic Advances is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Domestic Advances and (ii) the Canadian Advances is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Canadian Advances. Such agreement notwithstanding, Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of Borrowers) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the Advances, the Swing Loans, and the Protective Advances shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by Agent (1) on behalf of Swing Lender, with respect to the outstanding Swing Loans, (2) for itself, with respect to the outstanding Protective Advances, and (3) with respect to Domestic Borrowers' and Canadian Borrowers', as applicable or their Subsidiaries' Collections or payments received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 2:00 p.m. (California time) (or 2:00 p.m. Chicago in the case of Canadian Obligations) on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Domestic Advances, Domestic Swing Loans, Canadian Advances, Canadian Swing Loans, Domestic Protective Advances, Domestic Overadvances, Canadian Protective Advances, and Canadian Overadvances for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(h)): (y) if the amount of the applicable Advances (including Swing Loans, Overadvances, and Protective Advances) made by a Lender that is not a Defaulting Lender exceeds such Lender's Pro Rata Share of the Advances (including Swing Loans and Protective Advances) as of a Settlement Date, then Agent shall, by no later than 12:00 p.m. (California time) (or 12:00 p.m. Chicago time, in the case of a Settlement of Canadian Advances) on the Settlement Date, transfer in immediately available funds in the Applicable Currency to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Domestic Advances (including Domestic Swing Loans, Domestic Overadvances, and Protective Advances) and Canadian Advances (including Canadian Swing Loans, Canadian Overadvances, and Canadian Protective Advances), and (z) if the amount of the Advances (including Swing Loans, Overadvances, and Protective Advances) made by a Lender is less than such Lender's Pro Rata Share of the Advances (including Swing Loans, Overadvances, and Protective Advances) as of a Settlement Date, such Lender shall no later than 12:00 p.m. (California time) (or 12:00 p.m. Chicago time, in the case of a Settlement of Canadian Advances) on the Settlement Date transfer

in immediately available funds in the Applicable Currency to the applicable Agent's Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Domestic Advances (including Domestic Swing Loans, Domestic Overadvances, and Protective Advances) or Canadian Advances (including Canadian Swing Loans, Canadian Overadvances, and Canadian Protective Advances), as applicable. Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loans or Protective Advances and, together with the portion of such Swing Loans or Protective Advances representing Swing Lender's Pro Rata Share thereof, shall constitute Advances of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender's balance of the Advances, Swing Loans, and Protective Advances is less than, equal to, or greater than such Lender's Pro Rata Share of the Advances, Swing Loans, and Protective Advances as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrowers and allocable to the Lenders hereunder, and proceeds of Collateral.

(iii) Between Settlement Dates, Agent, to the extent Protective Advances or Swing Loans are outstanding, may pay over to Agent or Swing Lender, as applicable, any Collections or payments received by Agent that in accordance with the terms of this Agreement would be applied to the reduction of the Advances, for application to the Protective Advances or Swing Loans. Between Settlement Dates, Agent, to the extent no Protective Advances or Swing Loans are outstanding, may pay over to Swing Lender any Collections or payments received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Advances, for application to Swing Lender's Pro Rata Share of the Advances. If, as of any Settlement Date, Collections or payments of Parent or its Subsidiaries received since the then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Advances other than to Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the Lenders, and Agent shall pay to the Lenders (other than a Defaulting Lender if Agent has implemented the provisions of Section 2.3(h)), to be applied to the outstanding Advances of such Lenders, an amount such that each such Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Advances. During the period between Settlement Dates, Swing Lender with respect to Swing Loans, Agent with respect to Protective Advances, and each Lender (subject to the effect of agreements between Agent and individual Lenders) with respect to the Advances other than Swing Loans and Protective Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the Lenders, as applicable.

(iv) Anything in this Section 2.3(f) to the contrary notwithstanding, in the event that a Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to implement the provisions set forth in Section 2.3(h).

(g) **Notation.** Agent, as a non-fiduciary agent for Borrowers, shall maintain a register the ("Register") in the Applicable Currency showing the principal amount of the Advances owing to each Lender by the Domestic Borrowers and Canadian Borrowers, including the Swing Loans owing to the applicable Swing Lender, and Protective Advances owing to Agent, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate. Notwithstanding anything to the contrary, any assignment of any Loan shall be effective only upon appropriate entries with respect thereto being made in the Register. The Register shall be available for inspection by the Borrowers, Agent and any Lender (solely with respect to its Loans), at any reasonable time and from time to time upon reasonable prior notice. This Section 2.3(g) shall be construed so that the Loans are at all times maintained in "registered form" within the meanings of Sections 163(f), 871(h)(2) and 881(c)(2) of the IRC and the Treasury Regulations thereunder.

(h) **Defaulting Lenders**.

(i) Notwithstanding the provisions of Section 2.4(b)(ii), Agent shall not be obligated to transfer to a Defaulting Lender any payments made by any Borrower to Agent for the Defaulting Lender's benefit or any Collections or proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, (A) in the absence of such transfer to a Defaulting Domestic Lender, Agent shall transfer any such payments pertaining to Domestic Advances or Domestic Collateral, (1) first, to Domestic Swing Lender to the extent of any Domestic Swing Loans that were made by Domestic Swing Lender and that were required to be, but were not, paid by the Defaulting Domestic Lender, (2) second, to Issuing Lender, to the extent of the portion of a Domestic Letter of Credit Disbursement that was required to be, but was not, paid by the Defaulting Domestic Lender, (3) third, to each Non-Defaulting Domestic Lender ratably in accordance with their Domestic Commitments (but, in each case, only to the extent that such Defaulting Domestic Lender's portion of a Domestic Advance (or other funding obligation) was funded by such other Non-Defaulting Domestic Lender), (4) to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be re-advanced to or for the benefit of the Domestic Borrowers (upon the request of the Domestic Borrowers and subject to the conditions set forth in Section 3.2) as if such Defaulting Domestic Lender had made its portion of Domestic Advances (or other funding obligations) hereunder, (5) to the payment of any amounts owing to the Domestic Lenders, the Issuing Lender or Domestic Swing Lender against such Defaulting Domestic Lender as a result of such Defaulting Domestic Lender's breach of its obligations under this Agreement, (6) so long as no Default or Event of Default exists, to the payment of any amounts owing to the Domestic Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Domestic Borrowers against such Defaulting Domestic Lender as a result of such Defaulting Domestic Lender's breach of its obligations under this Agreement, and (7) from and after the date on which all other Obligations have been paid in full, to such Defaulting Domestic Lender in accordance with Section 2.4(b)(ii) in the absence of such transfer to a Defaulting Canadian Lender, Agent shall transfer such payments pertaining to Canadian Advances, Canadian Collateral and, to the extent all Domestic Obligations have been paid in full, Collateral, (1) first, to Canadian Swing Lender to the extent of any Canadian Swing Loans that were made by Canadian Swing Lender and that were required to be, but were not, paid by the Canadian Lender, (2) second, to Issuing Lender, to the extent of the portion of a Canadian Letter of Credit Disbursement that was required to be, but was not, paid by the Defaulting

Canadian Lender, (3) to each Non-Defaulting Canadian Lender ratably in accordance with their Canadian Revolver Commitments (but, in each case, only to the extent that such Defaulting Canadian Lender's portion of a Canadian Advance (or other funding obligation) was funded by such other Non-Defaulting Canadian Lender), (4) to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be re-advanced to or for the benefit of the Canadian Borrowers (upon the request of Canadian Borrowers and subject to the conditions set forth in Section 3.2) as if such Defaulting Canadian Lender had made its portion of Canadian Advances (or other funding obligations) hereunder, (5) to the payment of any amounts owing to the Canadian Lenders, the Issuing Lender or the Canadian Swing Lender as a result of any judgment of a court of competent jurisdiction obtained by any Canadian Lender or the Issuing Lender against such Defaulting Canadian Lender as a result of such Defaulting Canadian Lender's breach of its obligations under this Agreement, (6) so long as no Default or Event of Default exists, to the payment of any amounts owing to the Canadian Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Canadian Borrowers against such Defaulting Canadian Lender as a result of such Defaulting Canadian Lender's breach of its obligations under this Agreement, and (7) from and after the date on which all other Canadian Obligations have been paid in full, to such Defaulting Canadian Lender in accordance with Section 2.4(b)(ii). Subject to the foregoing, Agent may hold and, in its discretion, re-lend to the applicable Borrowers for the account of any Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Pro Rata Share in connection therewith) and for the purpose of calculating the fees payable under Section 2.10(b), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero. The provisions of this Section 2.3(h) shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the Non-Defaulting Domestic Lenders or Non-Defaulting Canadian Lenders (as applicable), Agent, Issuing Lender, and Borrowers shall have waived, in writing, the application of this Section 2.3(h) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated to fund hereunder, pays to Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by Agent, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by Agent pursuant to Section 2.3(h)(ii) shall be released to the applicable Borrowers). The operation of this Section 2.3(h) shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by any Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by Borrowers of their duties and obligations hereunder to Agent, Issuing Lender, or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrowers, at their option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitments of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document

if it fails to do so) subject only to being paid its share of the outstanding Obligations (other than Bank Product Obligations, but including (1) all interest, fees, and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Pro Rata Share of its participation in the Letters of Credit); provided, that any such assumption of the Commitments of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or Borrowers' rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(h) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(h) shall control and govern.

(ii) If any Domestic Swing Loan or Domestic Letter of Credit is outstanding at the time that a Domestic Lender becomes a Defaulting Domestic Lender then:

(A) such Defaulting Domestic Lender's Swing Loan Exposure and Letter of Credit Exposure shall be reallocated among the Non-Defaulting Domestic Lenders in accordance with their respective Pro Rata Shares (it being understood such Defaulting Domestic Lender's Swing Loan Exposure shall be reallocated among Non-Defaulting Domestic Lenders with a Domestic Revolver Commitment and such Defaulting Domestic Lender's Domestic Letter of Credit Exposure shall be reallocated among Non-Defaulting Domestic Lenders with a Domestic Revolver Commitment to the extent such Domestic Letter of Credit Exposure arises from a Letter of Credit) but only to the extent (x) the sum of all Non-Defaulting Domestic Lenders' Revolving Loan Exposures *plus* such Defaulting Domestic Lender's Swing Loan Exposure and applicable Domestic Letter of Credit Exposure does not exceed the total of all Non-Defaulting Domestic Lenders' Revolver Commitments and (y) the conditions set forth in Section 3.2 are satisfied at such time;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, the Domestic Borrowers shall within one Business Day following notice by the Agent (x) first, prepay such Defaulting Domestic Lender's Swing Loan Exposure (after giving effect to any partial reallocation pursuant to clause (A) above) and (y) second, cash collateralize such Defaulting Domestic Lender's applicable Domestic Letter of Credit Exposure (after giving effect to any partial reallocation pursuant to clause (A) above), pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Agent, for so long as such Letter of Credit Exposure is outstanding; provided, that Domestic Borrowers shall not be obligated to cash collateralize any Defaulting Lender's Letter of Credit Exposure if such Defaulting Lender is also an Issuing Lender;

(C) if the Domestic Borrowers cash collateralize any portion of such Defaulting Domestic Lender's Domestic Letter of Credit Exposure pursuant to this Section 2.3(h)(ii), such Domestic Borrowers shall not be required to pay any Letter of Credit Fees to Agent for the account of such Defaulting Domestic Lender pursuant to Section 2.6(b) with respect to such cash collateralized portion of such Defaulting Domestic Lender's Domestic Letter of Credit Exposure during the period such Letter of Credit Exposure is cash collateralized;

(D) to the extent the Domestic Letter of Credit Exposure of the Non-Defaulting Domestic Lenders is reallocated pursuant to this Section 2.3(h)(ii), then the Letter of Credit Fees payable to the Non-Defaulting Domestic Lenders pursuant to Section 2.6(b) shall be adjusted in accordance with such Non-Defaulting Domestic Lenders' Domestic Letter of Credit Exposure;

(E) to the extent any Defaulting Domestic Lender's Domestic Letter of Credit Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.3(h)(ii), then, without prejudice to any rights or remedies of the Issuing Lender or any Domestic Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Domestic Lender under Section 2.6(b) with respect to such portion of such Letter of Credit Exposure shall instead be payable to the Issuing Lender until such portion of such Defaulting Lender's Domestic Letter of Credit Exposure is cash collateralized or reallocated;

(F) so long as any Domestic Lender is a Defaulting Domestic Lender, the Domestic Swing Lender shall not be required to make any Domestic Swing Loan and the Issuing Lender shall not be required to issue, amend, or increase any Domestic Letter of Credit, in each case, to the extent (x) the Defaulting Domestic Lender's Pro Rata Share of such Domestic Swing Loans or Domestic Letter of Credit cannot be reallocated pursuant to this Section 2.3(h)(ii) or (y) the Domestic Swing Lender or Issuing Lender, as applicable, has not otherwise entered into arrangements reasonably satisfactory to the Domestic Swing Lender or Issuing Lender, as applicable, and Domestic Borrowers to eliminate the Domestic Swing Lender's or Issuing Lender's risk with respect to the Defaulting Domestic Lender's participation in Domestic Swing Loans or Domestic Letters of Credit; and

(G) Agent may release any cash collateral provided by Domestic Borrowers pursuant to this Section 2.3(h)(ii) to the Issuing Lender and the Issuing Lender may apply any such cash collateral to the payment of such Defaulting Domestic Lender's Pro Rata Share of any Domestic Letter of Credit Disbursement that is not reimbursed by the Domestic Borrowers pursuant to Section 2.11(a)(iv).

(iii) If any Canadian Swing Loan or Canadian Letter of Credit is outstanding at the time that a Canadian Lender becomes a Defaulting Canadian Lender then:

(A) such Defaulting Canadian Lender's Swing Loan Exposure and Letter of Credit Exposure shall be reallocated among the Non-Defaulting Canadian Lenders in accordance with their respective Pro Rata Shares (it being understood such Defaulting Canadian Lender's Swing Loan Exposure shall be reallocated among Non-Defaulting Canadian Lenders with a Canadian Revolver Commitment and it being understood such Defaulting Canadian Lender's Canadian Letter of Credit Exposure shall be reallocated among Non-Defaulting Canadian Lenders with a Canadian Revolver Commitment to the extent such Canadian Letter of Credit Exposure arises from a Canadian Letter of Credit) but only to the extent (x) the sum of all Non-Defaulting Canadian Lenders' Revolving Loan Exposures *plus* such Defaulting Canadian Lender's Swing Loan Exposure and applicable Canadian Letter of Credit Exposure does not exceed the total of all Non-Defaulting Canadian Lenders' Canadian Revolver Commitments and (y) the conditions set forth in Section 3.2 are satisfied at such time;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, the Canadian Borrowers shall within one Business Day following notice by the Agent (x) first, prepay such Defaulting Canadian Lender's Swing Loan Exposure (after giving effect to any partial reallocation pursuant to clause (A) above) and (y) second, cash collateralize such Defaulting Canadian Lender's applicable Canadian Letter of Credit Exposure (after giving effect to any partial reallocation pursuant to clause (A) above), pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Agent, for so long as such Letter of Credit Exposure is outstanding; provided, that Canadian Borrowers shall not be obligated to cash collateralize any Defaulting Canadian Lender's applicable Canadian Letter of Credit Exposure if such Defaulting Canadian Lender is also the Issuing Lender;

(C) if the Canadian Borrowers cash collateralize any portion of such Defaulting Canadian Lender's Canadian Letter of Credit Exposure pursuant to this Section 2.3(h)(iii), such Canadian Borrowers shall not be required to pay any Letter of Credit Fees to Agent for the account of such Defaulting Canadian Lender pursuant to Section 2.6(b) with respect to such cash collateralized portion of such Defaulting Canadian Lender's Canadian Letter of Credit Exposure during the period such Letter of Credit Exposure is cash collateralized;

(D) to the extent any Canadian Letter of Credit Exposure of the Non-Defaulting Canadian Lenders is reallocated pursuant to this Section 2.3(h)(iii), then the Letter of Credit Fees payable to the Non-Defaulting Canadian Lenders pursuant to Section 2.6(b) shall be adjusted in accordance with such Non-Defaulting Canadian Lenders' Canadian Letter of Credit Exposure;

(E) to the extent any Defaulting Canadian Lender's Canadian Letter of Credit Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.3(h)(iii), then, without prejudice to any rights or remedies of the Issuing Lender or any Canadian Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Canadian Lender under Section 2.6(b) with respect to such portion of such Letter of Credit Exposure shall instead be payable to the Issuing Lender until such portion of such Defaulting Lender's Canadian Letter of Credit Exposure is cash collateralized or reallocated;

(F) so long as any Canadian Lender is a Defaulting Canadian Lender, the Canadian Swing Lender shall not be required to make any Canadian Swing Loan and the Issuing Lender shall not be required to issue, amend, or increase any Canadian Letter of Credit, in each case, to the extent (x) the Defaulting Canadian Lender's Pro Rata Share of such Canadian Swing Loans or Canadian Letter of Credit cannot be reallocated pursuant to this Section 2.3(h)(iii) or (y) the Canadian Swing Lender or Issuing Lender, as applicable, has not otherwise entered into arrangements reasonably satisfactory to the Canadian Swing Lender or Issuing Lender, as applicable, and Canadian Borrowers to eliminate the Swing Lender's or Issuing Lender's risk with respect to the Defaulting Canadian Lender's participation in Swing Loans or Canadian Letters of Credit; and

(G) Agent may release any cash collateral provided by Canadian Borrowers pursuant to this Section 2.3(h)(iii) to the Issuing Lender and the Issuing Lender may apply any such cash collateral to the payment of such Defaulting Canadian Lender's Pro Rata

Share of any Canadian Letter of Credit Disbursement that is not reimbursed by the Canadian Borrowers pursuant to Section 2.11(b)(iv).

(i) **Independent Obligations.** All Advances (other than Swing Loans and Protective Advances) shall be made by the Domestic Lenders or Canadian Lenders, as applicable, contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Advances (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

2.4 Payments; Reductions of Commitments; Prepayments.

(a) **Payments by Borrowers**.

(i) Except as otherwise expressly provided herein, all payments by Borrowers shall be made to the applicable Agent's Account (for the account of the Domestic Lenders or the Canadian Lenders, as the case may be) in immediately available funds in the Applicable Currency, no later than 11:00 a.m. (California time) (or 11:00 a.m. Chicago time for payments to be made to the Agent's Applicable Canadian Account) on the date specified herein. Any payment received by Agent later than 11:00 a.m. (California time) (or 11:00 a.m. Chicago time for payments to be made to the Agent's Applicable Canadian Account) on the date specified herein to be applied in accordance with Section 2.4(b)(i) and (ii) as applicable. Any payment received by Agent later than 11:00 a.m. (California time) (or 11:00 a.m. Chicago time for payments to be made to the Agent's Applicable Canadian Account) shall be deemed to have been received (unless Agent, in its sole discretion, elects to credit it on the date received) on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Administrative Borrower prior to the date on which any payment is due to the Lenders that Borrowers will not make such payment in full as and when required, Agent may assume that Borrowers have made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due to such Lender. If and to the extent Borrowers do not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(b) **Apportionment and Application**.

(i) So long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all principal and interest payments received by Agent shall be apportioned ratably among the Lenders (according to the

unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses received by Agent (other than fees or expenses that are for Agent's separate account or for the separate account of the Issuing Lender) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee or expense relates. All payments to be made hereunder by Borrowers shall be remitted to Agent and all (subject to Section 2.4(b)(iv)) such payments in respect of the Obligations, and all proceeds of Collateral in respect of the Obligations received by Agent, shall be applied, so long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, *first* to reduce the balance of the Advances outstanding and, thereafter, to Borrowers (to be wired to the Domestic Designated Account or the Canadian Designated Account, as applicable) or such other Person entitled thereto under applicable law.

(ii) At any time that an Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all payments remitted to Agent and all proceeds of Collateral received by Agent shall be applied as follows:

(1) first, to pay any Lender Group Expenses (including cost or expense reimbursements) owing by Loan Parties or indemnities then due to Agent under the Loan Documents in respect of the Obligations until paid in full,

(2) second, to pay any fees or premiums then due to Agent under the Loan Documents in respect of the Obligations until paid in full,

(3) third, to pay interest due in respect of all Domestic Protective Advances and Canadian Protective Advances until paid in full,

(4) fourth, to pay the principal of all Domestic Protective Advances and Canadian Protective Advances until paid in full,

(5) fifth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) owing by the Loan Parties or indemnities then due to any of the Lenders under the Loan Documents in respect of the Obligations, until paid in full,

(6) sixth, ratably, to pay any fees or premiums then due to any of the Lenders under the Loan Documents in respect of the Obligations until paid in full,

(7) seventh, ratably, to pay interest accrued in respect of the Domestic Swing Loans and Canadian Swing Loans until paid in full,

(8) eighth, ratably, to pay the principal of all Domestic Swing Loans and Canadian Swing Loans until paid in full,

(9) ninth, ratably, to pay interest accrued in respect of the Advances (other than Domestic Protective Advances and Canadian Protective Advances) until paid in full,

(10) tenth, ratably (i) to pay the principal of all Advances until paid in full, (ii) to Agent, to be held by Agent, for the benefit of Issuing Lender (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of the Issuing Lender, a share of each Letter of Credit Disbursement), as cash collateral in an amount up to 105% of the Letter of Credit Usage (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement as and when such disbursement occurs and, if a Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Letter of Credit shall, to the extent permitted by applicable law, be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (1) hereof), and (iii) ratably, to the Bank Product Providers based upon amounts then certified by the applicable Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable to such Bank Product Providers on account of Bank Product Obligations (other than Excluded Swap Obligations),

(11) eleventh, to pay any other Obligations (other than Excluded Swap Obligations) other than Obligations owed to Defaulting Lenders,

(12) twelfth, ratably to pay any Obligations (other than Excluded Swap Obligations) owed to Defaulting Lenders,

(13) thirteenth, to Borrowers (to be wired to the Domestic Designated Account or Canadian Designated Account, as applicable) or such other Person entitled thereto under applicable law.

(iii) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(f).

(iv) In each instance, so long as no Application Event has occurred and is continuing, Section 2.4(b)(i) shall not apply to any payment made by any Borrower to Agent and specified by such Borrower to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement or any other Loan Document.

(v) For purposes of Section 2.4(b)(ii), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(vi) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, if the conflict relates to the provisions of Section

2.3(h) and this Section 2.4, then the provisions of Section 2.3(h) shall control and govern, and if otherwise, then the terms and provisions of this Section 2.4 shall control and govern.

(c) **Reduction of Revolver Commitments**. The Revolver Commitments shall terminate on the Maturity Date. Borrowers may reduce without premium or penalty (i) the Domestic Revolver Commitments to the greater of: (A) an amount not less than the sum of (I) the Domestic Revolver Usage as of such date, *plus* (II) the Dollar Equivalent of the Canadian Revolver Usage as of such date, *plus* (III) the Dollar Equivalent of the principal amount of any Domestic Advances or Canadian Advances (as applicable) not yet made as to which a request has been given by Borrowers under Section 2.3(a), *plus* (IV) the amount of all Letters of Credit not yet issued as to which a request has been given by Borrowers, and (B) $20,000,000, and (ii) the Canadian Revolver Commitments to an amount (which may be zero) not less than the sum of (A) the Dollar Equivalent of the Canadian Revolver Usage *plus* (B) the Dollar Equivalent of the principal amount of any Canadian Advances not yet made as to which a request has been given by Borrowers under Section 2.3(a), *plus* (C) the Dollar Equivalent of the amount of all Canadian Letters of Credit not yet issued as to which a request has been given by Borrowers. Each such reduction shall be in an amount which is not less than $5,000,000, shall be made by providing not less than 5 Business Days prior written notice to Agent, and shall be irrevocable. Once reduced, the applicable Revolver Commitments may not be increased. Each such reduction of the applicable Revolver Commitments shall reduce (x) the applicable Revolver Commitments of each Lender proportionately in accordance with its ratable share thereof and (y) the Maximum Revolver Amount, in the case of a reduction of the Domestic Revolver Commitments, and the Canadian Maximum Revolver Amount, in the case of a reduction of the Canadian Revolver Commitments, in each case, dollar for dollar.

(d) **Optional Prepayments**. Borrowers may prepay the principal of any Advance at any time in whole or in part, without premium or penalty.

2.5 Overadvances; Promise to Pay.

(i) **Domestic Borrowing Base.** If at any time the Domestic Revolver Usage exceeds the lesser of (1) the Maximum Revolver Amount and (2) the Domestic Borrowing Base reflected in the Borrowing Base Certificate most recently delivered by Borrowers to Agent (a "Domestic Overadvance"), then the Domestic Borrowers shall promptly, and in any event, within 1 Business Day, pay to Agent, in cash, in Dollars, the amount of such excess, which amount shall be used by Agent to reduce the Obligations in accordance with the priorities set forth in Section 2.4(b).

(ii) **Canadian Borrowing Base.** If at any time (A) the Dollar Equivalent of the Canadian Revolver Usage exceeds (B) the lesser of (x) the Canadian Maximum Revolver Amount, and (y) the Canadian Borrowing Base reflected in the Borrowing Base Certificate most recently delivered by Borrowers to Agent (an "Canadian Overadvance"), then the Canadian Borrowers shall promptly, and in any event, within 1 Business Day, pay to Agent, in cash, in Dollars, the amount of such excess, which amount shall be used by Agent to reduce the Obligations in accordance with the priorities set forth in Section 2.4(b).

(iii) **Maximum Revolver Amount.** Without duplication of the prepayment required under clauses (i) and (ii) above, the Advances shall be repaid in an amount equal to 100% of the amount by which the sum of (A) the Domestic Revolver Usage, *plus* (B) the Dollar Equivalent amount of the Canadian Revolver Usage, exceeds the Maximum Revolver Amount.

(iv) **Promise to Pay.** Borrowers promise to pay the Obligations (including principal, interest, fees, costs, and expenses) in full on the Maturity Date or, if earlier, on the date on which the Obligations (other than the Bank Product Obligations) become due and payable pursuant to the terms of this Agreement.

2.6 Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations.

(a) **Interest Rates.** Except as provided in Section 2.6(c), all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof, shall bear interest on the Daily Balance thereof as follows:

(i) if the relevant Obligation is a LIBOR Rate Loan, at a *per annum* rate equal to the LIBOR Rate plus the LIBOR Rate Margin,

(ii) if the relevant Obligation is a Canadian CDOR Rate Loan, at a *per annum* rate equal to the CDOR Rate plus the Canadian CDOR Rate Margin, and

(iii) otherwise, at a *per annum* rate equal to the applicable Base Rate plus the Base Rate Margin.

(b) **Letter of Credit Fee.** Borrowers shall pay Agent (for the ratable benefit of the Lenders with a Domestic Revolver Commitment or Canadian Revolver Commitment, as applicable, subject to any agreements between Agent and individual Lenders), a Letter of Credit fee (the "Letter of Credit Fee") (which fee shall be in addition to the fronting fees and commissions, other fees, charges and expenses set forth in Section 2.11) that shall accrue at a per annum rate equal to the LIBOR Rate Margin times the Daily Balance of the undrawn amount of all outstanding Domestic Letters of Credit or Canadian Letters of Credit, as applicable.

(c) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default and at the written election of the Required Lenders,

(i) all Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest on the Daily Balance thereof at a per annum rate equal to 2 percentage points above the per annum rate otherwise applicable thereunder, and

(ii) the Letter of Credit Fee shall be increased to 2 percentage points above the per annum rate otherwise applicable hereunder ((i) and (ii) of this clause (c) shall mean the "Default Rate").

(d) **Payment.** Except to the extent provided to the contrary in Section 2.10 or Section 2.12(a), all interest, all Letter of Credit Fees, all other fees payable hereunder or under any of the other Loan Documents, and all costs, expenses, and Lender Group Expenses payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on the first day of each month at any time that Obligations or Commitments are outstanding. Domestic Borrowers hereby authorize Agent, from time to time without prior notice to Domestic Borrowers, (i) to charge to the Domestic Loan Account (A) with all interest accrued during the prior month on the Domestic Advances, (B) with all Letter of Credit Fees accrued or chargeable hereunder, (C) as and when incurred or accrued, all fees and costs provided for in Section 2.10, (D) with the unused line fee, (E) as and when due and payable, all other fees payable hereunder or under any of the other Loan Documents, (F) as and when incurred or accrued, the fronting fees and all commissions, other fees, charges and expenses provided for in Section 2.11(a)(x), (G) as and when incurred or accrued, all other Lender Group Expenses, and (H) as and when due and payable all other payment obligations payable under any Loan Document or any Domestic Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Domestic Bank Products) and (ii) to charge to the Canadian Loan Account: (A) with all interest accrued during the prior month on the Canadian Advances, (B) with all Letter of Credit Fees accrued or chargeable hereunder during the prior month, (C) as and when due and payable, all other fees payable hereunder or under any of the other Loan Documents by any Canadian Borrower, (D) as and when incurred or accrued, the fronting fees and all commissions, other fees, charges and expenses provided for in Section 2.11(b)(x), (E) as and when incurred or accrued, all other Lender Group Expenses attributable to any Canadian Borrower (to the extent not included in clause (i) above), and (F) as and when due and payable all other payment obligations payable under any Loan Document attributable to any Canadian Borrower or any Canadian Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Canadian Bank Products). All amounts (including interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement) charged to the Domestic Loan Account shall thereupon constitute Domestic Advances hereunder, shall constitute Domestic Obligations hereunder, and shall initially accrue interest at the rate then applicable to Advances that are Base Rate Loans. All amounts (including interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement) charged to the Canadian Loan Account shall thereupon constitute Canadian Advances hereunder, shall constitute Canadian Obligations hereunder, and shall initially accrue interest at the rate then applicable to Canadian Advances that are Base Rate Loans.

(e) **Computation.** All interest and fees chargeable under the Loan Documents shall be computed on the basis of a three hundred sixty (360) day year, other than for Canadian CDOR Rate Loans and Canadian Base Rate Loans which shall be calculated on the basis of three hundred sixty-five (365) or three hundred sixty-six (366) day year in each case, for the actual number of days elapsed in the period during which the interest or fees accrue. In the event the Base Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Base Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Base Rate.

(f) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law (including, without limitation, the Criminal Code (Canada), to the extent applicable) that a court of competent jurisdiction shall, in a final determination, deem applicable. Each Borrower and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, *ipso facto*, as of the date of this Agreement, Borrowers are and shall be liable only for the payment of such maximum as allowed by law, and payment received from Borrowers in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

(g) **Interest Act (Canada)**.

(i) For purposes of the Interest Act (Canada), if interest computed on the basis of a three hundred sixty (360) day year is payable for any part of the calendar year, the equivalent yearly rate of interest may be determined by multiplying the specified rate of interest by the number of days (three hundred sixty-five (365) or three hundred sixty-six (366)) in such calendar year and dividing such product by three hundred sixty (360). For the purpose of the Interest Act (Canada) and any other purpose, (i) the principle of deemed reinvestment shall not apply to any interest calculation under this Agreement, and (ii) the rates of interest stipulated in this Agreement are intended to be nominal rates and not effective rates or yields.

(ii) EACH OF THE BORROWERS CONFIRMS THAT IT FULLY UNDERSTANDS AND IS ABLE TO CALCULATE THE RATE OF INTEREST APPLICABLE TO EACH OF THE LOANS AND OTHER OBLIGATIONS BASED ON THE METHODOLOGY FOR CALCULATING PER ANNUM RATES PROVIDED FOR IN THIS AGREEMENT. Agent agrees that if requested in writing by a Borrower it shall calculate the nominal and effective per annum rate of interest on any Loans or other Obligations outstanding at any time and provide such information to such Borrower promptly following such request; provided that any error in any such calculation, or any failure to provide such information on request, shall not relieve such Borrower or any other Loan Party of any of its obligations under this Agreement or any other Loan Document, nor result in any liability to the Agent or any Lender. EACH BORROWER HEREBY IRREVOCABLY AGREES NOT TO, AND NOT TO PERMIT ANY OTHER LOAN PARTY TO, PLEAD OR ASSERT, WHETHER BY WAY OF DEFENCE OR OTHERWISE, IN ANY PROCEEDING RELATING TO THE LOAN DOCUMENTS, THAT THE INTEREST PAYABLE UNDER THE LOAN DOCUMENTS AND THE CALCULATION THEREOF HAS NOT BEEN ADEQUATELY DISCLOSED TO THE BORROWERS OR ANY OTHER LOAN PARTY, WHETHER PURSUANT TO SECTION 4 OF THE INTEREST ACT (CANADA) OR ANY OTHER APPLICABLE LAW OR LEGAL PRINCIPLE.

2.7 Crediting Payments. The receipt of any payment item by Agent shall not be required to be considered a payment on account unless such payment item is a wire transfer of immediately available funds in the Applicable Currency made to Agent's Domestic Account or

the Agent's Applicable Canadian Account, as the case may be, or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Domestic Account or the Agent's Applicable Canadian Account, as the case may be, on a Business Day on or before 11:00 a.m. (California time) (or 11:00 a.m. Chicago time, in the case of payments in respect of the Canadian Obligations). If any payment item is received into Agent's Domestic Account or the Agent's Applicable Canadian Account, as the case may be, on a non-Business Day or after 11:00 a.m. (California time) (or 11:00 a.m. Chicago time, in the case of payments in respect of the Canadian Obligations) on a Business Day (unless Agent, in its sole discretion, elects to credit it on the date received), it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

2.8 Designated Account. Agent is authorized to make the Advances and Issuing Lender is authorized to issue the Letters of Credit, under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to Section 2.6(d). The Domestic Borrowers agree to establish and maintain the Domestic Designated Account with the Domestic Designated Account Bank for the purpose of receiving the proceeds of the Domestic Advances requested by the Domestic Borrowers and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and the Domestic Borrowers, any Domestic Advances or Domestic Swing Loan requested by the Domestic Borrowers and made by Agent or the Lenders hereunder shall be made to the Domestic Designated Account. The Canadian Borrowers agrees to establish and maintain the Canadian Designated Account with the Canadian Designated Account Bank for the purpose of receiving the proceeds of any Canadian Advances or Canadian Swing Loans to the Canadian Borrowers requested by the Canadian Borrowers and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and the Canadian Borrowers, any Canadian Advances requested by the Canadian Borrowers and made by Agent or the Lenders hereunder shall be made to the Canadian Designated Account.

2.9 Maintenance of Loan Account; Statements of Obligations. Agent shall maintain an account on its books in the name of the Administrative Borrower (the "Domestic Loan Account") on which Domestic Borrowers will be charged with all Domestic Advances (including Domestic Protective Advances and Domestic Swing Loans) made by Agent, Domestic Swing Lender, or the Domestic Lenders to the Domestic Borrowers or for Domestic Borrowers' account, the Domestic Letters of Credit issued or arranged by Issuing Lender for the Domestic Borrowers' account, and with all other payment Domestic Obligations hereunder or under the other Loan Documents, including, accrued interest, fees and expenses, and Lender Group Expenses with respect thereto. In accordance with Section 2.7, the Domestic Loan Account will be credited with all payments received by Agent from the Domestic Borrowers or for the Domestic Borrowers' account. Agent shall maintain an account on its books in the name of each Canadian Borrower (the "Canadian Loan Account") on which Canadian Borrowers will be charged, all Canadian Advances (including Canadian Protective Advances and Canadian Swing Loans) made by Agent, Canadian Swing Lender or the Lenders to Canadian Borrowers or for Canadian Borrowers' account, the Canadian Letters of Credit issued or arranged by Issuing Lender for Canadian Borrowers' account, and with all other payment Canadian Obligations hereunder or under the other

Loan Documents, including, accrued interest, fees and expenses, and Lender Group Expenses with respect thereto. In accordance with Section 2.7, the Canadian Loan Account will be credited with all payments received by Agent from the Canadian Borrowers for Canadian Borrowers' account. Agent shall make available to the Administrative Borrower monthly statements regarding the Loan Accounts, including the principal amount of the Advances, interest accrued hereunder, fees accrued or charged hereunder or under the other Loan Documents, and a summary itemization of all charges and expenses constituting Lender Group Expenses accrued hereunder or under the other Loan Documents, and each such statement, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between the Borrowers and the Lender Group unless, within 30 days after Agent first makes such a statement available to the Administrative Borrower, the Administrative Borrower shall deliver to Agent written objection thereto describing the error or errors contained in such statement.

2.10 Fees. Borrowers shall pay to Agent,

(a) **Agent Fees.** for the account of Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

(b) **Unused Line Fee**.

(i) Borrowers shall pay to Agent, in accordance with Sections 2.10(b)(ii) and 2.10(b)(iii) below for the applicable account of the Revolving Lenders, an unused line fee (the "Unused Line Fee") in an amount equal to the Applicable Unused Line Fee Percentage *per annum* times the result of (y) the aggregate amount of the Revolver Commitments less (z) the average Daily Balance of the Domestic Revolver Usage and the Canadian Revolver Usage, in each case, during the immediately preceding month (or portion thereof), which Unused Line Fee shall be due and payable on the first day of each month from and after the Closing Date up to the first day of the month prior to the date on which the Obligations are paid in full and on the date on which the Obligations are paid in full;

(ii) Borrowers shall pay to Agent, for the ratable account of the Lenders, an unused line fee in an amount equal to (x) the quotient of (A) the Canadian Maximum Revolver Amount *divided* by (B) the Maximum Revolver Amount (the "Canadian Unused Line Fee Quotient"), *times* (y) the Unused Line Fee; and

(iii) Domestic Borrowers shall pay to Agent, for the ratable account of the Domestic Lenders, an unused line fee in an amount equal to (x) one *minus* the Canadian Unused Line Fee Quotient *times* (y) the Unused Line Fee.

(c) for the account of Agent, audit, appraisal, and valuation fees and charges as follows: (i) a fee of up to $1,000 per day, per auditor, plus out-of-pocket expenses for each financial audit of Borrowers performed by personnel employed by Agent, (ii) if implemented, a fee of $1,000 per day, per applicable individual, plus out of pocket expenses for the establishment of electronic collateral reporting systems, and (iii) the actual charges paid or incurred by Agent if it elects to employ the services of one or more third Persons to perform financial audits of Borrowers or their Subsidiaries, to establish electronic collateral reporting systems, to appraise the

Collateral, or any portion thereof, or to assess Borrowers' or their Subsidiaries' business valuation; provided, however, that so long as no Event of Default shall have occurred and be continuing, Borrowers shall not be obligated to reimburse Agent for more than 2 field audits during any calendar year, or more than 1 full appraisal and 3 desktop appraisals of the Collateral during any calendar year.

2.11 Letters of Credit.

(a) **Domestic Letters of Credit**.

(i) Subject to the terms and conditions of this Agreement, upon the request of Administrative Borrower made in accordance herewith, the Issuing Lender agrees to issue, or to cause an Underlying Issuer (including, as Issuing Lender's agent) to issue, a requested Domestic Letter of Credit for the account of a Domestic Borrower. If Issuing Lender, at its option, elects to cause an Underlying Issuer to issue a requested Domestic Letter of Credit, then Issuing Lender agrees that it will enter into arrangements relative to the reimbursement of such Underlying Issuer (which may include, among other means, by becoming an applicant with respect to such Domestic Letter of Credit or entering into undertakings or other arrangements that provide for reimbursement of such Underlying Issuer with respect to drawings under such Domestic Letter of Credit; each such obligation or undertaking, irrespective of whether in writing, a "Domestic Reimbursement Undertaking") with respect to Domestic Letters of Credit issued by such Underlying Issuer. By submitting a request to Issuing Lender for the issuance of a Domestic Letter of Credit, Domestic Borrowers shall be deemed to have requested that (i) Issuing Lender issue or (ii) an Underlying Issuer issue the requested Domestic Letter of Credit (and, in such case, to have requested Issuing Lender to issue a Domestic Reimbursement Undertaking with respect to such requested Domestic Letter of Credit). Domestic Borrowers acknowledge and agree that Domestic Borrowers are and shall be deemed to be applicants (within the meaning of Section 5-102(a)(2) of the Code) with respect to each Underlying Domestic Letter of Credit. Each request for the issuance of a Domestic Letter of Credit, or the amendment, renewal, or extension of any outstanding Domestic Letter of Credit, shall be made in writing by an Authorized Person and delivered to the Issuing Lender via hand delivery, telefacsimile, or other electronic method of transmission reasonably in advance of the requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance reasonably satisfactory to the Issuing Lender and shall (x) specify (A) the amount of such Domestic Letter of Credit, (B) the date of issuance, amendment, renewal, or extension of such Domestic Letter of Credit, (C) the proposed expiration date of such Domestic Letter of Credit, (D) the name and address of the beneficiary of the Domestic Letter of Credit, and (E) such other information (including, the conditions to drawing, and, in the case of an amendment, renewal, or extension, identification of the Domestic Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Domestic Letter of Credit, and (y) shall be accompanied by such Issuer Documents as Agent, Issuing Lender or Underlying Issuer may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that Issuing Lender or Underlying Issuer generally requests for Domestic Letters of Credit in similar circumstances. Anything contained herein to the contrary notwithstanding, the Issuing Lender may, but shall not be obligated to, issue or cause the issuance of a Domestic Letter of Credit or to issue a Domestic Reimbursement Undertaking in respect of an Underlying Domestic Letter of Credit, in either case, that supports

the obligations of Parent or its Subsidiaries (1) in respect of (A) a lease of real property, or (B) an employment contract, or (2) at any time that one or more of the Lenders is a Defaulting Lender.

(ii) The Issuing Lender shall have no obligation to issue a Domestic Letter of Credit or a Domestic Reimbursement Undertaking in respect of an Underlying Domestic Letter of Credit, in either case, if any of the following would result after giving effect to the requested issuance:

(A) the Domestic Letter of Credit Usage would exceed the difference of (x) the Domestic Borrowing Base at such time *minus* (y) the outstanding principal balance of the Domestic Advances (including Domestic Swing Loans), or

(B) the Domestic Letter of Credit Usage would exceed $5,000,000, or

(C) the Domestic Letter of Credit Usage would exceed the difference of (x) Maximum Revolver Amount *minus* (y) the sum of (1) the Dollar Equivalent of the Canadian Revolver Usage, *plus* (2) the outstanding amount of Domestic Advances (including Domestic Swing Loans).

(iii) In the event there is a Defaulting Lender as of the date of any request for the issuance of a Domestic Letter of Credit, the Issuing Lender shall not be required to issue or arrange for such Domestic Letter of Credit to the extent (x) the Defaulting Lender's Domestic Letter of Credit Exposure with respect to such Domestic Letter of Credit may not be reallocated pursuant to Section 2.3(h)(ii) or (y) the Issuing Lender has not otherwise entered into arrangements reasonably satisfactory to it and Domestic Borrower to eliminate the Issuing Lender's risk with respect to the participation in such Domestic Letter of Credit of the Defaulting Lender, which arrangements may include Domestic Borrower cash collateralizing such Defaulting Lender's Domestic Letter of Credit Exposure in accordance with Section 2.3(h)(ii). Additionally, Issuing Lender shall have no obligation to issue a Domestic Letter of Credit or a Domestic Reimbursement Undertaking in respect of an Underlying Domestic Letter of Credit, in either case, if (I) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain Issuing Lender from issuing such Domestic Letter of Credit or Domestic Reimbursement Undertaking or Underlying Issuer from issuing such Domestic Letter of Credit, or any law applicable to Issuing Lender or Underlying Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Issuing Lender or Underlying Issuer shall prohibit or request that Issuing Lender or Underlying Issuer refrain from the issuance of letters of credit generally or such Domestic Letter of Credit or Domestic Reimbursement Undertaking (as applicable) in particular, or (II) the issuance of such Domestic Letter of Credit would violate one or more policies of Issuing Lender or Underlying Issuer applicable to letters of credit generally.

(iv) Any Issuing Lender (other than Wells Fargo or any of its Affiliates) shall notify Agent in writing no later than the Business Day immediately following the Business Day on which such Issuing Lender issued any Domestic Letter of Credit; provided that (y) until Agent advises any such Issuing Lender that the provisions of Section 3.2 are not satisfied, or (z) the

aggregate amount of the Domestic Letters of Credit issued in any such week exceeds such amount as shall be agreed by Agent and such Issuing Lender, such Issuing Lender shall be required to so notify Agent in writing only once each week of the Domestic Letters of Credit issued by such Issuing Lender during the immediately preceding week as well as the daily amounts outstanding for the prior week, such notice to be furnished on such day of the week as Agent and such Issuing Lender may agree. Each Domestic Letter of Credit shall be in form and substance reasonably acceptable to the Issuing Lender, including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Lender makes a payment under a Domestic Letter of Credit or an Underlying Issuer makes a payment under an Underlying Domestic Letter of Credit, Domestic Borrowers shall pay to Agent an amount equal to the applicable Domestic Letter of Credit Disbursement on the date such Domestic Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Domestic Letter of Credit Disbursement immediately and automatically shall be deemed to be an Domestic Advance hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 3) and, initially, shall bear interest at the rate then applicable to Domestic Advances that are Base Rate Loans. If a Domestic Letter of Credit Disbursement is deemed to be a Domestic Advance hereunder, Domestic Borrowers' obligation to pay the amount of such Domestic Letter of Credit Disbursement to Issuing Lender shall be automatically converted into an obligation to pay the resulting Domestic Advance. Promptly following receipt by Agent of any payment from Domestic Borrowers pursuant to this paragraph, Agent shall distribute such payment to the Issuing Lender or, to the extent that Lenders have made payments pursuant to Section 2.11(b) to reimburse the Issuing Lender, then to such Lenders and the Issuing Lender as their interests may appear.

(v) Promptly following receipt of a notice of a Domestic Letter of Credit Disbursement pursuant to Section 2.11(a)(i), each Lender with a Domestic Revolver Commitment agrees to fund its Pro Rata Share of any Domestic Advance deemed made pursuant to Section 2.11(a)(i) on the same terms and conditions as if Domestic Borrowers had requested the amount thereof as a Domestic Advance and Agent shall promptly pay to Issuing Lender the amounts so received by it from the Lenders. By the issuance of a Domestic Letter of Credit or a Domestic Reimbursement Undertaking (or an amendment, renewal, or extension of a Domestic Letter of Credit or a Domestic Reimbursement Undertaking) and without any further action on the part of the Issuing Lender or the Lenders with Domestic Revolver Commitments, the Issuing Lender shall be deemed to have granted to each Lender with a Domestic Revolver Commitment, and each Lender with a Domestic Revolver Commitment shall be deemed to have purchased, a participation in each Domestic Letter of Credit issued by Issuing Lender and each Domestic Reimbursement Undertaking, in an amount equal to its Pro Rata Share of such Domestic Letter of Credit or Domestic Reimbursement Undertaking, and each such Lender agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of any Domestic Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer under the applicable Domestic Letter of Credit. In consideration and in furtherance of the foregoing, each Lender with a Domestic Revolver Commitment hereby absolutely and unconditionally agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of each Domestic Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer and not reimbursed by Domestic Borrowers on the date due as provided in Section 2.11(a)(i), or of any reimbursement payment that is required to be refunded (or that Agent or Issuing Lender elects, based upon the advice of counsel, to refund) to Domestic Borrowers for any reason. Each Lender with a Domestic Revolver

Commitment acknowledges and agrees that its obligation to deliver to Agent, for the account of the Issuing Lender, an amount equal to its respective Pro Rata Share of each Domestic Letter of Credit Disbursement pursuant to this Section 2.11(a)(v) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of a Domestic Letter of Credit Disbursement as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and Agent (for the account of the Issuing Lender) shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(vi) Each Domestic Borrower hereby agrees to indemnify, save, defend, and hold the Lender Group and each Underlying Issuer harmless from any damage, loss, cost, reasonable out-of-pocket expense, or liability (other than Taxes, which shall be governed by Section 16), and reasonable documented attorneys' fees and expenses incurred by Issuing Lender, any other member of the Lender Group, or any Underlying Issuer arising out of or in connection with any Domestic Reimbursement Undertaking or any Domestic Letter of Credit; provided, however, that no Domestic Borrower shall be obligated hereunder to indemnify the Lender Group or any Underlying Issuer for any loss, cost, expense, or liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer. Each Domestic Borrower agrees to be bound by the Underlying Issuer's regulations and interpretations of any Domestic Letter of Credit or by Issuing Lender's interpretations of any Domestic Reimbursement Undertaking even though this interpretation may be different from such Domestic Borrower's own, and each Domestic Borrower understands and agrees that none of the Issuing Lender, the Lender Group, or any Underlying Issuer shall be liable for any error, negligence, or mistake, whether of omission or commission, in following any Domestic Borrower's instructions or those contained in the Domestic Letter of Credit or any modifications, amendments, or supplements thereto. Each Domestic Borrower understands that the Domestic Reimbursement Undertakings may require Issuing Lender to indemnify the Underlying Issuer for certain costs or liabilities arising out of claims by a Domestic Borrower against such Underlying Issuer. Each Domestic Borrower hereby agrees to indemnify, save, defend, and hold Issuing Lender and the other members of the Lender Group harmless with respect to any loss, cost, reasonable out-of-pocket expense (including reasonable documented attorneys' fees and expenses), or liability (other than Taxes, which shall be governed by Section 16) incurred by them as a result of the Issuing Lender's indemnification of an Underlying Issuer; provided, however, that Domestic Borrowers shall not be obligated hereunder to indemnify for any such loss, cost, expense, or liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of the Issuing Lender or any other member of the Lender Group.

(vii) Each Domestic Lender and each Domestic Borrower agree that, in paying any drawing under a Domestic Letter of Credit, neither Issuing Lender nor any Underlying Issuer (as applicable) shall have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Domestic Letter of Credit or the Underlying Domestic Letter of Credit (as applicable)) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such

document. None of Issuing Lender, any Underlying Issuer, Agent, any of the Lender-Related Persons or Agent-Related Persons, nor any correspondent, participant or assignee of Issuing Lender shall be liable to any Lender or any Domestic Loan Party for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; (iii) any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Domestic Letter of Credit or any error in interpretation of technical terms; or (iv) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Domestic Letter of Credit or Issuer Document. Domestic Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Domestic Letter of Credit; provided, that this assumption is not intended to, and shall not, preclude Domestic Borrowers from pursuing such rights and remedies as they may have against the beneficiary or transferee at law or under any other agreement. None of Issuing Lender, any Underlying Issuer, Agent, any of the Lender-Related Persons or Agent-Related Persons, nor any correspondent, participant or assignee of Issuing Lender or any Underlying Issuer shall be liable or responsible for any of the matters described in clauses (A) through (F) of Section 2.11(a)(viii) or for any action, neglect or omission under or in connection with any Domestic Letter of Credit or Issuer Document, including in connection with the issuance or any amendment of any Domestic Letter of Credit, the failure to issue or amend any Domestic Letter of Credit, the honoring or dishonoring of any demand under any Domestic Letter of Credit, or the following of any Domestic Borrower's instructions or those contained in the Domestic Letter of Credit or any modifications, amendments, or supplements thereto, and such action or neglect or omission will bind Domestic Borrowers. In furtherance and not in limitation of the foregoing, Issuing Lender and each Underlying Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary (or Issuing Lender and any Underlying Issuer may refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Domestic Letter of Credit and may disregard any requirement in a Domestic Letter of Credit that notice of dishonor be given in a particular manner and any requirement that presentation be made at a particular place or by a particular time of day), and neither Issuing Lender nor any Underlying Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Domestic Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. Neither Issuing Lender nor any Underlying Issuer shall be responsible for the wording of any Domestic Letter of Credit (including any drawing conditions or any terms or conditions that are ineffective, ambiguous, inconsistent, unduly complicated or reasonably impossible to satisfy), notwithstanding any assistance Issuing Lender or any Underlying Issuer may provide to any Domestic Borrower with drafting or recommending text for any letter of credit application or with the structuring of any transaction related to any Domestic Letter of Credit, and each Domestic Borrower hereby acknowledges and agrees that any such assistance will not constitute legal or other advice by Issuing Lender or any Underlying Issuer or any representation or warranty by Issuing Lender or any Underlying Issuer that any such wording or such Domestic Letter of Credit will be effective. Without limiting the foregoing, Issuing Lender or any Underlying Issuer may, as it deems appropriate, use in any Domestic Letter of Credit any portion of the language prepared by any Domestic Borrower and

contained in the letter of credit application relative to drawings under such Domestic Letter of Credit. Each Domestic Borrower hereby acknowledges and agrees that neither any Underlying Issuer nor any member of the Lender Group shall be responsible for delays, errors, or omissions resulting from the malfunction of equipment in connection with any Domestic Letter of Credit.

(viii) The obligation of Domestic Borrowers to reimburse Issuing Lender for each drawing under each Domestic Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(A) any lack of validity or enforceability of such Domestic Letter of Credit, this Agreement, or any other Loan Document,

(B) the existence of any claim, counterclaim, setoff, defense or other right that Parent or any of its Subsidiaries may have at any time against any beneficiary or any transferee of such Domestic Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), Issuing Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Domestic Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction,

(C) any draft, demand, certificate or other document presented under such Domestic Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect, or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Domestic Letter of Credit,

(D) any payment by Issuing Lender under such Domestic Letter of Credit against presentation of a draft or certificate that does not substantially or strictly comply with the terms of such Domestic Letter of Credit (including, without limitation, any requirement that presentation be made at a particular place or by a particular time of day), or any payment made by Issuing Lender under such Domestic Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Domestic Letter of Credit,

(E) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or discharge of, Parent or any of its Subsidiaries, or

(F) the fact that any Default or Event of Default shall have occurred and be continuing.

(ix) Each Domestic Borrower hereby authorizes and directs any Underlying Issuer to deliver to the Issuing Lender all instruments, documents, and other writings and property received by such Underlying Issuer pursuant to such Underlying Domestic Letter of Credit and to accept and rely upon the Issuing Lender's instructions with respect to all matters arising in connection with such Underlying Domestic Letter of Credit and the related application.

(x) Domestic Borrowers acknowledge and agree that any and all fees, charges, costs, or commissions in effect from time to time, of the Issuing Lender relating to Domestic Letters of Credit or incurred by the Issuing Lender relating to Underlying Domestic Letters of Credit, upon the issuance of any Domestic Letter of Credit, upon the payment or negotiation of any drawing under any Domestic Letter of Credit, or upon the occurrence of any other activity with respect to any Domestic Letter of Credit (including the transfer, amendment, or cancellation of any Domestic Letter of Credit), together with any and all fronting fees in effect from time to time related to Domestic Letters of Credit, shall be Lender Group Expenses for purposes of this Agreement and shall be reimbursable immediately after the date on which such fees, charges, costs, or commissions are first incurred or accrued by Domestic Borrowers to Agent for the account of the Issuing Lender; it being acknowledged and agreed by Domestic Borrowers that, as of the Interim Facility Effective Date, the Issuing Lender is entitled to charge Domestic Borrowers a fronting fee of 0.825% per annum times the undrawn amount of each Underlying Domestic Letter of Credit and that such fronting fee may be changed from time to time without notice, and that the Underlying Issuer also imposes a schedule of charges for amendments, extensions, drawings, and renewals.

(xi) If by reason of (i) any change after the Interim Facility Effective Date in any applicable law, treaty, rule, or regulation or any change in the interpretation or application thereof by any Governmental Authority, or (ii) compliance by the Issuing Lender, any other member of the Lender Group, or Underlying Issuer with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Federal Reserve Board as from time to time in effect (and any successor thereto):

(A) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Domestic Letter of Credit issued or caused to be issued hereunder or hereby, or

(B) there shall be imposed on the Issuing Lender, any other member of the Lender Group, or Underlying Issuer any other condition regarding any Domestic Letter of Credit or Domestic Reimbursement Undertaking,

and the result of the foregoing is to increase, directly or indirectly, the cost to the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer of issuing, making, participating in, or maintaining any Domestic Reimbursement Undertaking or Domestic Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Administrative Borrower, and Domestic Borrowers shall pay within 30 days after demand therefor, such amounts as Agent may specify to be necessary to compensate the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, however, that (A) no Domestic Borrower shall be required to provide any compensation pursuant to this Section 2.11(a)(xi) for any such amounts incurred more than 180 days prior to the date on which the demand for payment of such amounts is first made to Domestic Borrowers, and (B) if

an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section 2.11(a)(xi), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

(xii) Unless otherwise expressly agreed by the Issuing Lender and a Domestic Borrower when a Domestic Letter of Credit is issued, (i) the rules of the ISP and the UCP 600 shall apply to each standby Domestic Letter of Credit, and (ii) the rules of the UCP 600 shall apply to each commercial Domestic Letter of Credit.

(xiii) In the event of a direct conflict between the provisions of this Section 2.11(a) and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.11(a) shall control and govern.

(b) **Canadian Letters of Credit.**

(i) Subject to the terms and conditions of this Agreement, upon the request of Administrative Borrower made in accordance herewith, the Issuing Lender agrees to issue, or to cause an Underlying Issuer (including, as Issuing Lender's agent) to issue, a requested Canadian Letter of Credit for the account of a Canadian Borrower. If Issuing Lender, at its option, elects to cause an Underlying Issuer to issue a requested Canadian Letter of Credit, then Issuing Lender agrees that it will enter into arrangements relative to the reimbursement of such Underlying Issuer (which may include, among other means, by becoming an applicant with respect to such Canadian Letter of Credit or entering into undertakings or other arrangements that provide for reimbursement of such Underlying Issuer with respect to drawings under such Canadian Letter of Credit; each such obligation or undertaking, irrespective of whether in writing, a "Canadian Reimbursement Undertaking") with respect to Canadian Letters of Credit issued by such Underlying Issuer. By submitting a request to Issuing Lender for the issuance of a Canadian Letter of Credit, Canadian Borrowers shall be deemed to have requested that (i) Issuing Lender issue or (ii) an Underlying Issuer issue the requested Canadian Letter of Credit (and, in such case, to have requested Issuing Lender to issue a Canadian Reimbursement Undertaking with respect to such requested Canadian Letter of Credit). Canadian Borrowers acknowledge and agree that Canadian Borrowers are and shall be deemed to be applicants (within the meaning of Section 5-102(a)(2) of the Code) with respect to each Underlying Canadian Letter of Credit. Each request for the issuance of a Canadian Letter of Credit, or the amendment, renewal, or extension of any outstanding Canadian Letter of Credit, shall be made in writing by an Authorized Person and delivered to the Issuing Lender via hand delivery, telefacsimile, or other electronic method of transmission reasonably in advance of the requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance reasonably satisfactory to the Issuing Lender and shall (x) specify (A) the amount of such Canadian Letter of Credit, (B) the date of issuance, amendment, renewal, or extension of such Canadian Letter of Credit, (C) the proposed expiration date of such

Canadian Letter of Credit, (D) the name and address of the beneficiary of the Canadian Letter of Credit, and (E) such other information (including, the conditions to drawing, and, in the case of an amendment, renewal, or extension, identification of the Canadian Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Canadian Letter of Credit, and (y) shall be accompanied by such Issuer Documents as Agent, Issuing Lender or Underlying Issuer may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that Issuing Lender or Underlying Issuer generally requests for Canadian Letters of Credit in similar circumstances. Anything contained herein to the contrary notwithstanding, the Issuing Lender may, but shall not be obligated to, issue or cause the issuance of a Canadian Letter of Credit or to issue a Canadian Reimbursement Undertaking in respect of an Underlying Canadian Letter of Credit, in either case, that supports the obligations of Parent or its Subsidiaries (1) in respect of (A) a lease of real property, or (B) an employment contract, or (2) at any time that one or more of the Lenders is a Defaulting Lender.

(ii) The Issuing Lender shall have no obligation to issue a Canadian Letter of Credit or a Canadian Reimbursement Undertaking in respect of an Underlying Canadian Letter of Credit, in either case, if any of the following would result after giving effect to the requested issuance:

(A) the Canadian Letter of Credit Usage would exceed the difference of (x) the Canadian Borrowing Base at such time *minus* (y) the outstanding principal balance of the Canadian Advances (including Canadian Swing Loans), or

(B) the Canadian Letter of Credit Usage would exceed $500,000, or

(C) the Canadian Letter of Credit Usage would exceed the Maximum Revolver Amount *minus* (y) the sum of (1) the Domestic Revolver Usage, *plus* (2) the outstanding amount of Canadian Advances (including Canadian Swing Loans).

(iii) In the event there is a Defaulting Lender as of the date of any request for the issuance of a Canadian Letter of Credit, the Issuing Lender shall not be required to issue or arrange for such Canadian Letter of Credit to the extent (x) the Defaulting Lender's Canadian Letter of Credit Exposure with respect to such Canadian Letter of Credit may not be reallocated pursuant to Section 2.3(h)(ii) or (y) the Issuing Lender has not otherwise entered into arrangements reasonably satisfactory to it and Canadian Borrowers to eliminate the Issuing Lender's risk with respect to the participation in such Canadian Letter of Credit of the Defaulting Lender, which arrangements may include Canadian Borrowers cash collateralizing such Defaulting Lender's Canadian Letter of Credit Exposure in accordance with Section 2.3(h)(ii). Additionally, Issuing Lender shall have no obligation to issue a Canadian Letter of Credit or a Canadian Reimbursement Undertaking in respect of an Underlying Canadian Letter of Credit, in either case, if (I) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain Issuing Lender from issuing such Canadian Letter of Credit or Canadian Reimbursement Undertaking or Underlying Issuer from issuing such Canadian Letter of Credit, or any law applicable to Issuing Lender or Underlying Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Issuing

Lender or Underlying Issuer shall prohibit or request that Issuing Lender or Underlying Issuer refrain from the issuance of letters of credit generally or such Canadian Letter of Credit or Canadian Reimbursement Undertaking (as applicable) in particular, or (II) the issuance of such Canadian Letter of Credit would violate one or more policies of Issuing Lender or Underlying Issuer applicable to letters of credit generally.

(iv) Any Issuing Lender (other than Wells Fargo or any of its Affiliates) shall notify Agent in writing no later than the Business Day immediately following the Business Day on which such Issuing Lender issued any Canadian Letter of Credit; provided that (y) until Agent advises any such Issuing Lender that the provisions of Section 3.2 are not satisfied, or (z) the aggregate amount of the Canadian Letters of Credit issued in any such week exceeds such amount as shall be agreed by Agent and such Issuing Lender, such Issuing Lender shall be required to so notify Agent in writing only once each week of the Canadian Letters of Credit issued by such Issuing Lender during the immediately preceding week as well as the daily amounts outstanding for the prior week, such notice to be furnished on such day of the week as Agent and such Issuing Lender may agree. Each Canadian Letter of Credit shall be in form and substance reasonably acceptable to the Issuing Lender, including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Lender makes a payment under a Canadian Letter of Credit or an Underlying Issuer makes a payment under an Underlying Canadian Letter of Credit, Canadian Borrowers shall pay to Agent an amount equal to the applicable Canadian Letter of Credit Disbursement on the date such Canadian Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Canadian Letter of Credit Disbursement immediately and automatically shall be deemed to be an Canadian Advance hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 3) and, initially, shall bear interest at the rate then applicable to Canadian Advances that are Base Rate Loans. If a Canadian Letter of Credit Disbursement is deemed to be a Canadian Advance hereunder, Canadian Borrowers' obligation to pay the amount of such Canadian Letter of Credit Disbursement to Issuing Lender shall be automatically converted into an obligation to pay the resulting Canadian Advance. Promptly following receipt by Agent of any payment from Canadian Borrowers pursuant to this paragraph, Agent shall distribute such payment to the Issuing Lender or, to the extent that Lenders have made payments pursuant to Section 2.11(b) to reimburse the Issuing Lender, then to such Lenders and the Issuing Lender as their interests may appear.

(v) Promptly following receipt of a notice of a Canadian Letter of Credit Disbursement pursuant to Section 2.11(a)(i), each Lender with a Canadian Revolver Commitment agrees to fund its Pro Rata Share of any Canadian Advance deemed made pursuant to Section 2.11(a)(i) on the same terms and conditions as if Canadian Borrowers had requested the amount thereof as a Canadian Advance and Agent shall promptly pay to Issuing Lender the amounts so received by it from the Lenders. By the issuance of a Canadian Letter of Credit or a Canadian Reimbursement Undertaking (or an amendment, renewal, or extension of a Canadian Letter of Credit or a Canadian Reimbursement Undertaking) and without any further action on the part of the Issuing Lender or the Lenders with Canadian Revolver Commitments, the Issuing Lender shall be deemed to have granted to each Lender with a Canadian Revolver Commitment, and each Lender with a Canadian Revolver Commitment shall be deemed to have purchased, a participation in each Canadian Letter of Credit issued by Issuing Lender and each Canadian Reimbursement Undertaking, in an amount equal to its Pro Rata Share of such Canadian Letter of Credit or

Canadian Reimbursement Undertaking, and each such Lender agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of any Canadian Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer under the applicable Canadian Letter of Credit. In consideration and in furtherance of the foregoing, each Lender with a Canadian Revolver Commitment hereby absolutely and unconditionally agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of each Canadian Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer and not reimbursed by Canadian Borrowers on the date due as provided in Section 2.11(a)(i), or of any reimbursement payment that is required to be refunded (or that Agent or Issuing Lender elects, based upon the advice of counsel, to refund) to Canadian Borrowers for any reason. Each Lender with a Canadian Revolver Commitment acknowledges and agrees that its obligation to deliver to Agent, for the account of the Issuing Lender, an amount equal to its respective Pro Rata Share of each Canadian Letter of Credit Disbursement pursuant to this Section 2.11(a)(v) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of a Canadian Letter of Credit Disbursement as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and Agent (for the account of the Issuing Lender) shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(vi) Each Canadian Borrower hereby agrees to indemnify, save, defend, and hold the Lender Group and each Underlying Issuer harmless from any damage, loss, cost, reasonable out-of-pocket expense, or liability (other than Taxes, which shall be governed by Section 16), and reasonable documented attorneys fees and expenses incurred by Issuing Lender, any other member of the Lender Group, or any Underlying Issuer arising out of or in connection with any Canadian Reimbursement Undertaking or any Canadian Letter of Credit; provided, however, that no Canadian Borrower shall be obligated hereunder to indemnify the Lender Group or any Underlying Issuer for any loss, cost, expense, or liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer. Each Canadian Borrower agrees to be bound by the Underlying Issuer's regulations and interpretations of any Canadian Letter of Credit or by Issuing Lender's interpretations of any Canadian Reimbursement Undertaking even though this interpretation may be different from any Canadian Borrower's own, and each Canadian Borrower understands and agrees that none of the Issuing Lender, the Lender Group, or any Underlying Issuer shall be liable for any error, negligence, or mistake, whether of omission or commission, in following each Canadian Borrower's instructions or those contained in the Canadian Letter of Credit or any modifications, amendments, or supplements thereto. Each Canadian Borrower understands that the Canadian Reimbursement Undertakings may require Issuing Lender to indemnify the Underlying Issuer for certain costs or liabilities arising out of claims by such Canadian Borrower against such Underlying Issuer. Each Canadian Borrower hereby agrees to indemnify, save, defend, and hold Issuing Lender and the other members of the Lender Group harmless with respect to any loss, cost, reasonable out-of-pocket expense (including reasonable documented attorneys fees and expenses), or liability (other than Taxes, which shall be governed by Section 16) incurred by them as a result of the Issuing Lender's indemnification of an Underlying Issuer; provided, however, that Canadian Borrowers

shall not be obligated hereunder to indemnify for any such loss, cost, expense, or liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of the Issuing Lender or any other member of the Lender Group.

(vii) Each Canadian Lender and each Canadian Borrower agree that, in paying any drawing under a Canadian Letter of Credit, neither Issuing Lender nor any Underlying Issuer (as applicable) shall have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Canadian Letter of Credit or the Underlying Canadian Letter of Credit (as applicable)) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of Issuing Lender, any Underlying Issuer, Agent, any of the Lender-Related Persons or Agent-Related Persons, nor any correspondent, participant or assignee of Issuing Lender shall be liable to any Lender or any Canadian Loan Party for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; (iii) any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Canadian Letter of Credit or any error in interpretation of technical terms; or (iv) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Canadian Letter of Credit or Issuer Document. Each Canadian Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Canadian Letter of Credit; provided, that this assumption is not intended to, and shall not, preclude Canadian Borrowers from pursuing such rights and remedies as they may have against the beneficiary or transferee at law or under any other agreement. None of Issuing Lender, any Underlying Issuer, Agent, any of the Lender-Related Persons or Agent-Related Persons, nor any correspondent, participant or assignee of Issuing Lender or any Underlying Issuer shall be liable or responsible for any of the matters described in clauses (A) through (F) of Section 2.11(b)(viii) or for any action, neglect or omission under or in connection with any Canadian Letter of Credit or Issuer Document, including in connection with the issuance or any amendment of any Canadian Letter of Credit, the failure to issue or amend any Canadian Letter of Credit, the honoring or dishonoring of any demand under any Canadian Letter of Credit, or the following of any Canadian Borrower's instructions or those contained in the Canadian Letter of Credit or any modifications, amendments, or supplements thereto, and such action or neglect or omission will bind Canadian Borrowers. In furtherance and not in limitation of the foregoing, Issuing Lender and each Underlying Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary (or Issuing Lender and any Underlying Issuer may refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Canadian Letter of Credit and may disregard any requirement in a Canadian Letter of Credit that notice of dishonor be given in a particular manner and any requirement that presentation be made at a particular place or by a particular time of day), and neither Issuing Lender nor any Underlying Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Canadian Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. Neither Issuing Lender nor any Underlying Issuer shall be responsible for the wording of any Canadian Letter of Credit (including any drawing conditions or any terms or conditions that are ineffective, ambiguous, inconsistent,

unduly complicated or reasonably impossible to satisfy), notwithstanding any assistance Issuing Lender or any Underlying Issuer may provide to any Canadian Borrower with drafting or recommending text for any letter of credit application or with the structuring of any transaction related to any Canadian Letter of Credit, and each Canadian Borrower hereby acknowledges and agrees that any such assistance will not constitute legal or other advice by Issuing Lender or any Underlying Issuer or any representation or warranty by Issuing Lender or any Underlying Issuer that any such wording or such Canadian Letter of Credit will be effective. Without limiting the foregoing, Issuing Lender or any Underlying Issuer may, as it deems appropriate, use in any Canadian Letter of Credit any portion of the language prepared by any Canadian Borrower and contained in the letter of credit application relative to drawings under such Canadian Letter of Credit. Each Canadian Borrower hereby acknowledges and agrees that neither any Underlying Issuer nor any member of the Lender Group shall be responsible for delays, errors, or omissions resulting from the malfunction of equipment in connection with any Canadian Letter of Credit.

(viii) The obligation of Canadian Borrowers to reimburse Issuing Lender for each drawing under each Canadian Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(A) any lack of validity or enforceability of such Canadian Letter of Credit, this Agreement, or any other Loan Document,

(B) the existence of any claim, counterclaim, setoff, defense or other right that Parent or any of its Subsidiaries may have at any time against any beneficiary or any transferee of such Canadian Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), Issuing Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Canadian Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction,

(C) any draft, demand, certificate or other document presented under such Canadian Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect, or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Canadian Letter of Credit,

(D) any payment by Issuing Lender under such Canadian Letter of Credit against presentation of a draft or certificate that does not substantially or strictly comply with the terms of such Canadian Letter of Credit (including, without limitation, any requirement that presentation be made at a particular place or by a particular time of day), or any payment made by Issuing Lender under such Canadian Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Canadian Letter of Credit,

(E) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or discharge of, Parent or any of its Subsidiaries, or

(F) the fact that any Default or Event of Default shall have occurred and be continuing.

(ix) Each Canadian Borrower hereby authorizes and directs any Underlying Issuer to deliver to the Issuing Lender all instruments, documents, and other writings and property received by such Underlying Issuer pursuant to such Underlying Letter of Credit and to accept and rely upon the Issuing Lender's instructions with respect to all matters arising in connection with such Underlying Letter of Credit and the related application.

(x) Canadian Borrowers acknowledge and agree that any and all fees, charges, costs, or commissions in effect from time to time, of the Issuing Lender relating to Canadian Letters of Credit or incurred by the Issuing Lender relating to Underlying Canadian Letters of Credit, upon the issuance of any Canadian Letter of Credit, upon the payment or negotiation of any drawing under any Canadian Letter of Credit, or upon the occurrence of any other activity with respect to any Canadian Letter of Credit (including the transfer, amendment, or cancellation of any Canadian Letter of Credit), together with any and all fronting fees in effect from time to time related to Canadian Letters of Credit, shall be Lender Group Expenses for purposes of this Agreement and shall be reimbursable immediately after the date on which such fees, charges, costs, or commissions are first incurred or accrued by Canadian Borrowers to Agent for the account of the Issuing Lender; it being acknowledged and agreed by Canadian Borrowers that, as of the Interim Facility Effective Date, the Issuing Lender is entitled to charge Canadian Borrowers a fronting fee of 0.825% per annum times the undrawn amount of each Underlying Letter of Credit and that such fronting fee may be changed from time to time without notice, and that the Underlying Issuer also imposes a schedule of charges for amendments, extensions, drawings, and renewals.

(xi) If by reason of (i) any change after the Interim Facility Effective Date in any applicable law, treaty, rule, or regulation or any change in the interpretation or application thereof by any Governmental Authority, or (ii) compliance by the Issuing Lender, any other member of the Lender Group, or Underlying Issuer with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Federal Reserve Board as from time to time in effect (and any successor thereto):

(A) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Canadian Letter of Credit issued or caused to be issued hereunder or hereby, or

(B) there shall be imposed on the Issuing Lender, any other member of the Lender Group, or Underlying Issuer any other condition regarding any Canadian Letter of Credit or Canadian Reimbursement Undertaking,

and the result of the foregoing is to increase, directly or indirectly, the cost to the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer of issuing, making, participating in, or maintaining any Canadian Reimbursement Undertaking or Canadian Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Administrative Borrower, and Canadian Borrowers shall pay within 30 days after demand therefor, such amounts as Agent may specify to be necessary to compensate the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, however, that (A) no Canadian Borrower shall be required to provide any compensation pursuant to this Section 2.11(b)(xi) for any such amounts incurred more than 180 days prior to the date on which the demand for payment of such amounts is first made to Canadian Borrowers, and (B) if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section 2.11(a)(xi), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

(xii) Unless otherwise expressly agreed by the Issuing Lender and a Canadian Borrower when a Canadian Letter of Credit is issued, (i) the rules of the ISP and the UCP 600 shall apply to each standby Canadian Letter of Credit, and (ii) the rules of the UCP 600 shall apply to each commercial Canadian Letter of Credit.

(xiii) In the event of a direct conflict between the provisions of this Section 2.11(b) and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.11(b) shall control and govern.

(c) All Canadian Letters of Credit shall be denominated in an Applicable Currency as selected by the Canadian Borrowers.

2.12 LIBOR and Canadian CDOR Rate Option.

(a) **Interest and Interest Payment Dates.** In the case of a Loan denominated in US Dollars, in lieu of having interest charged at the rate based upon the Domestic Base Rate, Borrowers shall have the option, subject to Section 2.12(b) below (the "LIBOR Option") to have interest on all or a portion of the Advances be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a LIBOR Rate Loan, or upon continuation of a LIBOR Rate Loan as a LIBOR Rate Loan) at a rate of interest based upon the LIBOR Rate. In the case of a Loan denominated in Canadian Dollars, in lieu of having interest charged at the rate based upon the Canadian Base Rate, Canadian Borrowers shall have the option, subject to Section 2.12(b) below (the "Canadian CDOR Rate Option") to have interest on all or a

portion of the Loans be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Canadian Base Rate Loan to a Canadian CDOR Rate Loan, or upon continuation of a Canadian CDOR Rate Loan as a Canadian CDOR Rate Loan) at a rate of interest based upon the Canadian CDOR Rate. Interest on LIBOR Rate Loans and Canadian CDOR Rate Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto, (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof, or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period, unless Borrowers properly have exercised the LIBOR Option or Canadian CDOR Rate Option with respect thereto, as applicable, the interest rate applicable to such LIBOR Rate Loan or Canadian CDOR Rate Loan automatically shall convert to the rate of interest then applicable to Base Rate Loans in the same currency and of the same type hereunder. At any time that an Event of Default has occurred and is continuing, at the written election of the Required Lenders, Borrowers no longer shall have the option to request that Advances bear interest at a rate based upon the LIBOR Rate or Canadian CDOR Rate.

(b) LIBOR and Canadian CDOR Rate Election.

(i) Borrowers may, at any time and from time to time, so long as no Event of Default has occurred and is continuing and the Required Lenders have not elected in writing that the Borrowers may no longer do so, elect to exercise the LIBOR Option for Loans denominated in US Dollars or the Canadian CDOR Rate for Loans denominated in Canadian Dollars by notifying Agent prior to 11:00 a.m. (California time) (or 11:00 a.m. Chicago time in the case of Canadian Advances) at least 3 Business Days prior to the commencement of the proposed Interest Period (the "LIBOR/Canadian CDOR Rate Deadline"). Notice of Borrowers' election of the LIBOR Option or Canadian CDOR Rate Option, as the case may be, for a permitted portion of the Advances and an Interest Period pursuant to this Section shall be made by delivery to Agent of a LIBOR/Canadian CDOR Rate Notice received by Agent before the LIBOR/Canadian CDOR Rate Deadline, or by telephonic notice received by Agent before the LIBOR Deadline (to be confirmed by delivery to Agent of a LIBOR/Canadian CDOR Rate Notice received by Agent prior to 5:00 p.m.(California time) on the same day). Promptly upon its receipt of each such LIBOR/Canadian CDOR Rate Notice, Agent shall provide a copy thereof to each of the affected Lenders.

(ii) Each LIBOR/Canadian CDOR Rate Notice shall be irrevocable and binding on each Borrower. In connection with each Domestic Advance that is LIBOR Rate Loan, each Domestic Borrower shall, and in connection with each Canadian Advance that is LIBOR Rate Loan or Canadian CDOR Rate Loan, each Borrower shall, indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense actually incurred by Agent or any Lender as a result of (A) the payment of any principal of any LIBOR Rate Loan or Canadian CDOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any LIBOR Rate Loan or Canadian CDOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan or Canadian CDOR Rate Loan on the date specified in any LIBOR/Canadian CDOR Rate Notice delivered pursuant hereto (such losses, costs, or expenses, "Funding Losses"). A certificate of Agent or a Lender delivered to the

Domestic Borrowers or the Canadian Borrowers, as applicable, setting forth in reasonable detail any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section 2.12 shall be conclusive absent manifest error. The Domestic Borrowers, if such LIBOR Rate Loan is a Domestic Advance, or the Canadian Borrowers, if such LIBOR Rate Loan or Canadian CDOR Rate Loan is a Canadian Advance, shall pay such amount to Agent or the Lender, as applicable, within 30 days of the date of its receipt of such certificate. If a payment of a LIBOR Rate Loan or Canadian CDOR Rate Loan on a day other than the last day of the applicable Interest Period would result in a Funding Loss, Agent may, in its sole discretion at the request of the Administrative Borrower, hold the amount of such payment as cash collateral in support of the Domestic Obligations or the Canadian Obligations, as applicable, until the last day of such Interest Period and apply such amounts to the payment of the applicable LIBOR Rate Loan or Canadian CDOR Rate Loan on such last day, it being agreed that Agent has no obligation to so defer the application of payments to any LIBOR Rate Loan or Canadian CDOR Rate Loan, as applicable, and that, in the event that Agent does not defer such application, Borrowers shall be obligated to pay any resulting Funding Losses. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

(iii) Unless Agent, in its sole discretion, agrees otherwise, Borrowers shall have not more than, (a) with respect to Domestic Advances, 5 LIBOR Rate Loans in effect at any given time and, (b) with respect to Canadian Advances, 3 LIBOR Rate Loans or Canadian CDOR Rate Loans in effect at any given time. Borrowers may only exercise the LIBOR/Canadian CDOR Rate Option for proposed LIBOR Rate Loans or Canadian CDOR Rate Loans of at least $1,000,000 or the Dollar Equivalent thereof.

(iv) [Reserved].

(c) **Conversion.** Borrowers may convert LIBOR Rate Loans to Domestic Base Rate Loans or Canadian CDOR Rate Loans to Canadian Base Rate Loans at any time; provided, however, that in the event that LIBOR Rate Loans or Canadian CDOR Rate Loans are converted or prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any automatic prepayment through the required application by Agent of proceeds of Borrowers' and their Subsidiaries' Collections in accordance with Section 2.4(b) or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, each Borrower shall indemnify, defend, and hold Agent and the Lenders and their Participants harmless against any and all Funding Losses in accordance with Section 2.12 (b)(ii).

(d) **Special Provisions Applicable to LIBOR Rate**.

(i) The LIBOR Rate and Canadian CDOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar or Canadian Dollar deposits or increased costs, in each case, due to changes in applicable law occurring subsequent to the commencement of the then applicable Interest Period, including any Changes in Law (including any changes in tax laws (except changes of general applicability in corporate income tax laws)) and changes in the reserve requirements imposed by the Board of Governors, which

additional or increased costs would increase the cost of funding or maintaining loans bearing interest at the LIBOR Rate or Canadian CDOR Rate. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (A) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate or Canadian CDOR Rate and the method for determining the amount of such adjustment, or (B) repay the LIBOR Rate Loans or Canadian CDOR Rate Loans of such Lender with respect to which such adjustment is made (together with any amounts due under Section 2.12(b)(ii)). No Borrower shall be required to compensate any Lender pursuant to this Section for additional or increased costs incurred more than 180 days prior to the date that the such Lender notifies Administrative Borrower of such changes in applicable law or in the reserve requirements giving rise to such additional or increased costs and of such Lender's intention to claim compensation therefor; provided further that if such claim arises by reason of changes in applicable law or in the reserve requirements that are retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

(ii) In the event that any change in market conditions or any Change in Law shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or Canadian CDOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (y) in the case of any LIBOR Rate Loans or Canadian CDOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans or Canadian CDOR Rate Loans, as applicable, and interest upon the LIBOR Rate Loans or Canadian CDOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans in the Applicable Currency, and (z) Borrowers shall not be entitled to elect the LIBOR/Canadian CDOR Rate Option until such Lender determines that it would no longer be unlawful or impractical to do so.

(e) **No Requirement of Matched Funding.** Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to acquire eurodollar or Canadian Dollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate or Canadian CDOR Rate, as applicable.

2.13 Capital Requirements.

(a) If, after the date hereof, the Issuing Lender or any Lender determines that (i) any Change in Law regarding capital or reserve requirements for banks or bank holding companies, or (ii) compliance by the Issuing Lender or such Lender, or their respective parent bank holding companies, with any guideline, request or directive of any Governmental Authority regarding capital adequacy (whether or not having the force of law), has the effect of reducing the return on the Issuing Lender's, such Lender's or such holding companies' capital as a consequence

of the Issuing Lender's or such Lender's commitments hereunder to a level below that which the Issuing Lender, such Lender or such holding companies could have achieved but for such Change in Law or compliance (taking into consideration the Issuing Lender's, such Lender's or such holding companies' then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by the Issuing Lender or such Lender to be material, then the Issuing Lender or such Lender may notify Administrative Borrower and Agent thereof. Following receipt of such notice, Borrowers agree to pay the Issuing Lender or such Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 30 days after presentation by the Issuing Lender or such Lender of a statement in the amount and setting forth in reasonable detail the Issuing Lender or such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, the Issuing Lender or such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of the Issuing Lender or any Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Issuing Lender or such Lender's right to demand such compensation; provided that no Borrower shall be required to compensate the Issuing Lender or a Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that the Issuing Lender or such Lender notifies Borrowers of such Change in Law giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further that if such claim arises by reason of the Change in Law that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

(b) If the Issuing Lender or any Lender requests additional or increased costs referred to in Section 2.11(a)(xi), Section 2.11(b)(xi), or Section 2.12(d)(i) or amounts under Section 2.13(a) or sends a notice under Section 2.12(d)(ii) relative to changed circumstances (such Issuing Lender or Lender, an "Affected Lender"), then such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.11(a)(xi), Section 2.11(b)(xi), Section 2.12(d)(i) or Section 2.13(a), as applicable, or would eliminate the illegality or impracticality of funding or maintaining LIBOR Rate Loans or Canadian CDOR Rate Loans and (ii) in the reasonable judgment of such Affected Lender, such designation or assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrowers agree to pay all reasonable out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrowers' obligation to pay any future amounts to such Affected Lender pursuant to Section 2.11(a)(xi), Section 2.11(b)(xi), Section 2.12(d)(i) or Section 2.13(a), as applicable, or to enable Borrowers to obtain LIBOR Rate Loans or Canadian CDOR Rate Loans, as applicable, then Borrowers (without prejudice to any amounts then due to such Affected Lender under Section 2.11(a)(xi), Section 2.11(b)(xi), Section 2.12(d)(i) or Section 2.13(a), as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.11(a)(xi), Section 2.11(b)(xi), Section

2.12(d)(i) or Section 2.13(a), as applicable, or indicates that it is no longer unlawful or impractical to fund or maintain LIBOR Rate Loans or Canadian CDOR Rate Loans, as applicable, may designate a different Issuing Lender or substitute a Lender, in each case, reasonably acceptable to Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and commitments, and upon such purchase by the Replacement Lender, such Replacement Lender shall be deemed to be "Issuing Lender" or a "Lender" (as the case may be) for purposes of this Agreement and such Affected Lender shall cease to be "Issuing Lender" or a "Lender" (as the case may be) for purposes of this Agreement.

(c) Notwithstanding anything herein to the contrary, the protection of Sections 2.11(a)(xi), 2.11(b)(xi), 2.12(d), and 2.13 shall be available to the Issuing Lender and each Lender (as applicable) regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, judicial ruling, judgment, guideline, treaty or other change or condition which shall have occurred or been imposed, so long as it shall be customary for issuing banks or lenders affected thereby to comply therewith.

2.14 [Reserved].

2.15 Joint and Several Liability of Domestic Borrowers and Canadian Borrowers.

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lender Group under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.15), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligation until such time as all of the Obligations are paid in full.

(d) The Obligations of each Borrower under the provisions of this Section 2.15 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of the provisions of this Agreement (other than this Section 2.15(d)) or any other circumstances whatsoever.

(e) Except as otherwise expressly provided in this Agreement, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of any Advances or Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.15 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.15, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.15 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.15 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any other Borrower or Agent or any Lender.

(f) Each Borrower represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) The provisions of this Section 2.15 are made for the benefit of Agent, each member of the Lender Group, each Bank Product Provider, and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of Agent, any member of the Lender Group, any Bank Product Provider, or any of their successors or assigns first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The

provisions of this Section 2.15 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.15 will forthwith be reinstated in effect, as though such payment had not been made.

(h) Each Borrower hereby agrees that it will not enforce any of its rights of contribution or subrogation against any other Borrower with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to Agent or Lenders with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Borrower with respect to any payments to any Agent or any member of the Lender Group hereunder or under any of the Bank Product Agreements are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor.

(i) Each Borrower hereby agrees that after the occurrence and during the continuance of any Default or Event of Default, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness (Borrowers may continue to collect intercompany indebtedness unless requested otherwise by Agent) of any other Borrower owing to such Borrower until the Obligations shall have been paid in full in cash. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Borrower as trustee for Agent, and such Borrower shall deliver any such amounts to Agent for application to the Obligations in accordance with Section 2.4(b).

2.16 Currencies. The Domestic Advances and other Domestic Obligations (unless such other Domestic Obligations expressly provide otherwise) shall be made and repaid in Dollars. The Canadian Advances and other Canadian Obligations made to the Canadian Borrowers shall be made in Dollars or CAD, as requested by the Canadian Borrowers. All such Canadian Obligations denominated in Dollars shall be repaid in Dollars and all such Canadian Obligations denominated in CAD shall be repaid in CAD.

2.17 Circumstances Affecting CAD Availability. In connection with any request for a Canadian Advance denominated in CAD ("CAD Advance") or Canadian Letter of Credit denominated in CAD ("CAD Letters of Credit" and, together with the CAD Advances, the "CAD Extensions") or a continuation or extension thereof, if a Change in Law or any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls, shall make it unlawful or impossible for any Canadian Lender (or any of their applicable lending office) to honor its obligations to make or maintain any CAD Extensions, then Agent shall

promptly give notice thereof to the Administrative Borrower and the other Lenders. Thereafter, until Agent notifies the Administrative Borrower that such circumstances no longer exist, the obligation of such Canadian Lender to make CAD Extensions or any continuation or extension thereof, as applicable, shall be suspended until such Canadian Lender determines that it would no longer be unlawful or impractical to do so, provided, that the Canadian Borrowers shall continue to be entitled to make elections for CAD Extensions from any other Canadian Lenders. In this event, any such Canadian Lender that gives notice pursuant to this Section 2.17 shall be required to participate in any CAD Advances in Dollars (in an amount equal to the Dollar Equivalent of its Pro Rata Share of the CAD Advance that is due to be made) and its participation will be treated as a separate Canadian Advance denominated in Dollars during that Interest Period. The Canadian Borrowers shall either (i) repay in full (or cause to be repaid in full) the then outstanding principal amount of such CAD Advances, together with accrued interest thereon, on the last day of the then current Interest Period applicable to such CAD Advances, or (ii) convert the then outstanding principal amount of each such CAD Advance of such Canadian Lender to a Canadian Advance denominated in Dollars; provided, that if the Canadian Borrowers elects to make such conversion, Canadian Borrowers shall pay to Agent and Lenders any and all costs, fees and other expenses, if any, incurred by Agent and Lenders in effecting such conversion.

3. CONDITIONS; TERM OF AGREEMENT.

3.1 Conditions Precedent to the Initial Extension of Credit. The obligation of each Lender to make its initial extension of credit provided for hereunder is subject to the fulfillment, to the satisfaction of Agent and Required Lenders, of each of the following conditions precedent (the making of such initial extension of credit by a Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent) (the date of the fulfillment of such conditions, the "Interim Facility Effective Date"):

(a) Borrowers shall have delivered the following fully executed Loan Documents:

(i) this Agreement,

(ii) the US Security Agreement,

(iii) [reserved],

(iv) [reserved],

(v) [reserved],

(vi) the Guaranty,

(vii) [reserved],

(viii) the Intercreditor Agreement,

(ix) the Fee Letter, and

(x) the DIP Term Loan Agreement;

(b) the Petition Date shall have occurred;

(c) (i) within two (2) Business Days following the Petition Date, the Bankruptcy Court shall have entered the Interim Order and an order authorizing the DIP Term Loan Facility ("DIP TL Order"), which Interim Order and DIP TL Order (x) shall have been entered on the docket of the Bankruptcy Court, (y) shall be in full force and effect and shall not have been, in whole or in part, vacated, reversed, stayed, or set aside and (z) shall not have been amended or modified in any manner adverse to the Lenders without the prior written consent of Agent acting at the direction of Required Lenders, and (ii) the Loan Parties shall be in compliance with the terms of the Interim Order and the DIP TL Order in all respects;

(d) all "first day" motions filed by the Loan Parties (including any motions related to cash management or any critical vendor or supplier motions) and related orders entered by the Bankruptcy Court in the Chapter 11 Cases shall be in form and substance reasonably satisfactory to the Agent (acting at the direction of Required Lenders);

(e) the Agent shall have received the Initial DIP Budget, together with a certificate of the Borrowers stating that such Initial DIP Budget has been prepared on a reasonable basis and in good faith and is based upon assumptions believed by the Borrowers to be reasonable at the time made and from the best information then available to the Borrowers;

(f) Agent shall have received proper Form UCC-1 financing statements for filing under the Code and PPSA financing statements or other applicable financing statements (other than filing confirmations for the Hypothecs) necessary or, in the reasonable opinion of the Lenders, desirable to perfect the security interests purported to be created by the Interim Order;

(g) the Agent shall have received a certificate from the Secretary of each Borrower (i) attesting to the resolutions of such Borrower's Board of Directors authorizing its execution, delivery, and performance of this Agreement and the other Loan Documents to which such Borrower is a party, (ii) authorizing specific officers of such Borrower to execute the same, and (iii) attesting to the incumbency and signatures of such specific officers of such Borrower;

(h) the Agent shall have received copies of each Borrower's Governing Documents, as amended, modified, or supplemented to the Interim Facility Effective Date, certified by the Secretary of such Borrower;

(i) the Agent shall have received a certificate of status with respect to each Loan Party, dated within 30 days of the Interim Facility Effective Date, such certificate to be issued by the appropriate officer of the jurisdiction of organization of such Borrower, which certificate shall indicate that such Borrower is in good standing in such jurisdiction;

(j) the Agent shall have received certificates of insurance, as are required by Section 5.6 of this Agreement, the form and substance of which shall be satisfactory to the Agent;

(k) the Agent shall have completed (i) Patriot Act searches, OFAC/PEP searches and customary individual background checks for each Borrower, and (ii) OFAC/PEP searches and customary individual background searches for each Borrower's senior management and key principals, and each Guarantor, in each case, the results of which shall be satisfactory to the Agent;

(l) Borrowers and each of their Subsidiaries shall have received all licenses, approvals or evidence of other actions required by any Governmental Authority in connection with the execution and delivery by Borrowers or their Subsidiaries of the Loan Documents or with the consummation of the transactions contemplated thereby;

(m) no later than the Petition Date, absent a consensual agreement and/or memoranda of understanding with Teamsters National Auto Transporters Industry Negotiating Committee consistent with the RSA Term Sheet and the CBA Term Sheet, the Debtors shall file a motion with the Bankruptcy Court seeking an interim order pursuant to section 1113(e) of the Bankruptcy Code to modify the contribution to Central States, Southeast and Southwest Areas Pension Fund due August 19, 2019;

(n) Borrowers shall have delivered a Borrowing Base Certificate in the form of Exhibit B-1 to the Agreement, reflecting that compliance with the financial covenant set forth in Section 7(b) hereto after giving effect to the initial extensions of credit hereunder and the payment of all fees and expenses required to be paid by Borrowers on the Interim Facility Effective Date under this Agreement or the other Loan Documents;

(o) Agent shall have received, a certificate executed by a responsible officer on behalf of each Borrower, dated the Interim Facility Effective Date, stating (i) that the representations and warranties set forth in Article IV shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the Interim Facility Effective Date, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case, such representations and warranties shall be true and correct in all material respects on such earlier date (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof)), and (ii) that no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof;

(p) no Material Adverse Change shall have occurred since the Petition Date;

(q) the lenders under the DIP Term Loan Facility will have funded to the Debtors not less than $5,000,000;

(r) all orders entered by the Bankruptcy Court pertaining to cash management and adequate protection and all other motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith, shall be in form and substance

satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of Agent, Agent);

(s) Borrowers shall have paid all reasonable and out-of-pocket fees, Lender Group Expenses, and other amounts payable to the Agent;

(t) no unstayed order or injunction challenging either the DIP ABL Facility or the DIP Term Loan Facility shall exist prior to the Interim Facility Effective Date;

(u) no monitor, trustee, receiver, interim receiver, receiver and manager or other similar Person in any Insolvency Proceeding, or examiner with enlarged powers relating to the operation of the business of the Loan Parties pursuant to applicable Insolvency Laws (other than, for the avoidance of doubt, the appointment of the Information Officer), shall have been appointed with respect to the Loan Parties or their Property; and

(v) the Agent shall have received a request for a Borrowing in accordance with the terms and conditions of this Agreement, which shall include the intended uses of proceeds in accordance with the Initial DIP Budget.

3.2 Conditions Precedent to all Extensions of Credit. The obligation of the Lender Group (or any member thereof) to make any Advances hereunder (or to extend any other credit hereunder) at any time, including the initial extension of credit, shall be subject to the following conditions precedent:

(a) the representations and warranties of Parent or its Subsidiaries contained in this Agreement or in the other Loan Documents shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date);

(b) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof;

(c) in the event that such Advance is to be made more than thirty (30) days after the Petition Date (or such later date consented to by the Agent and the Required Lenders);

(i) the Bankruptcy Court shall have entered the Final Order, which Final Order (A) shall have been entered on the docket of the Bankruptcy Court and (B) shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the prior written consent of the Agent and the Required Lenders; and

(ii) within five (5) calendar days after the entry of such Final Order, the Canadian Court shall have issued the Canadian Final DIP Recognition Order, which Canadian Final DIP Recognition Order shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the prior written consent of the Agent and the Required Lenders;

(d) on or before the date that that the Canadian Initial Recognition Order is entered, Canadian Loan Parties shall have delivered the following fully executed Loan Documents:

(i) the Canadian Guarantee

(ii) the Canadian Security Agreement

(iii) the Hypothecs;

(e) the Debtors shall be in compliance in all respects with the applicable DIP Order and, subject to the Permitted Variances, the DIP Budget;

(f) all reasonable and invoiced fees and amounts due and payable by the Borrowers to the Agent and the Lenders on or before the date of such Advance shall have been paid;

(g) there shall not exist any action, suit, investigation, litigation or proceeding pending or threatened (other than the Chapter 11 Cases or the Recognition Proceedings) in any court or tribunal or before any Governmental Authority of facts or circumstances that, in the opinion of the Agent and the Required Lenders, materially and adversely affects any of the transactions contemplated hereby, or that has or could be reasonably likely to result in a Material Adverse Change; and

(h) the Agent shall have received a request for a Borrowing in accordance with the terms and conditions of this Agreement, which shall include the intended uses of proceeds in accordance with the applicable DIP Budget;

(i) the making of such Loan or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, would not conflict with, or cause any Lender or the Issuing Lender to violate or exceed, any applicable Governmental Requirement, and no Change in Law shall have occurred, and no litigation shall be pending or threatened (other than the Chapter 11 Cases or the Recognition Proceedings), which does or, with respect to any threatened litigation, seeks to, enjoin, prohibit or restrain, the making or repayment of any Loan, the issuance, amendment, renewal, extension or repayment of any Letter of Credit or any participations therein or the consummation of the transactions contemplated by this Agreement or any other Loan Document;

(j) at the time of and immediately after giving effect to each such Borrowing or the issuance, amendment, renewal or extension of each such Letter of Credit, or both, as applicable, the aggregate Revolving Loan Exposures for all Lenders shall not exceed the then-effective Availability;

(k) [reserved];

(l) All reasonable and invoiced pre- and post-petition reasonable and invoiced fees, charges, and expenses of the Agent and Lenders including, without limitation, (i) the fees, charges and expenses of Buchalter, A Professional Corporation, and local counsel to the Agent in

each applicable jurisdiction (including the Northern District of Georgia and Canada) and (ii) all other amounts due and payable by the Borrowers on or before the date of such Advance shall have been paid; and

(m) the Restructuring Support Agreement shall be in full force and effect without any modification or amendment thereto (without the Agent's express written consent);

(n) the Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law, and the Recognition Proceedings have been or will be commenced within five (5) calendar days following entry of the Interim Order and proper notice has been or will be given of (i) the motion seeking approval of the Loan Documents, the Interim Order, the Canadian Initial Recognition Order, the Canadian Supplemental Order, the Final Order, and the Canadian Final DIP Recognition Order, (ii) the hearing for entry of the Interim Order, the Canadian Initial Recognition Order, and the Canadian Supplemental Order, as applicable, and (iii) the hearing for the entry of the Final Order and the Canadian Final DIP Recognition Order, as applicable;

(o) the Debtors are in compliance with the terms and conditions of the Interim Order or Final Order, as applicable and each of the foregoing orders shall be in full force and effect and shall not have been vacated, stayed, reversed, modified or amended in any respect without the prior written consent of the Agent and the Required Lenders;

(p) with respect to the making of any Canadian Advance or other extension of credit to Canadian Borrowers hereunder, the Canadian Court shall have entered the Canadian Initial Recognition Order and the Canadian Supplemental Order, which orders (i) shall have been issued by the Canadian Court upon an application or motion of the Foreign Representative satisfactory in form and substance to Agent in its sole discretion and upon prior notice to such parties required to receive such notice and such other parties as may be reasonably requested by Agent; (ii) shall be in full force and effect and shall not have been amended, modified or stayed, or reversed (other than in respect of the Canadian Supplemental Order by the Canadian Final DIP Recognition Order); and, if the Canadian Supplemental Order is the subject of a pending objection, appeal or motion for reconsideration in any respect (other than in respect of the Canadian Supplemental Order by the Canadian Final DIP Recognition Order), neither the Canadian Supplemental Order, nor the making of the Loans or the performance by the Loan Parties of any of the Obligations shall be the subject of a presently effective stay, and (iii) shall otherwise be in form and substance satisfactory Agent;

(q) the Sale Transaction APA is in full force and effect; and

(r) all Obligations shall be secured by perfected liens and security interests on all Collateral of the Loan Parties pursuant to, and such Liens and security interests shall have the priorities set forth in, the applicable DIP Order and DIP Recognition Order, subject only to the Permitted Liens.

3.3 Maturity. This Agreement shall continue in full force and effect for a term ending on the date that is the earliest of (a) December 31, 2019, (b) the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later

than the "effective date" thereof) of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the Bankruptcy Court; (c) the acceleration of the Advances and the termination of the Commitments in accordance with Section 8 hereof; and (d) a sale of all or substantially all of the assets of Borrower and the Loan Parties, pursuant to Section 363 of the Bankruptcy Code or Section 36 of the CCAA, as applicable (such earliest date, the "Maturity Date"). The foregoing notwithstanding, the Lender Group, upon the election of the Required Lenders, shall have the right to terminate its obligations under this Agreement immediately and without notice to Administrative Borrower upon the occurrence and during the continuation of an Event of Default.

3.4 Effect of Maturity. On the Maturity Date, all commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and all of the Obligations immediately shall become due and payable without notice or demand and Borrowers shall be required to repay all of the Obligations in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full and the Commitments have been terminated. When all of the Obligations have been paid in full and the Lender Group's obligations to provide additional credit under the Loan Documents have been terminated irrevocably, Agent will, at Borrowers' sole expense, deliver all possessory Collateral and execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

3.5 Early Termination by Borrowers. Borrowers have the option, without premium or penalty, at any time upon 5 Business Days prior written notice to Agent, to terminate this Agreement and terminate the Commitments hereunder by repaying to Agent all of the Obligations in full.

3.6 Conditions Subsequent. The obligation of the Lender Group (or any member thereof) to continue to make Advances (or otherwise extend credit hereunder) is subject to the fulfillment, on or before the date applicable thereto, of the conditions subsequent set forth on Schedule 3.6 (the failure by Borrowers to so perform or cause to be performed such conditions subsequent as and when required by the terms thereof, shall constitute an Event of Default). All provisions of this Agreement and the other Loan Documents (including, without limitation, all representations, warranties, covenants, Events of Default and other agreements herein and therein) shall be deemed modified to the extent necessary to reflect the fact that additional time has been provided for compliance with respect to such conditions subsequent.

4. REPRESENTATIONS AND WARRANTIES.

In order to induce the Lender Group to enter into this Agreement, Parent and each Borrower make the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be

applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Interim Facility Effective Date (except to the extent that such representations and warranties relate solely to an earlier date), and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the date of the making of each Advance (or other extension of credit) made thereafter, as though made on and as of the date of such Advance (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1 Due Organization and Qualification; Subsidiaries.

(a) Parent and each Loan Party (i) is duly organized and existing and in good standing under the laws of the jurisdiction of its organization, (ii) is qualified to do business in any jurisdiction where the failure to be so qualified could reasonably be expected to result in a Material Adverse Change, and (iii) subject to the entry and terms of the Financing Orders and other orders of the Bankruptcy Court and the Canadian Court, as applicable, has all requisite organizational power and authority to own and operate its properties, to carry on its business as now conducted to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) Set forth on Schedule 4.1(b) (taking into account any time period granted under the Security Agreement for the delivery of the Stock of any new Subsidiary of Parent) is a complete and accurate description of the authorized capital Stock of Parent and each of its Subsidiaries, by class, and, as of the Interim Facility Effective Date, a description of the number of shares of each such class that are issued and outstanding. Other than as described on Schedule 4.1(b), (i) there are no subscriptions, options, warrants, or calls relating to any shares of any such Person's capital Stock, including any right of conversion or exchange under any outstanding security or other instrument and (ii) neither Parent nor any of its Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital Stock or any security convertible into or exchangeable for any of its capital Stock.

(c) Set forth on Schedule 4.1(b) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement), is a complete and accurate list of Parent's direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Stock authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by Parent. All of the outstanding capital Stock of each such Subsidiary has been validly issued and is fully paid and non-assessable.

4.2 Due Authorization; No Conflict.

(a) Subject to any restrictions arising on account of any Debtor's status as a "debtor" under the Bankruptcy Code and entry of the Financing Orders, as to each Loan Party, and solely with respect to the performance by the Canadian Borrowers under the Loan Documents, subject to the entry of the DIP Recognition Order, the execution, delivery, and performance by

such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party.

(b) Subject to any restrictions arising on account of any Debtor's status as a "debtor" under the Bankruptcy Code and entry of the DIP Order, and solely with respect to the performance by the Canadian Borrowers under the Loan Documents, subject to the entry of the DIP Recognition Order, as to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate any material provision of federal, state, or local law or regulation applicable to any Loan Party or its Subsidiaries, the Governing Documents of any Loan Party or its Subsidiaries, or any order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party or its Subsidiaries, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Material Contract of any Loan Party or its Subsidiaries except to the extent that any such conflict, breach or default could not individually or in the aggregate reasonably be expected to have a Material Adverse Change, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens, or (iv) require any approval of any Loan Party's interest-holders or any approval or consent of any Person under any Material Contract of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect and except, in the case of Material Contracts, for consents or approvals, the failure to obtain could not individually or in the aggregate reasonably be expected to cause a Material Adverse Change.

4.3 Governmental Consents. Subject to the entry of the DIP Order and the DIP Recognition Order, the execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than registrations, consents, approvals, notices, or other actions that have been obtained and that are still in force and effect and except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Agent for filing or recordation.

4.4 Binding Obligations; Perfected Liens.

(a) Subject to the entry of the DIP Order, each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto, and solely with respect to the performance by the Canadian Borrowers under the Loan Documents, subject to the entry of the DIP Recognition Order, and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(b) Subject to the approval of the Bankruptcy Court and the Canadian Court, to the extent required, and pursuant to the DIP Order and the DIP Recognition Orders, Agent's Liens are validly created and the Liens created by the Security Agreements shall constitute a perfected Lien on, and security interest in, all right, title and interest of the grantors thereunder in the

Collateral securing all of the Obligations, in each case subject to no Liens other than Permitted Liens.

(c) The entry of the DIP Order and the issuance of the DIP Recognition Order is effective to create in favor of Agent, for the benefit of the Lenders, as security for the Obligations, (i) a valid Lien on all of the Collateral pursuant to Sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code and Section 11.2 of the CCAA and (ii) an allowed administrative expense in each of the Chapter 11 Cases and the Recognition Proceedings having priority under Section 364(c)(1) of the Bankruptcy Code or under the CCAA over all other administrative expenses (including, without limitation, such expenses specified in Sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code and the applicable sections of the CCAA), subject only to the Permitted Priority Liens (the "Superpriority Claims").

4.5 Title to Assets; No Encumbrances. Subject to Permitted Liens, Parent and each of its Subsidiaries has (a) good, marketable and legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 5.1 hereof (or until such financial statements are delivered hereunder, of the Existing Credit Agreement), in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

4.6 Jurisdiction of Organization; Location of Chief Executive Office and Registered Office; Organizational Identification Number; Commercial Tort Claims.

(a) The name of (within the meaning of Section 9-503 of the Code and including any French form or combined English and French form of such name) and jurisdiction of organization of Parent and each of its Subsidiaries is set forth on Schedule 4.6(a) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement, including any grace period permitted under this Agreement or the Security Agreement in respect of delivery of Pledged Interests as the result of the formation or acquisition of new Subsidiaries).

(b) The chief executive office of Parent and each of its Subsidiaries is located at the address indicated on Schedule 4.6(b) (taking into account the time period granted under Section 5.15 to amend Schedule 4.6(b) for any change of a Loan Party's chief executive office); The registered office or domicile of each Canadian Loan Party is located at the address indicated on Schedule 4.6(b) (taking into account the time period granted under Section 5.15 to amend Schedule 4.6(b) for any change of a Canadian Loan Party's registered office or domicile);

(c) Parent's and each of its Subsidiaries' tax identification numbers or business numbers, as applicable, and organizational identification numbers, if any, are identified on Schedule 4.6(c) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement, including any grace period permitted under this

Agreement or the Security Agreement in respect of delivery of Pledged Interests as the result of the formation or acquisition of new Subsidiaries).

(d) As of the Interim Facility Effective Date, neither Parent nor any of its Subsidiaries holds any commercial tort claims that exceed $500,000 in amount, except as set forth on Schedule 4.6(d).

4.7 Litigation.

(a) Except for the Chapter 11 Cases, the Recognition Proceedings and any event leading up to the Chapter 11 Cases and the Recognition Proceedings and as set forth on Schedule 4.7(a), there are no actions, suits, or proceedings pending or, to the knowledge of Borrowers, after due inquiry, threatened in writing against Parent or any of its Subsidiaries that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Change.

(b) Schedule 4.7(b) sets forth a complete and accurate description, with respect to each of the actions, suits, or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, $1,000,000 (except to the extent covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) that, as of the Interim Facility Effective Date, is pending or, to the knowledge of Borrowers, after due inquiry, threatened in writing against Parent or any of its Subsidiaries as of the Interim Facility Effective Date, including (i) the parties to such actions, suits, or proceedings, (ii) the nature of the dispute that is the subject of such actions, suits, or proceedings, and (iii) the procedural status with respect to such actions, suits, or proceedings.

4.8 Compliance with Laws. Neither Parent nor any of its Subsidiaries (a) is in violation of any applicable laws, rules, regulations, executive orders, or codes (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

4.9 No Material Adverse Change. All historical financial statements relating to Parent and its Subsidiaries that have been delivered by any of the Borrowers to Agent have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, Parent's and its Subsidiaries' respective financial condition (consolidated to the extent specified in such financial statements) as of the date thereof and results of operations for the period then ended. Since December 31, 2018, except for the commencement of the Chapter 11 Cases and the Recognition Proceedings, and any events leading up to the Chapter 11 Cases and the Recognition Proceedings, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Change with respect to the Parent and its Subsidiaries, taken as a whole.

4.10 Fraudulent Transfer. No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

4.11 Employee Benefits/Canadian Pension Plans. Except as set forth on Schedule 4.11, neither Parent nor any of its Subsidiaries, nor any of their ERISA Affiliates maintains or contributes to any Benefit Plan or Canadian Pension Plan.

4.12 Environmental Condition. Except as set forth on Schedule 4.12, (a) to Borrowers' knowledge, neither Parent's nor any of its Subsidiaries' Properties has ever been used by Parent, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to Borrowers' knowledge, after due inquiry, neither Parent's nor any of its Subsidiaries' Properties has ever been designated or identified in any manner pursuant to any Environmental Law as a Hazardous Materials disposal site, (c) neither Parent nor any of its Subsidiaries has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by a Loan Party or its Subsidiaries, and (d) neither Parent nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

4.13 Intellectual Property. Parent and each of its Subsidiaries own, or hold licenses in, all trademarks, trade names, copyrights, patents, and licenses that are necessary and material to the conduct of its business as currently conducted, and attached hereto as Schedule 4.13 (taking into account the time period set forth in the proviso below for amending such schedule to add additional intellectual property) is a true, correct, and complete listing of all material trademarks, trade names, copyrights, patents, and licenses as to which Parent or one of its Subsidiaries is the owner or is an exclusive licensee; provided, however, that any Borrower may amend Schedule 4.13 to add additional intellectual property so long as such amendment occurs by written notice to Agent at the time that Parent provides its Compliance Certificate pursuant to Section 5.1 that relates to the month in which such intellectual property was acquired.

4.14 Leases. Parent and each of its Subsidiaries enjoy peaceful and undisturbed possession under any lease material to their business and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by Parent or the applicable Subsidiaries exists under any of them.

4.15 Deposit Accounts and Securities Accounts. Set forth on Schedule 4.15 (as updated pursuant to the provisions of the Security Agreement from time to time) is a listing of all of Parent's and its Subsidiaries' Deposit Accounts and Securities Accounts, including, with respect

to each bank or securities intermediary (a) the name and address of such Person, and (b) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

4.16 Complete Disclosure. All factual information (other than forward-looking information, forward-looking pro formas, and projections and information of a general economic nature and general information about Borrowers' industry), taken as a whole, furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information (other than forward-looking information, forward-looking pro formas and projections and information of a general economic nature and general information about Borrowers' industry), taken as a whole, hereafter furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Initial DIP Budget and any projections delivered to Agent represent, and as of the date on which any other Budgets or Projections are delivered to Agent, such additional Budgets or Projections represent, Borrowers' good faith estimate, on the date such Budgets or Projections are delivered, of the Loan Parties' and their Subsidiaries' future performance for the periods covered thereby based upon assumptions believed by Borrowers to be reasonable at the time of the delivery thereof to Agent (it being understood that such Budgets or Projections are subject to uncertainties and contingencies, many of which are beyond the control of the Loan Parties and their Subsidiaries, that no assurances can be given that such Budgets or Projections will be realized, and that actual results may differ in a material manner from such Budgets or Projections).

4.17 Material Contracts. Set forth on Schedule 4.17 (as such Schedule may be updated from time to time in accordance herewith) is a listing of the Material Contracts of each Loan Party and its Subsidiaries as of the most recent date on which Borrowers provided their Compliance Certificate pursuant to Section 5.1. Any Borrower may amend Schedule 4.17 to add additional Material Contracts so long as such amendment occurs by written notice to Agent on the date that Parent provides its Compliance Certificate. Except for matters which, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, and subject to the Financing Orders, each Material Contract (other than those that have expired at the end of their normal terms) (a) is in full force and effect and is binding upon and enforceable against Parent or the applicable Subsidiary and, to Borrowers' knowledge, after due inquiry, each other Person that is a party thereto in accordance with its terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws related to or limiting creditors' rights generally, (b) has not been otherwise amended or modified (other than amendments or modifications that would not reasonably be expected to result in a Material Adverse Change), and (c) is not in default due to the action or inaction of Parent or the applicable Subsidiary.

4.18 Patriot Act. To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter

V, as amended) and any other enabling legislation or executive order relating thereto, (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"); and (c) similar or comparable laws or orders in effect in Canada.

4.19 Indebtedness. Set forth on Schedule 4.19 is a true and complete list of all Indebtedness in excess of $250,000 for any particular Indebtedness and $500,000 in the aggregate for all Indebtedness of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Interim Facility Effective Date that is to remain outstanding immediately after giving effect to the closing hereunder on the Interim Facility Effective Date and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Interim Facility Effective Date.

4.20 Payment of Taxes. Except as otherwise permitted under Section 5.5 or Taxes the payment of which are stayed by the Chapter 11 Cases or the CCAA Proceedings, all U.S. and Canadian federal and other material tax returns and reports of each Loan Party and its Subsidiaries required to be filed by any of them have been timely filed, and all Taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable. Each Loan Party and each of its Subsidiaries have made adequate provision in accordance with GAAP for all Taxes not yet due and payable. No Borrower knows of any proposed Tax assessment against a Loan Party or any of its Subsidiaries that is not being actively contested by such Loan Party or such Subsidiary diligently, in good faith, and by appropriate proceedings; provided such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.21 Margin Stock. Neither Parent nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the loans made to Borrowers will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors.

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

4.23 OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws. No Loan Party or any of its Subsidiaries is in violation of any Sanctions. No Loan Party nor any of its Subsidiaries nor, to the knowledge of such Loan Party, any director, officer, employee, agent or Affiliate of such Loan Party or such Subsidiary (a) is a Sanctioned Person or a Sanctioned Entity, (b) has any assets located in Sanctioned Entities, or (c) derives revenues from investments

in, or transactions with Sanctioned Persons or Sanctioned Entities. Each of the Loan Parties and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws that are applicable to the Loan Parties and their respective Subsidiaries. Each of the Loan Parties and its Subsidiaries, and to the knowledge of each such Loan Party, each director, officer, employee, agent and Affiliate of each such Loan Party and each such Subsidiary, is in compliance with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws. No proceeds of any Loan made or Letter of Credit issued hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity, or otherwise used in any manner that would result in a violation of any Sanction, Anti-Corruption Law or Anti-Money Laundering Law by any Person (including any Lender, Bank Product Provider, or other individual or entity participating in any transaction).

4.24 Employee and Labor Matters. Except as set forth in Schedule 4.24, there is (i) no unfair labor practice charge or complaint pending or, to the knowledge of Borrowers, threatened against Parent or its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against Parent or its Subsidiaries which arises out of or under any collective bargaining agreement that could reasonably be expected to result in a material liability, (ii) no strike, lockout, slowdown, work stoppage or other material labor dispute pending or threatened against Parent or its Subsidiaries that could reasonably be expected to result in a material liability, or (iii) to the knowledge of Borrowers, after due inquiry, no union representation question existing with respect to the employees of Parent or its Subsidiaries and no union organizing or decertification activity taking place with respect to any of the employees of Parent or its Subsidiaries, in each case to the extent such events could reasonably be expected to result in a material liability. Neither Parent, nor any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state or Canadian law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of Parent or its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not reasonably be expected to result in a material liability.

4.25 [Reserved].

4.26 Use of Proceeds. The proceeds of the Loans will be used in accordance in all material respects with the terms of the current DIP Budget (subject to Permitted Disbursement Variance) and in compliance with Section 6.13.

4.27 Guarantors. (a) Each Subsidiary of Parent, (b) any co-borrower or guarantor under the Term Loan DIP Facility and (c) all "Debtors" as defined in the “first day orders” shall be Guarantors under the Loan Documents.

4.28 Eligible Accounts. As to each Account that is identified by any Borrower as an Eligible Account in a Borrowing Base Certificate submitted to Agent, except with respect to payment by the Account Debtor of such Account subsequent to the date as to which such Borrowing Base Certificate relates, such Account is (a) a bona fide existing payment obligation of the applicable Account Debtor created by the sale and delivery of Inventory or the rendition of

services to such Account Debtor in the ordinary course of Borrowers' business, (b) owed to one or more of the Borrowers, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria (other than Agent-discretionary criteria) set forth in the definition of Domestic Eligible Accounts or Canadian Eligible Accounts, as applicable.

4.29 Security. The provisions of the Financing Orders, as applicable, are effective (subject to their respective terms) to create in favor of Agent for the benefit of the Lenders a legal, valid, enforceable and perfected security interest on all right, title and interest of the respective Loan Parties in the Collateral described therein (with such priority as provided for in the Financing Orders). No filing or other action will be necessary to perfect the Liens on any Collateral under the Laws of the United States of America.

4.30 Budget. The DIP Budget was prepared in good faith based on assumptions believed by the Loan Parties to be reasonable at the time made.

4.31 Chapter 11 Cases. The Chapter 11 Cases were commenced on the Petition Date in accordance with the Bankruptcy Code and other applicable law and proper notice has been given, and notice of the hearing for (i) the approval of the Interim Order, has been given as identified in the certificate of service filed with the Bankruptcy Court and (ii) the approval of the Canadian Initial Orders has been given as identified in the affidavit of service filed with the Canadian Court. Each of the Interim Order and the Canadian Initial Orders and, after they have been entered, the Final Order and the Canadian Final DIP Recognition Order, are in full force and effect and have not, in whole or in part, been reversed, modified, amended, stayed, vacated, appealed or subjected to a stay pending appeal or otherwise successfully challenged and are not subject to any pending or threatened challenge or proceeding in any court of competent jurisdiction, in each case, except in a manner acceptable to Agent.

4.32 ERISA/Canadian Pension Plans. Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the IRC and other federal or state law. Each Canadian Pension Plan is in compliance in all material respects with the applicable provisions of all applicable Canadian pension benefits legislation and the Income Tax Act (Canada). Each Benefit Plan which is intended to qualify under Section 401(a) of the IRC has received a favorable opinion or determination letter from the IRS and to the best knowledge of each Borrower, nothing has occurred which would cause the loss of such qualification. Except as set forth on Schedule 4.32, (a) each Borrower and each ERISA Affiliate has made all required contributions to any Benefit Plan subject to Section 412 of the IRC, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the IRC has been made with respect to any Benefit Plan, and (b) and (b) each Canadian Borrower has made all required contributions to any Canadian Pension Plan. All payments due from Parent or any of its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Parent or such Subsidiary, except where the failure to do so could not individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

4.33 Hedge Agreements. On each date that any Hedge Agreement is executed by any Hedge Provider, Borrower and each other Loan Party satisfy all eligibility, suitability and other

requirements under the Commodity Exchange Act (7 U.S.C. § 1, et seq., as in effect from time to time) and the Commodity Futures Trading Commission regulations.

5. AFFIRMATIVE COVENANTS.

Parent and each Borrower covenant and agree that, until termination of all of the Commitments and payment in full of the Obligations, the Loan Parties shall and shall cause each of their Subsidiaries to comply with each of the following:

5.1 Financial Statements, Reports, Certificates. Deliver to Agent, with copies to each Lender, each of the financial statements, reports, and other items set forth on Schedule 5.1 no later than the times specified therein. In addition, each Borrower agrees that no Subsidiary of Parent will have a fiscal year different from that of Parent. In addition, each Borrower agrees to maintain a system of accounting that enables Parent to produce financial statements in accordance with GAAP. Each Borrower shall also (a) keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to its and its Subsidiaries' sales, and (b) maintain its billing systems/practices substantially as in effect as of the Interim Facility Effective Date and shall only make material modifications thereto with notice to, and with the consent of, Agent.

5.2 Collateral Reporting. Provide Agent (and if so requested by Agent, with copies for each Lender) with each of the reports set forth on Schedule 5.2 at the times specified therein. In addition, each Borrower agrees to use commercially reasonable efforts in cooperation with Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule.

5.3 Existence. Except as otherwise permitted under Section 6.3 or Section 6.4, at all times maintain and preserve in full force and effect its existence and good standing in its jurisdiction of organization and, except as could not reasonably be expected to result in a Material Adverse Change, good standing with respect to all other jurisdictions in which it is qualified to do business and any rights, franchises, licenses, permits, licenses, accreditations, authorizations, or other approvals material to its business.

5.4 Maintenance of Properties. Maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, casualty and condemnation and Permitted Dispositions excepted and except where the failure to do so would not reasonably be expected to have a Material Adverse Change.

5.5 Taxes. Cause all Taxes imposed, levied, or assessed against any Loan Party or its Subsidiaries, or any of their respective assets or in respect of any of its income, capital, businesses, or franchises to be paid in full, before delinquency or before the expiration of any extension period, except (i) to the extent that the validity of such assessment or tax shall be the subject of a Permitted Protest and so long as, in the case of a Tax that has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or (ii) with respect to such Taxes that do not exceed $500,000 in the aggregate at any one time. Parent will and will cause each of its Subsidiaries to make timely payment or deposit of all Tax payments and withholding taxes required of it and them by applicable

laws (subject to clauses (i) and (ii) of the preceding sentence), including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, provincial and federal income and capital taxes, and will, upon reasonable request, furnish Agent with proof reasonably satisfactory to Agent indicating that Parent and its Subsidiaries have made such payments or deposits.

5.6 Insurance. At Borrowers' expense, maintain insurance respecting each of the Loan Parties' and their Subsidiaries' assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. All such policies of insurance shall be with responsible and reputable insurance companies reasonably acceptable to Agent and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event in amount, adequacy and scope reasonably satisfactory to Agent (it being agreed that the amount, adequacy and scope of the policies of insurance of Borrowers in effect as of the Interim Facility Effective Date are acceptable to Agent). All property insurance policies covering the Collateral are to be made payable to Agent for the benefit of Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard loss payable endorsement with a standard noncontributory "lender" or "secured party" clause and are to contain such other provisions as Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Agent, with the loss payable (but only in respect of Collateral) and additional insured endorsements in favor of Agent and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If any Borrower fails to maintain such insurance, Agent may arrange for such insurance, but at such Borrower's expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Borrowers shall give Agent prompt notice of any loss exceeding $1,000,000 covered by its casualty or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default, subject to the Intercreditor Agreement and Financing Orders, Agent shall have the first right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. Notwithstanding anything in this Section 5.6, the Loan Parties and their Subsidiaries shall be permitted to self-insure on a basis consistent with commercially reasonable business practices. The parties hereby acknowledge that Borrowers' self-insurance practices in effect on the Interim Facility Effective Date are commercially reasonable business practices as of the date of this Agreement.

5.7 Inspection. Permit Agent, any Lender, and each of their duly authorized representatives or agents to visit any of its properties and inspect any of its assets or books and records, to conduct appraisals and valuations, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers, employees, and third party advisors at such reasonable times and intervals as Agent or any Lender, as applicable, may designate. The Loan Parties' reimbursement obligations under this Section 5.7 shall be subject to Section 2.10.

5.8 Compliance with Laws. Comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change or such compliance is stayed by the Chapter 11 Cases, the CCAA Proceedings or the Financing Orders.

5.9 Environmental.

(a) Keep any property either owned or operated by Parent or any of its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens,

(b) Comply, in all material respects, with Environmental Laws and provide to Agent documentation of such compliance which Agent reasonably requests,

(c) Promptly notify Agent of any release of which any Borrower has knowledge of a Hazardous Material in any Reportable Quantity (as defined under applicable Environmental Law) from or onto property owned or operated by Parent or any of its Subsidiaries and take any Remedial Actions required to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law, and

(d) Promptly, but in any event within 5 Business Days of its receipt thereof, provide Agent with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of Parent or its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against Parent or its Subsidiaries, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority.

5.10 Disclosure Updates. Promptly and in no event later than 10 Business Days after obtaining knowledge thereof, notify Agent if any schedule or certificate furnished to Agent or the Lenders by a Loan Party pursuant to the Loan Documents contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto, in each case except to the extent any such Schedule or certificate is permitted to be updated under the terms and conditions set forth in this Agreement.

5.11 Formation of Subsidiaries. No Loan Party shall form any Subsidiary or acquire any Subsidiary after the Interim Facility Effective Date without the prior written consent of the Required Lenders. If such consent is provided by the Required Lenders, such Loan Party shall, (a) substantially contemporaneously with such formation or acquisition (or such later date as permitted by the Required Lenders in their sole discretion) cause any such new Subsidiary to provide to Agent a Security Agreement or joinder to an existing Security Agreement (a "Security Agreement Joinder"), together with such other security documents (including mortgages with

respect to any Real Property owned in fee of such new Subsidiary to the extent required by the Loan Documents), as well as appropriate financing statements (and with respect to all property subject to a mortgage, fixture filings), all in form and substance reasonably satisfactory to the Required Lenders (including being sufficient to grant Agent a Lien (subject to the Intercreditor Agreement and Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), (b) no later than such formation or acquisition (or such later date as permitted by the Required Lenders in their sole discretion) provide to Agent a pledge agreement (or an addendum to an existing Security Agreement) and, subject to the terms of the Intercreditor Agreement and the Financing Orders, appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary reasonably satisfactory to the Required Lenders, (c) no later than substantially contemporaneously with such formation or acquisition (or such later date as permitted by the Required Lenders in their sole discretion) provide to Agent all other documentation, including, one or more opinions of counsel reasonably satisfactory to the Required Lenders, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance or other documentation with respect to all Real Property owned in fee and subject to a Mortgage) and (d) no later than substantially contemporaneously with such formation or acquisition (or such later date as permitted by the Required Lenders in their sole discretion) provide to Agent such other agreements, instruments, approvals, legal opinions or other documents reasonably requested by the Required Lenders in order to create, perfect, establish the priority of or otherwise protect any Lien purported to be covered by any such Security Agreement or Mortgage or otherwise to effect the intent that such Subsidiary shall become bound by all of the terms, covenants and agreements contained in the Loan Documents and that all property and assets of such new Subsidiary that is required to become Collateral for the Obligations pursuant to the terms of this Agreement and the other Loan Documents shall become Collateral for the Obligations. Any document, agreement, or instrument executed or issued pursuant to this Section 5.11 shall be a Loan Document.

5.12 Further Assurances. At any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, endorsements of certificates of title, mortgages, deeds of trust, opinions of counsel, and all other documents (the "Additional Documents") that Agent may reasonably request in form and substance reasonably satisfactory to Agent to the extent required under the Loan Documents, to create, perfect, and continue perfected or to better perfect Agent's Liens in all of the assets of the Loan Parties (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal) to the extent required under the Loan Documents, to create and perfect Liens in favor of Agent in any Real Property of Parent or its Subsidiaries that is not Excluded Real Property, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable law, if any Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents required to be delivered under this Section 5.12 within a reasonable period of time following the request to do so, such Loan Party hereby authorizes Agent to execute any such Additional Documents in such Loan Party's name, as applicable, and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance of, and not in limitation of, the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the

Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of Parent and its Subsidiaries.

5.13 Material Contracts. Contemporaneously with the delivery of each Compliance Certificate pursuant to Section 5.1, provide Agent with copies of (a) each Material Contract entered into since the delivery of the previous Compliance Certificate, and (b) each material amendment or modification of any Material Contract entered into since the delivery of the previous Compliance Certificate.

5.14 Lender Calls. The Loan Parties and/or their advisors, as applicable (including appropriately senior members of management), shall, upon request of the Agent, host the following telephonic conference calls with Agent, the Lenders and their respective advisors:

(a) promptly following the delivery of each variance report pursuant to clause (a) set forth on Schedule 5.1, a call to discuss the contents of such variance report; and

(b) no less frequently than bi-monthly, a call to discuss the DIP Budget and DIP Budget-related initiatives (including, but not limited to, selling, general and administrative expenses and Capital Expenditures).

a) ERISA Matters. Furnish to Agent:

(c) Notice of ERISA Matters. Upon learning of the occurrence of any of the following which could be reasonably expected to result in a Material Adverse Change, written notice thereof which describes the same and the steps being taken by Parent and its Subsidiaries with respect thereto: (i) a Prohibited Transaction in connection with any Plan (ii) the occurrence of a Reportable Event with respect to any Pension Plan subject to Title IV of ERISA, (iii) the institution of any steps by Parent and its Subsidiaries, the PBGC or any other Person to terminate any Plan, (iv) the institution of any steps by Parent and its Subsidiaries or any ERISA Affiliate to withdraw from any Pension Plan or Multiemployer Plan, (v) the failure to make a required contribution to any Pension Plan if such failure is sufficient to give rise to a lien under Section 303(k) of ERISA or any similar legislation, (vi) the taking of any action with respect to a Pension Plan which could result in the requirement that a Loan Party furnish a bond or other security to the PBGC, any similar regulatory authority, or such Pension Plan, (vii) any material increase in the contingent liability of a Loan Party with respect to any post retirement Welfare Plan benefits, (viii) any and all claims, actions, or lawsuits (other than claims for benefits in the ordinary course) asserted or instituted, and of any threatened litigation or claims (other than claims for benefits in the ordinary course), against a Loan Party or against any ERISA Affiliate in connection with any Plan or Canadian Pension Plan maintained, at any time, by a Loan Party or such ERISA Affiliate, or to which a Loan Party or such ERISA Affiliate has or had at any time any obligation to contribute, or/and against any such Plan or Canadian Pension Plan itself, or against any fiduciary of or service provided to any such Plan, (ix) the occurrence of a Canadian Pension Event, or (x) the occurrence of any event with respect to any Pension Plan or Multiemployer Plan or Canadian Pension Plan which would result in Parent or any of its Subsidiaries incurring any liability, fine or penalty.

(d) Copies of ERISA Information. Upon Agent's reasonable request (or in the case of clause (vi) below, upon any Borrower receiving or possessing such documents or information), each of the following shall be delivered by Borrowers to the Agent: (i) a copy of each Plan or Canadian Pension Plan(or, where any such plan is not in writing, complete description thereof) (and if applicable, related trust agreements or other funding instruments) and all amendments thereto, all written interpretations thereof and written descriptions thereof that have been distributed to employees or former employees of a Loan Party or any of its ERISA Affiliates; (ii) the most recent determination letter issued by the Internal Revenue Service with respect to each Pension Plan; (iii) for the three most recent plan years, Annual Reports on Form 5500 Series requires to be filed with any governmental agency for each Plan; (iv) all actuarial reports prepared for the last three plan years for each Pension Plan and Canadian Pension Plan; (v) a listing of all Multiemployer Plans, with the aggregate amount of the most recent annual contributions required to be made by a Loan Party or any ERISA Affiliate to each such Multiemployer Plan and copies of the collective bargaining agreements requiring such contributions; (vi) any information that has been provided to a Loan Party or any ERISA Affiliate regarding withdrawal liability under any Multiemployer Plan and (vii) the aggregate amount of the most recent annual payments made to former employees of a Loan Party or any ERISA Affiliate under any retiree Welfare Plan.

5.15 OFAC; Sanctions; Anti-Corruption Laws; Anti-Money Laundering Laws. Each Loan Party will, and will cause each of its Subsidiaries to comply (i) with all applicable Sanctions, and (ii) in all material respects, with all Anti-Corruption Laws and Anti-Money Laundering Laws. Each of the Loan Parties and its Subsidiaries shall implement and maintain in effect policies and procedures designed to ensure compliance by the Loan Parties and their Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Sanctions, Anti-Corruption Laws and Anti-Money Laundering Laws.

5.16 Budget Update; Cash Reporting; Testing.

(a) The Debtors shall deliver to the Agent (i) prior to the Petition Date, the Initial DIP Budget and (ii) the Revised DIP Budget no later than the at the times specified in Schedule 5.1. Each Revised DIP Budget shall be subject to the approval of the Agent, in its sole discretion, and, until such approval is obtained, the previously delivered and approved DIP Budget shall remain in effect for all purposes, including variance testing and reporting.

(b) The Debtors shall deliver to the Agent a weekly DIP variance report/reconciliation on Friday of each week for the prior week and for the period from the commencement of the Initial DIP Budget to the end of the prior week in each case in accordance with Schedule 5.1 hereto together with an explanation for all material variances, certified by the chief financial officer of Holdings.

5.17 Delivery of Proposed DIP Order and Proposed DIP Recognition Orders. The Borrower will deliver to the Agent before the anticipated Petition Date, (i) the proposed DIP Order and proposed DIP Recognition Orders (which shall be in form and substance satisfactory to the Agent and the Required Lenders) and (ii) Bidding Procedures Motion (which shall be in form and substance satisfactory to the Agent and the Required Lenders).

5.18 Cash Management. Each Debtor shall maintain its cash management system as it existed prior to the Petition Date, and any changes to the cash management system shall be subject to the approval of the Agent and permitted pursuant to any applicable order of the Bankruptcy Court or the Canadian Court.

5.19 Bankruptcy Transaction Milestones. The Debtors shall perform or deliver, as applicable, each of the following on or before the dates specified as follows (collectively, the "Milestones"):

(a) commence their Chapter 11 Cases no later than the Petition Date;

(b) file the DIP Motion and the Sale and Bidding Procedures Motion by no later than the Petition Date;

(c) the Debtors and the Teamsters National Automobile Transport Industry Negotiating Committee ("TNATINC") 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 the CBA Term Sheet to the IBT membership for ratification;

(d) no later than the Petition Date, the Debtors, the Purchaser, and the Central States Plan shall execute the Support Agreement (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 Solus 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;

(e) obtain entry of the Interim Order by no later than two (2) Business Days after the Petition Date, and on or before the date that is five (5) calendar days following the entry of the Interim Order, the Canadian Court shall have issued the Canadian Initial Orders;

(f) obtain entry by the Bankruptcy Court of the Final Order and the Bid Procedures Order by no later than twenty-five (25) days after the Petition Date, and on or before the date that is five (5) calendar days following the entry of the Final Order and the Bid Procedures Order, the Canadian Court shall have issued the Canadian Final DIP Recognition Order and an order recognizing the Bid Procedures Order;

(g) 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;

(h) obtain ratification of the CBAs consistent with the CBA Term Sheet, this Term Sheet, the CSPF Term Sheet, and the Restructuring Support Agreement, 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 Restructuring Support Agreement, shall be subject to the consent of the Agent and the Purchaser;

(i) obtain entry by the Bankruptcy Court of the Sale Order no later than sixty-five (65) calendar days after the Petition Date and on or before the date that is five (5) calendar days following the entry of the Sale Order, the Canadian Court shall have issued an order recognizing the Sale Order; and

(j) cause the Sale Closing Date to occur no later than seventy-five (75) days after the Petition Date.

5.20 Bankruptcy Covenants. The Debtors shall comply with all covenants, terms and conditions and perform all obligations set forth in the Interim Order or Final Order, as applicable, and the Canadian Initial Orders or the Canadian Final DIP Recognition Order, as applicable.

5.21 Restructuring Proposals. The Debtors shall promptly deliver or cause to be delivered to the Agent copies of any term sheets, proposals, or presentations from any party relating to (i) the restructuring of the Debtors' capital structure (including any refinancing of any portion of the Debtors' existing debt obligations) or (ii) the sale of all or any material portion of the Debtors' assets.

5.22 Chapter 11 Cases and Recognition Proceedings Documents and Notices. The Debtors shall deliver or cause to be delivered for review and comment, as soon as reasonably practicable, all material pleadings, motions, and other documents (provided that any of the foregoing relating to the DIP Facilities or the Sale Transaction shall be deemed material) to be filed by the Debtors with the Bankruptcy Court or the Canadian Court to the Agent and its counsel. The Debtors shall provide (a) copies to the Agent and its counsel pleadings, motions, applications, judicial information, financial information, and other documents distributed by or on behalf of the Debtors to any Committee and (b) such other reports and information as the Agent may, from time to time, reasonably request.

6. NEGATIVE COVENANTS.

Parent and each Borrower covenant and agree that, until termination of all of the Commitments and payment in full of the Obligations, the Loan Parties will not and will not permit any of their Subsidiaries to do any of the following:

6.1 Indebtedness. Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

6.2 Liens. Create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

6.3 Restrictions on Fundamental Changes.

(a) Other than pursuant to the restructuring contemplated by the Restructuring Support Agreement or otherwise with the prior written consent of the Required Lenders, enter into

any merger, amalgamations, consolidation, reorganization, or recapitalization, or reclassify its Stock,

(b) Other than pursuant to the restructuring contemplated by the Restructuring Support Agreement or otherwise with the prior written consent of the Required Lenders, liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except for the liquidation or dissolution of non-operating Subsidiaries of Parent with nominal assets and nominal liabilities,

(c) Suspend or cease operating a substantial portion of its or their business.

6.4 Disposal of Assets. Other than Permitted Dispositions or transactions expressly permitted by Sections 6.11, convey, sell, lease, license, assign, transfer, or otherwise dispose of (or, unless the effectiveness of such agreement is conditioned upon consent thereto by the Required Lenders or the payment in full of the Obligations, enter into an agreement to convey, sell, lease, license, assign, transfer, or otherwise dispose of) any assets of Parent's or its Subsidiaries.

6.5 Change Name. Change its or any of its Subsidiaries' name, organizational identification number, jurisdiction of organization, or organizational identity; provided, however, that Parent or its Subsidiaries may change its name upon at least 10 days prior written notice to Agent of such change.

6.6 Nature of Business. Make any change in the nature of its or their business as described in the definition of Permitted Business.

6.7 Prepayments and Amendments.

(a) optionally or voluntarily prepay, redeem, defease, purchase or otherwise voluntarily acquire any Indebtedness of Parent and its Subsidiaries, other than (A) the Obligations in accordance with this Agreement or the Existing Secured Obligations in accordance with the Existing Credit Agreement, or (B) Permitted Intercompany Advances and provided for greater certainty that the Borrowers and their Subsidiaries that are Loan Parties may make payments and repayments as between each other,

(b) make any payment on account of Indebtedness that has been contractually subordinated in right of payment to the Obligations, or

(c) Directly or indirectly, amend, modify, or change any of the terms or provisions of

(i) any agreement, instrument, document, indenture, or other writing evidencing or concerning Permitted Indebtedness other than (A) the Obligations in accordance with this Agreement or the Existing Secured Obligations in accordance with the Existing Credit Agreement, or (B) Permitted Intercompany Advances,

(ii) any Material Contract except to the extent that such amendment, modification, or change is approved by Required Lenders.

(iii) the Governing Documents of any Loan Party or any of its Subsidiaries.

6.8 Change of Control. Cause, permit, or suffer, directly or indirectly, any Change of Control.

6.9 Restricted Junior Payments. Make any Restricted Junior Payment; provided, however, that, so long as it is permitted by law, the following shall be permitted hereunder:

(a) Parent's Subsidiaries may make distributions to Parent for the sole purpose of allowing Parent to, and Parent shall use the proceeds thereof solely to make payments, to the extent that such payments are required in the ordinary course of business and relate directly to Parent and its Subsidiaries, or to services provided for or on behalf of Parent and its Subsidiaries, in each case that are required to be paid in cash, when due of (i) corporate franchise fees and taxes actually owed by Parent, (ii) legal and accounting and other professional fees and expenses actually incurred by Parent or its Subsidiaries, (iii) costs incurred to comply with Parent's and its Subsidiaries' reporting obligations under federal or state laws or as required to comply with the Loan Documents or the DIP Term Loan Agreement and related loan documents, and (iv) other customary corporate overhead expenses and other operations conducted by Parent, in each case, in the ordinary course of business;

(b) so long as Parent is permitted to make the payments permitted by this Section 6.9, Parent's Subsidiaries may make dividends or distributions to Parent for the purpose of permitting Parent to make such payments and Parent agrees to use the proceeds of such dividends or distributions solely for such purpose;

6.10 Accounting Methods. Modify or change its fiscal year or its method of accounting.

6.11 Investments; Controlled Investments.

(a) Except for Permitted Investments, directly or indirectly, make or acquire any Investment.

(b) Other than (i) an aggregate amount of not more than $100,000 at any one time, in the case of Parent and the other Loan Parties, (ii) [Reserved], (iii) amounts on deposit securing any Liens permitted under clauses (h), (i), (j), (q), (x), (y), (z), (aa), (bb), and (cc) of the definition of Permitted Liens, and (iv) controlled disbursement accounts that do not maintain cash balances, zero balance accounts and local terminal accounts which do not receive deposits, make, acquire, or permit to exist Permitted Investments consisting of cash, Cash Equivalents, or amounts credited to Deposit Accounts or Securities Accounts, in each case, of the Loan Parties, unless Parent or the applicable Loan Party and the applicable bank or securities intermediary have entered into Control Agreements with Agent governing such Permitted Investments in order to perfect (and further establish) Agent's Liens in such Permitted Investments. Except as otherwise provided in this Section 6.11(b), neither Parent nor the other Loan Parties shall establish or maintain any Deposit Account or Securities Account unless Agent shall have received a Control Agreement in respect of such Deposit Account or Securities Account.

6.12 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any transaction with any Affiliate of Parent or any of Subsidiary of Parent except for:

(a) any existing transactions (other than the payment of management, consulting, monitoring, or advisory fees) between Parent or its Subsidiaries, on the one hand, and any Affiliate of Parent or such Subsidiary, on the other hand, so long as such transactions (i) were fully disclosed to Agent prior to the consummation thereof, if they involve one or more payments by Parent or such Subsidiary in excess of $100,000 for any single transaction or series of related transactions, and (ii) were no less favorable, taken as a whole, to Parent or such Subsidiary, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate,

(b) so long as it has been approved by Parent's or such Subsidiary's board of directors (or comparable governing body) in accordance with applicable law, any existing indemnity provided for the benefit of directors (or comparable managers), officers, employees and agents of Parent or such Subsidiary,

(c) so long as it has been approved by Parent's or such Subsidiary's board of directors (or comparable governing body) in accordance with applicable law and the DIP Budget, the payment (and any agreement, plan or arrangement relating thereto) of reasonable compensation (including bonuses), severance, or employee benefit arrangements (including retirement, health, option, deferred compensation and other benefit plans) to employees, officers, and directors of Parent and its Subsidiaries in the ordinary course of business,

(d) any existing loans and advances existing as of the Petition Date to employees, directors, officers and consultants in the ordinary course of business in an aggregate principal amount not to exceed $500,000 at any time outstanding,

(e) transactions entered into solely between Loan Parties to the extent not otherwise prohibited hereunder,

(f) any agreement or arrangement described on Schedule 6.12, and

(g) transactions permitted by Section 6.3, Section 6.9, Section 6.11, or Section 6.14 or any Permitted Intercompany Advance.

6.13 Use of Proceeds. Use the proceeds of any loan made hereunder for any purpose other than in accordance with the applicable Budget (a) on the Interim Facility Effective Date, to (i) pay transactional fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby and (ii) repay the outstanding Existing Secured Obligations under the Existing Credit Agreement, and (b) thereafter, consistent with the terms and conditions hereof, for their lawful and permitted purposes; provided that (x) no part of the proceeds of the Loans will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors, (y) no part of the proceeds of any Loan or Letter of Credit will be used, directly or indirectly, to make any payments to a Sanctioned Entity or a Sanctioned Person, to fund any investments, loans or contributions in, or otherwise make such proceeds available to, a Sanctioned Entity or a

Sanctioned Person, to fund any operations, activities or business of a Sanctioned Entity or a Sanctioned Person, or in any other manner that would result in a violation of Sanctions by any Person, and (z) that no part of the proceeds of any Loan or Letter of Credit will be used, directly or indirectly, in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws.

6.14 Limitation on Issuance of Stock. Issue or sell or enter into any agreement or arrangement for the issuance and sale of any of its Stock, except pursuant to the Sale Transaction and, in each case, in compliance with DIP Budget.

6.15 [Reserved].

6.16 Repayment of Indebtedness. Except to the extent permitted hereunder, under the Financing Orders, the Canadian Supplemental Order, or under the DIP Budget, no Loan Party shall, without the express prior written consent of the Agent or pursuant to an order of the Bankruptcy Court or the Canadian Court after notice and a hearing, make any Pre-Petition Payment.

6.17 Compliance with DIP Budget. Except as otherwise provided herein or approved by the Agent (at the direction of the Required Lenders, in their sole discretion), the Loan Parties will not, and will not permit any Subsidiary thereof to, directly or indirectly, (a) use any cash, including the proceeds of any Advances, in a manner or for a purpose other than those permitted under this Agreement or contemplated by the Financing Orders or the DIP Budget or to pay professional fees payable under the Chapter 11 Cases or under the CCAA Proceedings, (b) violate the provisions of Section 7, (c) make any Pre-Petition Payment or application for authority to make any Pre-Petition Payment, other than those permitted by this Agreement, the Financing Orders or the DIP Budget (subject to Section 7(a)(ii)), (d) make or commit to make payments to critical vendors in each case as approved in writing by the Agent at the direction of the Required Lenders (other than those critical vendors set forth in the Financing Orders or in the DIP Budget, which shall not require prior approval) in respect of any pre-petition amount in excess of the amount included in the DIP Budget, (e) measured as of the end of each week, permit the aggregate cumulative amount of actual cash disbursements (in any event excluding disbursements for professional fees and expenses and restructuring expenses) as reported in the DIP variance reports delivered with respect to periods ending after the Petition Date through the end of such Variance Testing Period to exceed, by more than the applicable Permitted Variance, the aggregate cumulative corresponding amount forecast in the DIP Budget for the same such period, (f) measured as of the end of each Variance Testing Period, permit the aggregate cumulative amount of actual cash receipts (which shall exclude, for the avoidance of doubt, proceeds from borrowings of Advances) as reported in the DIP variance reports delivered with respect to periods ending after the Petition Date through the end of such Variance Testing Period to be less than, by more than the applicable Permitted Variance, the aggregate cumulative corresponding amount (which shall exclude, for the avoidance of doubt, proceeds from borrowings of Advances) forecast in the DIP Budget for the same such period, and (g) measured as of the end of each Variance Testing Period, permit the aggregate cumulative amount of actual net cash flow (in any event excluding from the calculation thereof disbursements for professional fees and expenses and restructuring expenses)

as reported in the DIP variance reports delivered with respect to periods ending after the Petition Date through the end of such Variance Testing Period to exceed, by more than the applicable Permitted Variance, the aggregate cumulative corresponding amount forecast in the DIP Budget for the same such period.

6.18 [Reserved].

6.19 DIP Order and DIP Recognition Orders; Administrative Expense Priority; Payments. The Debtors will not, and will not permit any of their Subsidiaries to:

(a) seek, consent to or suffer to exist at any time any modification, stay, vacation or amendment of the DIP Order or any DIP Recognition Order, except for modifications and amendments joined in or agreed to in writing by Agent in its sole discretion;

(b) seek the use of "Cash Collateral" (as defined in the DIP Order) in a manner inconsistent with the terms of the DIP Order or any DIP Recognition Order without the prior written consent of Agent;

(c) suffer to exist at any time a priority for any administrative expense or unsecured claim against any Loan Party (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expenses of the kind specified in Sections 105, 326, 328, 365, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code) or any other superpriority claim which is equal or superior to the priority of the Lenders or "Lenders" (as defined in the Existing Credit Agreement) in respect of the Obligations or Existing Secured Obligations, except for the amounts having a priority over the Obligations to the extent expressly set forth in the Loan Documents and acceptable to Agent in its sole discretion; and

(d) directly or indirectly seek, consent or suffer to exist at any time any Lien with priority over the Liens created by the Loan Documents or the Existing Loan Documents on any properties, assets or rights except to the extent set forth in the applicable DIP Order or DIP Recognition Order.

6.20 Restructuring Support Agreement. The Debtors will not, and will not permit any of their Subsidiaries to amend, modify or change in any manner that could reasonably be expected to be adverse to the interests of the Agent or Lenders, any term, condition or provision of the Restructuring Support Agreement, or terminate the Restructuring Support Agreement.

6.21 Applications Under the CCAA and BIA. Each Loan Party and its Subsidiaries acknowledges that its business and financial relationships with the Lenders are unique from its relationship with any other of its creditors. Each Loan Party and its Subsidiaries agrees that it shall not file any plan of compromise and arrangement under the CCAA or proposal under the *Bankruptcy and Insolvency Act (Canada)* (the "BIA"), or any plan of arrangement under any corporate statute, which provides for, or would permit, directly or indirectly, the Lenders to be classified with any other creditors of such Loan Party and its Subsidiaries for purposes of such plan of compromise and arrangement, proposal, plan or arrangement or otherwise.

6.22 Chapter 11 Modifications. Without the consent of the Required Lenders:

(a) seek, support, consent to or suffer to exist any modification, stay, vacation or amendment of any Financing Orders, the Sale Order or the order by the Canadian Court recognizing the Sale Order except for any modifications and amendments agreed to in writing by the Agent, in its sole discretion,

(b) seek the use of cash collateral in a manner inconsistent with the terms of the Financing Orders;

(c) incur, create, assume or suffer to exist or permit any claim or Lien against any Loan Party ranking pari passu with or senior to the claims and Liens of Agent and the Lenders hereunder, except for, and as provided in the Financing Orders, the DIP Term Loan Facility (and the Liens securing it), Senior Term Facility (and the Liens securing it), the Carve Out, the Administration Charge, the Adequate Protection Orders and any other applicable order of the Bankruptcy Court or the Canadian Court;

(d) file, assert, join, investigate, support, seek or prosecute any priority claims or administrative expense claims against the Loan Parties, except with respect to claims relating to this Agreement and the DIP Term Loan Facility;

(e) permit any order of the Bankruptcy Court which authorizes the return of any of the Loan Parties' property pursuant to Section 546(h) of the Bankruptcy Code;

(f) other than as permitted pursuant to the Initial Orders or the DIP Recognition Order, permit the entry of any order which grants prepayments of Indebtedness or "adequate protection";

(g) file, assert, join, investigate, support, seek or prosecute a sale or restructuring transaction other than the Sale Transaction in accordance with the Sale Motion and/or Bid Procedures;

(h) file, assert, join, investigate, support, seek or prosecute any order of the Bankruptcy Court or the Canadian Court contrary to this Agreement or the DIP Term Loan Agreement;

(i) (i) repay any pre-Petition Date Indebtedness or (ii) pay any Affiliates (other than any other Debtor), in each case, unless otherwise provided for in the applicable DIP Budget or Financing Orders; or

(j) file with the Bankruptcy Court or the Canadian Court a motion to approve or otherwise seek to assume, assign or reject any material executory contract.

7. FINANCIAL COVENANTS.

Each Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, the Debtors will comply with each of the following financial

covenants:

(a) **Variance Testing**.

(i) Permitted Receipt Variance. Borrower shall cause negative variances with respect to any Variance Testing Period in aggregate receipts (excluding Borrowings under this Agreement or borrowings under the DIP Term Loan Facility Agreement) not to exceed Permitted Receipt Variance. To the extent that the negative variance exceeds the Permitted Receipts Variance, for purposes of calculating compliance with this covenant, the dollar amount of the difference of the aggregate disbursements set forth in the DIP Budget for the applicable Variance Testing Period minus the actual reported aggregate disbursements (to the extent it is a positive number) will be added to the aggregate receipts for such Variance Testing Period.

(ii) Permitted Disbursement Variance. Borrower shall cause positive variances with respect to any Variance Testing Period in aggregate disbursements (excluding payments of the Term Loans or Loans under this Agreement and any professional fees payable under the Chapter 11 Cases and Recognition Proceedings) not to exceed Permitted Disbursement Variance. To the extent that the positive variance exceeds the Permitted Disbursement Variance, for purposes of calculating compliance with this covenant, the dollar amount of the difference of the actual reported aggregate receipts minus the aggregate receipts set forth in the DIP Budget for the applicable Variance Testing Period (to the extent it is a positive number) will be subtracted from the aggregate disbursements for such Variance Testing Period.

(iii) Variance Testing Period. The covenants set forth in clauses (i) and (ii) above will be tested each week (except as specified herein) as follows (1) commencing Friday August 16, 2019 for the two week period ending on that date, (2) on August 23, 2019 for the three week period ending on that date, (3) on August 30, 2019 for the four week period ending on that date, (4) there would be no testing on September 6, 2019, and (5) on September 13, 2019 for the two week period ending on that date and on each Friday thereafter (other than every fifth Friday on which date no testing will be conducted) for an increasing two, three, or four week period which testing period will re-set to a two week testing period every sixth week of testing (each such period a "Variance Testing Period").

(b) **Minimum Excess Availability**. The Debtors shall not permit Excess Availability on any date to be less than $5,000,000.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1 Payments. If Borrowers fail to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations, and such failure continues for a period of 3 Business Days, (b) all or any portion of the principal of the Obligations, or (c) any amount payable to the Issuing Lender in reimbursement of any drawing under a Letter of Credit;

8.2 Covenants. If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 3.6, 5.1, 5.2, 5.3 (solely if any Borrower is not in good standing in its jurisdiction of organization), 5.6, 5.7, 5.10, 5.11, or 5.13 through 5.22 of this Agreement, (ii) Sections 6 of this Agreement, (iii) Section 7 of this Agreement, or (iv) Section 6 of the Security Agreement;

(b) fails to perform or observe any covenant or other agreement contained in any of Sections 5.3 (other than if any Borrower is not in good standing in its jurisdiction of organization), 5.4, 5.5, 5.8, and 5.12 of this Agreement and such failure continues for a period of 10 days after the earlier of (i) the date on which such failure shall first become known to any senior officer of any Borrower or (ii) the date on which written notice thereof is given to Administrative Borrower by Agent; or

(c) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of 30 days after the earlier of (i) the date on which such failure shall first become known to any senior officer of any Borrower or (ii) the date on which written notice thereof is given to Administrative Borrower by Agent;

8.3 Judgments. If one or more judgments, orders, requirements to pay or awards for the payment of money involving an aggregate amount of $2,000,000, or more (except to the extent covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against Parent or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of 60 consecutive days at any time after the entry of any such judgment, order, or award during which (1) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (2) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

8.4 Bankruptcy, etc. If any Subsidiary that is not a Debtor (any such Subsidiary, an "Applicable Subsidiary") shall commence a voluntary case concerning itself under the Bankruptcy Code and such Applicable Subsidiary shall fail to become a Guarantor pursuant to Section 5.11 within 10 Business Days; or an involuntary case is commenced against an Applicable Subsidiary, and the petition is not controverted within 10 days, or is not dismissed within 45 days after the filing thereof, provided, however, that during the pendency of such period, each Lender shall be relieved of its obligation to extend credit hereunder; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of an Applicable Subsidiary, to operate all or any substantial portion of the business of an Applicable Subsidiary, commences any other proceeding (except the CCAA Proceedings) under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to an Applicable Subsidiary, or there is commenced against an Applicable Subsidiary any such proceeding (except the CCAA Proceedings) which remains undismissed for a period of 45 days after the filing thereof, or an Applicable Subsidiary is adjudicated insolvent or bankrupt; or any order of relief or other order

approving any such case or proceeding is entered; or an Applicable Subsidiary makes a general assignment for the benefit of creditors; or any action is taken by an Applicable Subsidiary for the purpose of effecting any of the foregoing;

8.5 [Reserved].

8.6 Restraint of Business. If Parent or any of its Subsidiaries: (a) is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of the business affairs of the Loan Parties, taken as a whole or (b) suffers any strike, walkout, lockout, work stoppage or other material labor dispute causing material cessation or material reduction in business operations, in each case, for more than 2 Business Days;

8.7 Default Under Other Agreements. If first arising after the Petition Date, (a) a default in one or more agreements to which a Loan Party or any of its Subsidiaries is a party with one or more third Persons relative to a Loan Party's or any of its Subsidiaries' Indebtedness involving an aggregate amount of $7,500,000 or more, and such default (after giving effect to any grace period therefor) (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder; (b) an event of default (after giving effect to any grace period therefor) in or an involuntary early termination of one or more Hedge Agreements to which a Loan Party or any of its Subsidiaries is a party; or (c) a default under the DIP Term Loan Facility; notwithstanding anything in this Section 8.7 to the contrary, to the extent a budget covenant (as set forth in Section 6.8 of the DIP Term Loan Agreement financial covenant "Event of Default" (as defined in the DIP Term Loan Agreement) is waived in accordance with the terms of the DIP Term Loan Agreement on or after the Closing Date, any such waiver shall automatically result in a waiver of any Event of Default under Section 8.7 hereof, solely to the extent Agent has not taken any enforcement action in respect of such Event of Default under Section 8.7 hereunder;

8.8 Representations, etc. If any warranty, representation, or certificate made herein or in any other Loan Document or delivered in writing to Agent or any Lender by any Loan Party in connection with this Agreement or any other Loan Document (other than projections and other forward-looking information, forward-looking pro formas, and general industry and economic information) proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

8.9 Guaranty. If the obligation of any Guarantor under the Guaranty or Canadian Guarantee is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement);

8.10 Security Documents. If the US Security Agreement, Canadian Security Agreement or Hypothecs or any other Loan Document that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected and, except to the extent of Permitted Liens which are permitted to be prior pursuant to the terms of any applicable Loan Document, first priority Lien on the Collateral covered thereby, except (a) as a result of a disposition of the

applicable Collateral in a transaction permitted under this Agreement, (b) with respect to Collateral the aggregate value of which, for all such Collateral, does not exceed at any time, $250,000, or (c) as the result of an action or failure to act on the part of Agent; or

8.11 Loan Documents. The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent) be declared to be null and void, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document.

8.12 ERISA. Excluding the matters disclosed on Schedule 8.12, (a) the institution by the PBGC, a Loan Party, or any ERISA Affiliate of steps to terminate a Benefit Plan or to organize, withdraw from or terminate from a Multiemployer Plan or (b) a contribution failure occurs with respect to any Plan sufficient to give rise to a lien under Section 303(k) of ERISA; or (c) the assets of a Loan Party or any ERISA Affiliate are encumbered as a result of security provided to a Benefit Plan pursuant to Section 412 of the IRC or Section 306 of ERISA in connection with a request for a minimum funding waiver or extension of the amortization period, or pursuant to Section 436 of the IRC; or (d) a Loan Party or an ERISA Affiliate fails to pay a PBGC premium with respect to a Pension Plan subject to Title IV of ERISA when due and it remains unpaid for more than 30 days thereafter; or (e) the occurrence of a Prohibited Transaction or Reportable Event with respect to a Plan; (f) the occurrence of a Canadian Pension Event or (g) a Loan Party or any of its ERISA Affiliates creates or permits the creation of any accumulated funding deficiency, whether or not waived; provided, however, that the events listed in clauses (a) through (f) shall not constitute an Event of Default unless the occurrence of any such event listed in clauses (a) through (f) above, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change;

8.13 Bankruptcy Matters.

(a) the Debtors fail to perform or deliver, as applicable, any Milestone by the time set forth in Section 5.20 of this Agreement;

(b) any of the Interim Order, the Final Order, the Canadian Initial Orders or the Canadian Final DIP Recognition Order is stayed, revised, revoked, remanded, rescinded, amended, reversed, vacated, or modified by the Bankruptcy Court or Canadian Court, as applicable, without the express prior written consent of the Agent (such consent to be given in its sole discretion);

(c) any Debtor shall file a pleading or other document seeking to modify or otherwise alter the Interim Order, the Final Order, the Canadian Initial Orders, the Canadian Final DIP Recognition Order, the Sale and Bidding Procedures Motion, the Bid Procedures Order, the order of the Canadian Court recognizing the Bid Procedures Order, the Sale Order, the order of the Canadian Court recognizing the Sale Order, or any Loan Document, or any of the transactions contemplated in any of the foregoing without the express prior written consent of the Agent (such consent to be given in its sole discretion);

(d) without the express prior written consent of the Agent, (i) an order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court (A) appointing a trustee under Section 1104 of the Bankruptcy Code, or an examiner with enlarged powers relating to the operation of the business of the Debtors, which appointment shall not have been reversed, stayed, or vacated within three days, or (B) terminating or shortening any Debtor's exclusive right to file and solicit acceptances for a plan of reorganization in the Chapter 11 Cases, or (ii) an order with respect to the Recognition Proceedings shall be entered by the Canadian Court (A) appointing any monitor, trustee, receiver, interim receiver, receiver and manager or other similar person in any Canadian proceeding under any Insolvency Laws, or an examiner with enlarged powers relating to the operation of the business of the Debtors pursuant to applicable Insolvency Laws (other than for the avoidance of doubt, the appointment of the Information Officer) or (B) terminating or shortening any Debtor's exclusive right to file and solicit acceptances for a plan of reorganization in the Chapter 11 Cases;

(e) (i) any Debtor shall attempt to invalidate, reduce or otherwise impair the liens and security interest of the Agent and Lenders, or otherwise in respect of the Obligations or Existing Secured Obligations, claims or rights against the Loan Parties or any of their Subsidiaries or to subject any Collateral to assessment or surcharge pursuant to Sections 105, 506(c), 552 or any other Section of the Bankruptcy Code or other applicable Insolvency Laws, (ii) any lien, security interest, or Superpriority Claim created by the Loan Documents, the Interim Order, the Final Order, the Canadian Initial Orders, or the Canadian Final DIP Recognition Order shall, for any reason, cease to be valid and enforceable, (iii) any action is commenced by any Debtor or any of their Subsidiaries that contests the extent, validity, perfection, enforceability, or priority of any of the liens and security interests of the Agent, Existing Agent, Lenders or Existing Lenders created by the Loan Documents, Existing Loan Documents, the Interim Order, the Final Order, the Canadian Initial Orders, or the Canadian Final DIP Recognition Order, (iv) any Debtor or any of their Subsidiaries challenges the extent, validity or priority of the Obligations or Existing Secured Obligations or the application of any payments or collections received by the Agent, the Lenders, the Existing Agent, or the Existing Lenders;

(f) without the express prior written consent of the Agent, (i) an order with respect to any of the Chapter 11 Cases or the Recognition Proceedings shall be entered by the Bankruptcy Court or the Canadian Court dismissing any of the Chapter 11 Cases or the Recognition Proceedings or converting any of the Chapter 11 Cases (or any case comprising part of any of the Chapter 11 Cases) to a case under chapter 7 of the Bankruptcy Code or a similar provision under another Insolvency Law, (ii) any Insolvency Proceeding with respect to the Loan Parties or their Subsidiaries other than the Recognition Proceedings shall be commenced in Canada, or (iii) the Debtors shall seek or request entry of any order to effect any of the events described in subclause (i) or (ii) of this paragraph;

(g) An order with respect to any of the Chapter 11 Cases or the Recognition Proceedings shall be entered without the express prior written consent of Agent, (i) to revoke, vacate, reverse, stay, modify, supplement or amend the Existing Credit Agreement, any Loan Document, any Existing Loan Document, the Interim Order, the Final Order, the Adequate Protection Orders, the Canadian Initial Orders, Canadian Final DIP Recognition Order or the transactions contemplated in any of the foregoing, (ii) to permit any administrative expense, claim

(now existing or hereafter arising, of any kind or nature whatsoever) to have priority equal or superior to the priority of the Agent, Existing Agent, Lenders and Existing Lenders in respect of the Existing Secured Obligations and Obligations (other than the Carve Out, the Administration Charge or the obligations pursuant to the DIP Term Loan Facility (subject to the terms of the Intercreditor Agreement)), (iii) to grant or to permit the grant of other super-priority liens or administrative expense claims (excluding the Administration Charge) with priority over or pari passu with the liens granted in connection with the DIP Facilities (excluding, for the avoidance of doubt, the Carve Out and except as contemplated in this Agreement or the Financing Orders), (d) to permit recovery from any portion of the Collateral (or from the Agent or any Lender) of any costs or expenses of preserving or disposing of Collateral under Sections 506(c) or 552(b) of the Bankruptcy Code (or otherwise);

(h) An application for any of the orders described in clause (g) above shall be made by any Loan Party or a Person other than the Loan Parties and the relief requested is not withdrawn, dismissed or denied within 5 days after filing or any Person obtains a final order against Agent for recovery from the Collateral (or from Agent or any Lender) of any costs or expenses of preserving or disposing of Collateral under Section 506(c) or 552(b) of the Bankruptcy Code;

(i) an order shall be entered by the Bankruptcy Court or the Canadian Court granting relief from the automatic stay in connection with the Chapter 11 Cases and the Recognition Proceedings to any party that affects the Loan Parties' property (including, without limitation, to permit foreclosure or enforcement on the Collateral) with a fair market value in excess of $500,000 without the written consent of the Agent;

(j) any plan of reorganization is filed by the Debtors or any other party that, or an order shall be entered by the Bankruptcy Court or issued by the Canadian Court confirming a reorganization plan in any of the Chapter 11 Cases or the Recognition Proceedings which, does not (i) contain a provision that all Obligations and all Existing Secured Obligations shall be paid in full in a manner satisfactory to the Agent on or before the effective date, or substantial consummation, of such plan and (ii) provide for the continuation of the liens and security interests granted to Agent and priorities until such plan effective date all Obligations and Existing Secured Obligations are paid in full;

(k) unless otherwise expressly agreed to in writing by Agent, a motion shall be filed by any Loan Party seeking authority, or an order shall be entered in any of the Chapter 11 Cases or the Recognition Proceedings, that (i) permits any Loan Party or any Subsidiary of any Loan Party to incur indebtedness secured by any claim under Bankruptcy Code Section 364(c)(1) or any corresponding provision under other applicable Insolvency Laws or by a Lien *pari passu* with or superior to the lien granted under the Loan Documents and the Existing Loan Documents and Bankruptcy Code Sections 364(c)(2) (or any corresponding provision under other applicable Insolvency Laws) unless (A) all of the Obligations and Existing Secured Obligations have been paid in full at the time of the entry of any such order, or (B) the Obligations and the Existing Secured Obligations are paid in full with such indebtedness, or (ii) permits any Loan Party or any Subsidiary of any Loan Party the right to use cash Collateral other than in accordance with the terms of the Financing Orders, unless all of the Obligations and Existing Secured Obligations shall have been paid in full;

(l) any motions in the Chapter 11 Cases or the Recognition Proceedings to sell Collateral or approve procedures regarding the same, or any orders of the Bankruptcy Court or Canadian Court approving or amending any of the foregoing, are not in form and substance acceptable to Agent;

(m) three Business Days after written notice to the Debtors of the failure by the Debtors to deliver to the Agent any of the documents or other written information required to be delivered pursuant to the Interim Order or Final Order (during which time the Loan Parties may cure) or any such documents or other written information shall contain a misrepresentation of a material fact when made so as to make the written information provided to the Agent and Lenders, taken as a whole, materially misleading;

(n) the failure by the Debtors to observe or perform any of the material terms or provisions contained in any Loan Document, any Existing Loan Document, or the Financing Orders;

(o) the entry of an order of the Bankruptcy Court or the Canadian Court granting any lien on or security interest in any of the Collateral that is *pari passu* with or senior to the DIP Liens held by the Agent on or as security interests in the Collateral, the Adequate Protection Liens, the Superpriority Claims or the Liens securing the Existing Secured Obligations, or the Loan Parties or any of their Subsidiaries shall seek or request (or support another party in the filing of) the entry of any such order;

(p) the Debtors' creating or permitting to exist any other Superpriority Claim which is *pari passu* with or senior to the claims of the Agent and the Lenders, the Adequate Protection Liens, the Superpriority Claims or the Pre-Petition Term Liens, except for the Permitted Priority Liens;

(q) the Debtors or any of their Subsidiaries using the proceeds of the Loans for any item other than in compliance with Section 6.13, or makes any Pre-Petition Payment, in each case except as agreed in writing in advance by the Agent;

(r) (i) Unless otherwise permitted by the terms of this Agreement or as consented to by the Lenders, any Loan Party shall have dissolved or liquidated or (ii) the suspension of the operation of all or substantially all of the business of the Loan Parties in the ordinary course for 2 consecutive Business Days;

(s) the consummation of a sale of all or substantially all of the Debtors' assets pursuant to Section 363 of the Bankruptcy Code, unless the proceeds of such sale are applied to the indefeasible payment in full the Obligations and Existing Secured Obligations (other than unasserted contingent indemnification Obligations) or otherwise applied in accordance with the DIP Order;

(t) any Debtor shall seek to sell any of its assets that are ABL Priority Collateral (as defined in the Intercreditor Agreement) outside the ordinary course of business, unless (i) the proceeds of such sale are used to indefeasibly pay the Obligations and Existing Secured

Obligations in full in cash unless such sale is consented to by the Agent, or (ii) such sale is pursuant to Bid Procedures approved by the Agent;

(u) (i) the payment of or granting adequate protection with respect to any Indebtedness that was existing prior to the Petition Date other than as expressly provided in the Interim Order or Final Order, as applicable, or the DIP Recognition Order, or as consented to by the Agent or (ii) except as provided in the Financing Orders, approving any settlement or other stipulation not approved by the Required Lenders with any pre-Petition Date secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor;

(v) (i) The payment of, or filing of a motion or other pleading (other than a Chapter 11 plan) by any Loan Party for authority to pay, any pre-Petition Date claim or administrative expense arising under Section 503(b)(9) of the Bankruptcy Code or the applicable section of the CCAA except as may be provided for or permitted under the Financing Orders, the Initial Orders, this Agreement, the DIP Term Loan Agreement or the current DIP Budget or consented to by Agent, or (ii) the entry of an order of the Bankruptcy Court or the Canadian Court granting any prepetition claim, including any carve out for administrative expenses, the status of an administrative expense claim or superpriority or pari passu administrative expense claim, senior to, or pari passu with, the claims in favor of the Lenders under the DIP Facilities, in each case, other than as permitted under the Loan Documents;

(w) the filing by the Loan Parties of a motion seeking approval of, or the confirmation of, a plan of reorganization or any sale or restructuring transaction other than the Sale Transaction or a plan satisfactory to the Required Lenders;

(x) Any order by the Bankruptcy Court or the Canadian Court shall be entered terminating or modifying the exclusivity right of any Loan Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code or the applicable section of the CCAA, without the prior written consent of the Required Lenders;

(y) any breach by any party to the to the Restructuring Support Agreement of its obligations under the Restructuring Support Agreement or the termination of the Restructuring Support Agreement for any reason;

(z) the termination, amendment or other modification of the Sale Transaction APA without the prior written consent of Agent;

(aa) the termination, modification, reduction, cancellation or other adverse change of terms or quantity of work under any agreement between any of the Loan Parties and any original equipment manufacturer customer, including, but not limited to General Motors Holdings, LLC, Ford Motor Company, and Toyota Motor Sales, U.S.A., Inc which may reasonably be expected to reduce consolidated revenues of the Loan Parties and their Subsidiaries on an annual basis by more than 10% compared to the most recent twelve-month operating period; or

(bb) the Permitted Variances under the DIP Budget are exceeded for any period of time.

9. RIGHTS AND REMEDIES.

9.1 Rights and Remedies. Upon the occurrence and during the continuation of an Event of Default, the Agent may, and, at the instruction of the Required Lenders, shall (in each case under clauses (a) through (e) by written notice to Administrative Borrower (such notice, a "Default Declaration" and the earliest date to occur of any such Default Declaration, the "Default Declaration Date")), in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, do any one or more of the following without first obtaining relief from the automatic stay under Section 362 of the Bankruptcy Code or the approval of the Bankruptcy Court:

(a) deliver notice to the Administrative Borrower of the Event of Default;

(b) (i) declare the principal of, and any and all accrued and unpaid interest and fees in respect of the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by each Borrower, and (ii) direct Borrowers to provide (and Borrowers agree that upon receipt of such notice Borrowers will provide) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations for drawings that may subsequently occur under issued and outstanding Letters of Credit;

(c) declare the Commitments terminated, reduced, or restricted whereupon the Commitments shall immediately be so terminated, reduced, or restricted together with (i) the obligation of any Lender hereunder to make Advances, (ii) the obligation of each Swing Lender to make Swing Loans, and (iii) the obligation of the Issuing Lender to issue Letters of Credit;

(d) declare a termination, reduction, or restriction on the ability of the Debtors to use any cash collateral (other than as set forth in clause (f) below);

(e) charge the Default Rate; and

(f) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents or applicable law, *provided that*, solely with respect to this clause (f), by no later than three (3) Business Days after the Default Declaration Date, the Debtors and/or any Committee shall be permitted to seek an emergency hearing before the Bankruptcy Court (which shall be sought on an expedited basis) solely to determine whether an Event of Default has occurred. If the Debtors and/or any Committee seek such an emergency hearing and such hearing is held, until such time as the Bankruptcy Court has ruled on whether an Event of Default has occurred, the Agent shall not be permitted to exercise its rights and remedies with respect to such Default Declaration or Event of Default. For the avoidance of doubt, if the Debtors and/or any Committee do not timely seek such an emergency hearing, the Agent or the Lenders shall be permitted to exercise all rights and remedies available under the Loan Documents or applicable law, including the right to foreclose on, or otherwise exercise rights and remedies with respect to

the Collateral or any portion thereof, and apply the proceeds thereof to the Obligations without first obtaining relief from the automatic stay under Section 362 of the Bankruptcy Code or the approval of the Bankruptcy Court. Notwithstanding the foregoing, neither the superpriority charge created by the Canadian Supplemental Order nor the Lien created by the Loan Documents of the Canadian Loan Parties may be enforced against the Canadian Collateral unless any leave of the Canadian Court required to enforce such superpriority charge or Lien has been obtained.

9.2 Remedies Cumulative. The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Initial Orders, the Second Day Orders, the Financing Orders, the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10. WAIVERS; INDEMNIFICATION.

10.1 Demand; Protest; etc. Each Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which such Borrower may in any way be liable.

10.2 The Lender Group's Liability for Collateral. Each Borrower hereby agrees that: (a) the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrowers.

10.3 Indemnification. Borrowers shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all documented and reasonable fees and out-of-pocket disbursements of attorneys, of outside counsel, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery, enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of Parent's and their Subsidiaries' compliance with the terms of the Loan Documents (provided, however, that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Lenders that do not involve any acts or omissions of any Loan Party and do not relate to any Lender acting in its capacity as Lender or in fulfilling the role of Lender under this Agreement, or (ii) disputes solely between or among

the Lenders and their respective Affiliates that do not involve any acts or omissions of any Loan Party and do not relate to any Lender acting in its capacity as Lender or in fulfilling the role of Lender under this Agreement; it being understood and agreed that the indemnification in this clause (a) shall extend to Agent (but not the Lenders) relative to disputes between or among Agent on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand, or (iii) any Taxes or any costs attributable to Taxes, which shall be governed by Section 16), (b) with respect to any actual or prospective investigation, litigation, or proceeding related to this Agreement, any other Loan Document, the making of any Loans or issuance of any Letters of Credit hereunder, or the use of the proceeds of the Loans or the Letters of Credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any Properties or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such Properties (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, no Borrower shall have any obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which any Borrower was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrowers with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

11. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to Borrowers or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to Borrowers: **JACK COOPER HOLDINGS CORP.**
1100 Walnut Street, Suite 2400
Kansas City, MO 64106
Attn: Chief Executive Officer and Chief Financial Officer
Email: mriggs@jackcooper.com
khaulotte@jackcooper.com

with copies to: **JACK COOPER HOLDINGS CORP.**

630 Kennesaw Due West Road
Kennesaw, GA 30152
Attn: Legal Department
Email: tciupitu@jackcooper.com

If to Agent: **WELLS FARGO CAPITAL FINANCE, LLC**
10 S. Wacker Drive, 13th Floor
Chicago, IL 60606
Attn: Scott Collins, Vice President
Fax No.: 312.332.0424

with copies to: **BUCHALTER, a Professional Corporation**
1000 Wilshire Boulevard, 15th Floor
Los Angeles, California 90017
Attn: Robert J. Davidson, Esq.
Fax No.: 213.630.5692

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

If any notice, disclosure or report is required to be delivered pursuant to the terms of this Agreement or any other Loan Document on a day that is not a Business Day, such notice, disclosure or report shall be deemed to have been required to be delivered on the immediately following Business Day.

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE.

(a) EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY COURT, THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED

BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE BANKRUPTCY COURT. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH HEREIN. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF AGENT AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF LOS ANGELES AND THE STATE OF CALIFORNIA, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(e) NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST THE AGENT, ANY SWING LENDER, ANY OTHER LENDER, ISSUING LENDER, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

(f) IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CLAIM AND THE WAIVER SET FORTH IN CLAUSE (C) ABOVE IS NOT ENFORCEABLE IN SUCH PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SUBCLAUSE (ii) BELOW, ANY CLAIM SHALL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE. VENUE FOR THE REFERENCE PROCEEDING SHALL BE IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING SET-OFF OR RECOUPMENT), (C) APPOINTMENT OF A RECEIVER, AND (D) TEMPORARY, PROVISIONAL, OR ANCILLARY REMEDIES

(INCLUDING WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS, OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO PARTICIPATE IN A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT WITH RESPECT TO ANY OTHER MATTER.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN 10 DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY SHALL HAVE THE RIGHT TO REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B). THE REFEREE SHALL BE APPOINTED TO SIT WITH ALL OF THE POWERS PROVIDED BY LAW. PENDING APPOINTMENT OF THE REFEREE, THE COURT SHALL HAVE THE POWER TO ISSUE TEMPORARY OR PROVISIONAL REMEDIES.

(iv) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE REFEREE SHALL DETERMINE THE MANNER IN WHICH THE REFERENCE PROCEEDING IS CONDUCTED INCLUDING THE TIME AND PLACE OF HEARINGS, THE ORDER OF PRESENTATION OF EVIDENCE, AND ALL OTHER QUESTIONS THAT ARISE WITH RESPECT TO THE COURSE OF THE REFERENCE PROCEEDING. ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS A COURT REPORTER AND A TRANSCRIPT IS ORDERED, A COURT REPORTER SHALL BE USED AND THE REFEREE SHALL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY THE COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND SHALL ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA.

(vi) THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH CALIFORNIA SUBSTANTIVE AND PROCEDURAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING MOTIONS FOR DEFAULT JUDGMENT OR

SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS OR HER DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW. THE REFEREE SHALL ISSUE A DECISION AND PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE, SECTION 644, THE REFEREE'S DECISION SHALL BE ENTERED BY THE COURT AS A JUDGMENT IN THE SAME MANNER AS IF THE ACTION HAD BEEN TRIED BY THE COURT. THE FINAL JUDGMENT OR ORDER FROM ANY APPEALABLE DECISION OR ORDER ENTERED BY THE REFEREE SHALL BE FULLY APPEALABLE AS IF IT HAS BEEN ENTERED BY THE COURT.

(vii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY. AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR OWN CHOICE, EACH PARTY HERETO KNOWINGLY AND VOLUNTARILY AND FOR THEIR MUTUAL BENEFIT AGREES THAT THIS REFERENCE PROVISION SHALL APPLY TO ANY DISPUTE BETWEEN THEM THAT ARISES OUT OF OR IS RELATED TO THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS.

13. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

13.1 Assignments and Participations.

(a) With the prior written consent of Agent, which consent of Agent shall not be unreasonably withheld, delayed or conditioned, and shall not be required in connection with an assignment to a Person that is a Lender or an Affiliate (other than individuals) of a Lender, any Lender may assign and delegate to one or more assignees (each, an "Assignee"; provided, however, that no Loan Party or Affiliate of a Loan Party shall be permitted to become an Assignee) that are Eligible Transferees all or any portion of the Obligations, the Commitments and the other rights and obligations of such Lender hereunder and under the other Loan Documents, in a minimum amount (unless waived by Agent) of $5,000,000 (except such minimum amount shall not apply to (x) an assignment or delegation by any Lender to any other Lender or an Affiliate of any Lender or (y) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least $5,000,000); provided, however, that Borrowers and Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Administrative Borrower and Agent by such Lender and the Assignee, (ii) such Lender and its Assignee have delivered to Administrative Borrower and Agent an Assignment and Acceptance and Agent has notified the assigning Lender of its receipt thereof in accordance with Section 13.1(b), and (iii) unless waived by Agent, the assigning Lender or Assignee has paid to Agent for Agent's separate account a processing fee in the amount of $3,500.

(b) From and after the date that Agent notifies the assigning Lender (with a copy to Borrowers) that it has received an executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to

the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, however, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Borrower or the performance or observance by any Borrower of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) (i) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, however, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other

Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decreases the amount or postpones the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, (v) no participation shall be sold to a natural person, (vi) no participation shall be sold to a Loan Party or an Affiliate of a Loan Party, and (vii) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrowers, the Collections of Parent or its Subsidiaries, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(ii) Each Participant shall be entitled to additional payments from the Borrowers pursuant to Section 16.1 as if such Participant were a Lender (and subject to the requirements and limitations imposed on such Lender with respect to such additional payments) if such Participant is treated as the beneficial owner for U.S. income Tax purposes (or other applicable Tax purposes) of the portion of the Loan with respect to which a participation is made. Each Originating Lender shall be entitled to continue receiving additional payments from the Borrowers pursuant to Section 16.1 with respect to any Loan notwithstanding the fact that such Originating Lender has assigned a participation in such Loan to a Participant if such Originating Lender is treated as the beneficial owner for U.S. income Tax purposes (and other applicable Tax purposes) of the portion of the Loan with respect to which a participation is made.

(iii) Each Originating Lender shall maintain, as a non-fiduciary agent of the Borrowers, a register (the "Participant Register") as to the participations granted and

transferred under Section 13.1(e)(i) containing the same information specified in Section 2.3(g) on the Register as if each Participant were a Lender. Notwithstanding anything in the Agreement to the contrary, any participation made pursuant to Section 13.1(e)(i) shall be effective only upon appropriate entries with respect thereto being made in the Participant Register. This Section 13.1(e)(iii) shall be construed so that the Loans are at all times maintained in "registered form" within the meanings of Sections 163(f), 871(h)(2) and 881(c)(2) of the IRC and any related regulations (and any successor provisions).

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to Parent and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24 or the Bank of Canada, and such Federal Reserve Bank or the Bank of Canada, as applicable may enforce such pledge or security interest in any manner permitted under applicable law.

(h) Any other provision in this Agreement notwithstanding, unless an Event of Default has occurred or is continuing, without the written consent of the Parent in its sole discretion, neither Allied System Holdings, Inc., The ComVest Group, ComVest Investment Partners III, LP, Spectrum, Black Diamond, Yucaipa nor any of their Affiliates shall be permitted to become an Assignee or a Participant hereunder.

(i) no assignment of Canadian Advances or Canadian Revolver Commitments may be made to a Person that cannot (directly or through an Applicable Designee) lend to the Canadian Borrowers in the Applicable Currency.

(j) if applicable, any assignment of any portion of a Lender's Domestic Revolver Commitment or Domestic Advances shall be accompanied by proportionate assignment of such Lender's Canadian Revolver Commitment or Canadian Advances.

(k) if applicable, any assignment of any portion of a Lender's Canadian Revolver Commitment or Canadian Advances shall be accompanied by a proportionate assignment of such Lender's Domestic Commitment or Domestic Advances.

13.2 Successors. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that no Borrower may assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to

Section 13.1 and, except as expressly required pursuant to Section 13.1 and subject to such assignment being recorded in the Register, no consent or approval by any Borrower is required in connection with any such assignment.

14. AMENDMENTS; WAIVERS.

14.1 Amendments and Waivers.

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than Bank Product Agreements or the Fee Letter), and no consent with respect to any departure by any Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by:

(i) all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(A) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,

(B) other than as permitted by Section 15.11, release Agent's Lien in and to any of the Collateral,

(C) amend, modify, or eliminate the definition of "Required Lenders" or "Pro Rata Share",

(D) except as contemplated by the Intercreditor Agreement, contractually subordinate any of Agent's Liens,

(E) other than in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release any Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by any Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents,

(F) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i) or (ii),

(G) amend, modify, or eliminate any of the provisions of Section 13.1(a) to permit a Loan Party or an Affiliate of a Loan Party to be permitted to become an Assignee, or

(H) amend, modify, or eliminate the definitions of: Domestic Borrowing Base, or Canadian Borrowing Base, or in each case, any of the defined terms (including

the definitions of Domestic Eligible Accounts, and Canadian Eligible Accounts) that are used in such definitions to the extent that any such change results in more credit being made available to Borrowers based upon the Borrowing Base, but not otherwise, or the definition of Maximum Revolver Amount, or change Section 2.1(c).

(ii) all of the Revolving Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(A) increase the amount of or extend the expiration date of any Revolver Commitment of any Lender or amend, modify, or eliminate the last sentence of Section 2.4(c),

(B) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document in respect of any extension of credit,

(C) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except (y) in connection with the waiver of applicability of Section 2.6(c) (which waiver shall be effective with the written consent of the Required Lenders), and (z) that any amendment or modification of defined terms used in the financial covenants in this Agreement shall not constitute a reduction in the rate of interest or a reduction of fees for purposes of this clause (C)),

(b) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive (i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and Borrowers (and shall not require the written consent of any of the Lenders), and (ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders,

(c) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Lender, or any other rights or duties of Issuing Lender under this Agreement or the other Loan Documents, without the written consent of Issuing Lender, Agent, Borrowers, and the Required Lenders,

(d) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lender, or any other rights or duties of Swing Lender under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Agent, Borrowers, and the Required Lenders,

(e) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or

obligations of any Borrower, shall not require consent by or the agreement of any Loan Party, and (ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender.

14.2 Replacement of Certain Lenders.

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) any Lender makes a claim for compensation under Section 16, then Borrowers or Agent, upon at least 5 Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Holdout Lender") or any Lender that made a claim for compensation (a "Tax Lender") with one or more Replacement Lenders, and the Holdout Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Holdout Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including (i) all interest, fees and other amounts that may be due in payable in respect thereof, and (ii) an assumption of its Pro Rata Share of participations in the Letters of Credit). If the Holdout Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or and on behalf of the Holdout Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Holdout Lender or Tax Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender or Tax Lender, as applicable, hereunder and under the other Loan Documents, the Holdout Lender or Tax Lender, as applicable, shall remain obligated to make the Holdout Lender's or Tax Lender's, as applicable, Pro Rata Share of Advances, and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of participations in such Letters of Credit.

14.3 No Waivers; Cumulative Remedies. No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by each Borrower of any provision of

this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. AGENT; THE LENDER GROUP.

15.1 Appointment and Authorization of Agent.

(a) Each Lender hereby designates and appoints WFCF as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (i) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, the Collections of Parent and its Subsidiaries, and related matters, (ii) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (iii) make Advances, for itself or on behalf of Lenders, as provided in the Loan Documents, (iv) exclusively receive, apply, and distribute the Collections of Parent and its Subsidiaries as provided in the Loan Documents, (v) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the Collections of

Parent and its Subsidiaries, (vi) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Parent or its Subsidiaries, the Obligations, the Collateral, the Collections of Parent and its Subsidiaries, or otherwise related to any of same as provided in the Loan Documents, and (vii) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

(b) Hypothecary Representative. For greater certainty, and without limiting the powers of Agent, each Lender and each Bank Product Provider hereby irrevocably constitutes Agent as the hypothecary representative within the meaning of Article 2692 of the CCQ in order to hold hypothecs and security granted by any Loan Party on property pursuant to the laws of the Province of Québec in order to secure obligations of any Loan Party hereunder and under the other Loan Documents. The execution by Agent, acting as hypothecary representative prior to this Agreement of any deeds of hypothec or other security documents is hereby ratified and confirmed.

(c) Ratification of Hypothecary Representative by Successors and Assignees, Etc. The constitution of Agent as hypothecary representative shall be deemed to have been ratified and confirmed by each Person accepting an assignment of, a participation in or an arrangement in respect of, all or any portion of the rights and obligations of any Lender or Bank Product Provider under this Agreement by the execution of an assignment, including an Assignment and Assumption or other agreement pursuant to which it becomes such assignee or participant, and by each successor Agent by the compliance with such formalities pursuant to which it becomes a successor Agent under this Agreement.

(d) Rights, Etc. of Hypothecary Representative. Agent acting as hypothecary representative shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favor of Agent in this Agreement, which shall apply mutatis mutandis to Agent acting as hypothecary representative. In the event of the resignation of Agent (which shall include its resignation as the hypothecary representative as contemplated in Section 15.1(b) and appointment of a successor Agent under this Agreement, such successor Agent shall also act as the hypothecary representative, as contemplated by Section 15.1(b).

15.2 Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3 Liability of Agent. None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by Parent or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any

other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Parent or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Providers) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of Parent or its Subsidiaries.

15.4 Reliance by Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrowers or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Providers).

15.5 Notice of Default or Event of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or any Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, however, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6 Credit Decision. Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of Parent and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a

Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers. Each Lender also represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to any Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

15.7 Costs and Expenses; Indemnification. Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from payments or proceeds of the (x) Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses and (y) Canadian Collateral received by Agent to reimburse Agent for such out-of-pocket costs and expenses attributable solely to Canadian Obligations, in each case prior to the distribution of any amounts to Lenders (or Bank Product Providers). In the event Agent is not reimbursed for such costs and expenses by Parent or its Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable share thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so to the extent required hereunder) from and against any and

all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make an Advance or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8 Agent in Individual Capacity. WFCF and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Parent and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though WFCF were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, WFCF or its Affiliates may receive information regarding Parent or Subsidiaries or Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Parent or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include WFCF in its individual capacity.

15.9 Successor Agent. Agent may resign as Agent upon 30 days (10 days if an Event of Default has occurred and is continuing) prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Administrative Borrower (unless such notice is waived by Borrowers) and without any notice to the Bank Product Providers. If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Administrative Borrower (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Agent for the Lenders (and the Bank Product Providers). If, at the time that Agent's resignation is effective, it is acting as the Issuing Lender or each Swing Lender, such resignation shall also operate to effectuate its resignation as the Issuing Lender or each Swing Lender, as applicable, and it shall automatically be relieved of any further obligation to issue Letters of Credit, to cause the Underlying Issuer to issue Letters of Credit, or to make Swing Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and with (so long as no Event of Default has occurred and is continuing) the consent of Administrative Borrower (such consent not to be unreasonably withheld, delayed, or conditioned), a successor Agent. If Agent has materially breached or failed to perform any material provision

of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrowers (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

15.10 Lender in Individual Capacity. Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Parent and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Parent or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Parent or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11 Collateral Matters.

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Borrowers of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrowers certify to Agent that the sale or disposition is permitted under Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which no Borrower or its Subsidiaries owned any interest at the time Agent's Lien was granted nor at any time thereafter, (iv) constituting property leased or licensed to a Borrower or its Subsidiaries under a lease or license that has expired or is terminated in a transaction permitted under this Agreement, or (v) in connection with a credit bid or purchase authorized under this Section 15.11. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the

instruction of the Required Lenders, to (a) consent to, credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code or other applicable law, (b) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, the PPSA or other applicable law, or (c) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any other sale or foreclosure conducted or consented to by Agent in accordance with applicable law in any judicial action or proceeding or by the exercise of any legal or equitable remedy. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders and the Bank Product Providers shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the Collateral that is the subject of such credit bid or purchase) and the Lenders and the Bank Product Providers whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the Collateral that is the subject of such credit bid or purchase (or in the Stock of the any entities that are used to consummate such credit bid or purchase), and (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such credit bid or purchase and in connection therewith Agent may reduce the Obligations owed to the Lenders and the Bank Product Providers (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or Borrowers at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, however, that (1) anything to the contrary contained in any of the Loan Documents notwithstanding, Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in Agent's opinion, could expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly released) upon (or obligations of Borrowers in respect of) any and all interests retained by any Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Each Lender further hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to irrevocably authorize) Agent, at its option and in its sole discretion, to subordinate any Lien granted to or held by Agent under any

Loan Document to the holder of any Permitted Lien on such property if such Permitted Lien secures Permitted Purchase Money Indebtedness, the 2016 Solus Term Indebtedness, the 2018 Solus Term Indebtedness, or the Senior Term Indebtedness. In connection with any termination or release that is authorized pursuant to this Section 15.11, Agent shall promptly (i) execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release and (ii) deliver to the Loan Parties any portion of such Collateral so released that is in the possession of Agent.

(b) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) (i) to verify or assure that the Collateral exists or is owned by Parent or its Subsidiaries or is cared for, protected, or insured or has been encumbered, (ii) to verify or assure that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, (iii) to verify or assure that any particular items of Collateral meet the eligibility criteria applicable in respect thereof, (iv) to impose, maintain, increase, reduce, implement, or eliminate any particular reserve hereunder or to determine whether the amount of any reserve is appropriate or not, or (v) to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise expressly provided herein.

(c) This Section 15.11 shall be subject in all respects to the provisions of the Intercreditor Agreement.

15.12 Restrictions on Actions by Lenders; Sharing of Payments.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to Parent or its Subsidiaries or any deposit accounts of Parent or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in

immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, however, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13 Agency for Perfection. Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code or any applicable Canadian securities transfer legislation can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14 Payments by Agent to the Lenders. All payments to be made by Agent to the Lenders (or Bank Product Providers) shall be made by bank wire transfer of immediately available funds in the Applicable Currency pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15 Concerning the Collateral and Related Loan Documents. Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

15.16 Audits and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report respecting Parent or its Subsidiaries (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any audit or examination will inspect only specific information regarding Parent and its Subsidiaries and will rely significantly upon Parent's and its Subsidiaries' books and records, as well as on representations of each Borrower's personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Parent and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing: (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by Parent or any Subsidiary of Parent to Agent that has not been contemporaneously provided by Parent or its Subsidiaries to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Parent or its Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of such Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Parent or its Subsidiaries, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to any Borrower a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17 Several Obligations; No Liability. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall

confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

16. WITHHOLDING TAXES.

16.1 Payments. All payments made by any Borrower hereunder or under any other Loan Document will be made without setoff, counterclaim, or other defense. In addition, except as otherwise provided in this Section 16.1, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes, and in the event any deduction or withholding of Taxes is required, (a) if such Taxes are Indemnified Taxes, the sum payable to Lenders shall be increased as may be necessary so that after making all required deductions or withholding for Indemnified Taxes, Lenders receive an amount equal to the sum they would have received had no such deductions or withholding been made, provided that Borrowers shall not be required to increase any such amounts payable to Lenders if the increase in such amount payable results from Agent's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction); (b) if such Taxes are Excluded Taxes, the sum payable to Lenders shall not be increased, (c) Borrowers shall make such deductions or withholding and the amount deducted or withheld shall be treated as paid to the relevant Lender for all purposes under this Agreement and the other Loan Documents, and (d) Borrowers will furnish to Agent as promptly as possible after the date the payment of any such Indemnified Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by Borrowers. Borrowers agree to pay any present or future stamp, value added or documentary Taxes or any other excise or property Taxes that arise from any payment made hereunder or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Loan Document. For the purposes of this Section 16, the term "Lender shall include a Participant. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations.

16.2 Exemptions.

(a) If a Lender is entitled to claim an exemption or reduction from United States withholding Tax, such Lender agrees with and in favor of Agent, to deliver to Agent and the Borrowers one of the following before receiving its first payment under this Agreement:

(i) if such Lender is entitled to claim an exemption from United States withholding Tax pursuant to the portfolio interest exception, (A) a statement of the Lender, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the

IRC, (II) a 10% shareholder of any Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to any Borrower within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN or Form W-8IMY (with proper attachments);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding Tax under a United States Tax treaty, a properly completed and executed copy of IRS Form W-8BEN;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding Tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender is entitled to claim that interest paid under this Agreement is exempt from United States withholding Tax because such Lender serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (with proper attachments); or

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding Tax.

(b) Each Lender shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and shall promptly notify Agent and the Borrowers of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a Lender claims an exemption from withholding Tax in a jurisdiction other than the United States, such Lender agrees with and in favor of Agent, to deliver to Agent any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding Tax before receiving its first payment under this Agreement, but only if such Lender is legally able to deliver such forms, provided, however, that nothing in this Section 16.2(c) shall require a Lender to disclose any information that it deems to be confidential (including without limitation, its Tax returns). Each Lender shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent and the Borrowers of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender claims exemption from, or reduction of, withholding Tax and such Lender sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender, such Lender agrees to notify Agent and Borrowers of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender. To the extent of such percentage amount, Agent will treat such Lender's documentation provided pursuant to Section 16.2(a) or 16.2(c) as no longer valid. With respect to

such percentage amount, such Participant or Assignee shall provide documentation, pursuant to Section 16.2(a) or 16.2(c), if applicable. Each Borrower agrees that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

16.3 Reductions.

(a) If a Lender or a Participant is subject to an applicable withholding Tax, Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any payment to such Lender or such Participant an amount equivalent to the applicable withholding Tax. If the forms or other documentation required by Section 16.2(a) or 16.2(c) are not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding Tax.

(b) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold Tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding Tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as Tax or otherwise, including penalties and interest, and including any Taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

16.4 Refunds. If Agent or a Lender determines, in its sole discretion, that it has received a refund of any Indemnified Taxes to which Borrowers have paid additional amounts pursuant to this Section 16, so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to Borrowers (but only to the extent of payments made, or additional amounts paid, by Borrowers under this Section 16 with respect to Indemnified Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that Borrowers, upon the request of Agent or such Lender, agree to repay the amount paid over to Borrowers (plus any penalties, interest or other charges, imposed by the relevant Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent hereunder) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority.

Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any Lender to make available its Tax returns (or any other information which it deems confidential) to any Borrower or any other Person.

16.5 Excluded Taxes. For the avoidance of doubt, no Borrower shall be required to pay any additional amount under this Agreement or under any other Loan Document with respect to Taxes if such Taxes are Excluded Taxes.

17. GENERAL PROVISIONS.

17.1 Effectiveness. This Agreement shall be binding and deemed effective when executed by each Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof following entry of the Interim Order and the Canadian Initial Orders.

17.2 Section Headings. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3 Interpretation. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or any Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5 Bank Product Providers. Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting; provided that no provision of any Loan Document shall be construed to give any Bank Product Provider a right to consent to any amendment, modification or waiver or action contemplated by any Loan Document. Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents; it being understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts

are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the relevant Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the relevant Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Any Borrower may obtain Bank Products from any Bank Product Provider, although no Borrower is required to do so. Each Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

17.6 Debtor-Creditor Relationship. The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7 Counterparts; Electronic Execution. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

17.8 Revival and Reinstatement of Obligations. If any member of the Lender Group or any Bank Product Provider repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such member of the Lender Group or such Bank Product Provider in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document or any Bank Product Agreement, because the payment, transfer, or the incurrence of the obligation so satisfied

is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because such member of the Lender Group or Bank Product Provider elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such member of the Lender Group or Bank Product Provider elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys fees of such member of the Lender Group or Bank Product Provider related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist and (ii) Agent's Liens securing such liability shall be effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) Agent's Liens shall have been released or terminated or (B) any provision of this Agreement shall have been terminated or cancelled, Agent's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability.

17.9 Confidentiality.

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding Parent and its Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers), provided that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Administrative Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrowers pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information, in Agent's or such Lender's reasonable judgment, as applicable, as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrowers, (vi) in connection with the Chapter 11 Cases and as otherwise requested or required by any Governmental Authority pursuant to any subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by

Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement, provided that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information either subject to the terms of this Section 17.9 or pursuant to confidentiality requirements substantially similar to those contained in this Section 17.9 (and such Person may disclose such Confidential Information to Persons employed or engaged by them as described in clause (i) above), (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that, prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than any Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrowers with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Agent may disclose information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services or in its marketing or promotional materials with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos, and other insignia of Borrowers and the Loan Parties and the Total Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of the Agent.

(c) Each Loan Party agrees that Agent may make materials or information provided by or on behalf of Loan Parties hereunder (collectively, "Borrower Materials") available to the Lenders by posting the communications on IntraLinks, SyndTrak or a substantially similar secure electronic transmission system (the "Platform"). The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of the Borrower Materials, or the adequacy of the Platform and expressly disclaims liability for errors or omissions in the communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by Agent in connection with the Borrower Materials or the Platform. In no event shall Agent or any of the Agent-Related Persons have any liability to the Loan Parties, any Lender or any other person for damages of any kind, including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Loan Party's or Agent's transmission of communications through the Internet, except to the extent the liability of such person is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such person's gross negligence or willful misconduct. Each Loan Party further agrees that certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time filed with the SEC as not containing any

material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

17.10 Lender Group Expenses. Borrowers agree to pay any and all Lender Group Expenses on the earlier of (a) the first day of each month or (b) the date on which demand therefor is made by Agent and agrees that its obligations contained in this Section 17.10 shall survive payment or satisfaction in full of all other Obligations.

17.11 Survival. All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent, the Issuing Lender, or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated.

17.12 Patriot Act. Each Lender that is subject to the requirements of the Patriot Act hereby notifies Borrowers that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender to identify each Borrower in accordance with the Patriot Act. In addition, Agent and each Lender shall have the right to periodically conduct due diligence on all Loan Parties, their senior management and key principals and legal and beneficial owners. Each Loan Party agrees to cooperate in respect of the conduct of such due diligence and further agrees that the reasonable costs and charges for any such due diligence by Agent shall constitute Lender Group Expenses hereunder and be for the account of Borrowers.

17.13 Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof. The foregoing to the contrary notwithstanding, all Bank Product Agreements, if any, are independent agreements governed by the written provisions of such Bank Product Agreements, which will remain in full force and effect, unaffected by any repayment, prepayments, acceleration, reduction, increase, or change in the terms of any credit extended hereunder, except as otherwise expressly provided in such Bank Product Agreement.

17.14 Jack Cooper Transport as Agent for Borrowers. Each Borrower hereby irrevocably appoints Jack Cooper Transport as the borrowing agent and attorney-in-fact for all Borrowers (the "Administrative Borrower") which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (a) to provide Agent with all notices with respect to the Advances and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and the other Loan Documents (and any notice or instruction provided by Administrative Borrower shall be deemed to be given by Borrowers hereunder and shall bind each Borrower), (b) to receive notices and instructions from members of the Lender Group (and any notice or instruction provided by any member of the Lender Group to the Administrative Borrower in accordance with the terms hereof shall be deemed to have been given to each Borrower), (c) to enter into Bank Product Provider Agreements on behalf of Borrowers and their Subsidiaries, and (d) to take such action as the Administrative Borrower deems appropriate on its behalf to obtain the Advances and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and Collateral in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Lender Group shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce the Lender Group to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Borrower or by any third party whosoever, arising from or incurred by reason of (i) the handling of the Loan Account and Collateral of Borrowers as herein provided, or (ii) the Lender Group's relying on any instructions of the Administrative Borrower**,** except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this Section 17.14 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be.

17.15 [Reserved].

17.16 Intercreditor Agreement. Agent and each Lender hereunder, by its acceptance of the benefits provided hereunder, (a) consents to the subordination of Liens provided for in the Intercreditor Agreement, (b) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Intercreditor Agreement and (c) authorizes and instructs the Agent to enter into the Intercreditor Agreement on behalf of each Lender. Agent and each Lender hereby agree that the terms, conditions and provisions contained in this Agreement are subject to the Intercreditor Agreement and, in the event of a conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.

17.17 Acknowledgment and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

17.18 Canadian Anti-Terrorism Laws.

(a) Each Loan Party acknowledges that, pursuant to the Canadian Anti-Terrorism Laws, Agent and Lenders may be required to obtain, verify and record information regarding each Loan Party, its respective directors, authorized signing officers, direct or indirect shareholders or other Persons in control of such Loan Party, and the transactions contemplated hereby. Each Loan Party shall promptly provide all such information, including supporting documentation and other evidence, as may be reasonably requested by Agent or any Lender, or any prospective assignee or participant of Agent or a Lender, in order to comply with any applicable Canadian Anti-Terrorism Laws, whether now or hereafter in existence.

(b) If Agent has ascertained the identity of any Canadian Loan Party or any authorized signatories of any Canadian Loan Party for the purposes of Canadian Anti-Terrorism Laws, then Agent:

(i) shall be deemed to have done so as an agent for each Canadian Lender and this Agreement shall constitute a "written agreement" in such regard between each Canadian Lender and Agent within the meaning of the applicable Canadian Anti-Terrorism Laws; and

(ii) shall provide to each Canadian Lender, copies of all information obtained in such regard without any representation or warranty as to its accuracy or completeness.

Notwithstanding the preceding sentence and except as may otherwise be agreed in writing, each Canadian Lender agrees that Agent has no obligation to ascertain the identity of the Canadian Loan Parties or any authorized signatories of the Canadian Loan Parties on behalf of any Canadian Lender, or to confirm the completeness or accuracy of any information it obtains from any Canadian Loan Party or any such authorized signatory in doing so.

17.19 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to Agent or any Lender from any Loan Party in the Agreement Currency, such Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to Agent or any Lender in such currency, Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Loan Party (or to any other Person who may be entitled thereto under applicable law).

17.20 Borrowing Base Certificate; Electronic Delivery. The Parties to this Agreement acknowledge and agree that the delivery of a completed Borrowing Base Certificate without the signature of the Borrower though the Agent's electronic platform or portal, by such other electronic method as may be approved by the Agent from time to time, in its sole discretion, or by such other electronic input of information necessary to calculate the Domestic Borrowing Base or Canadian Borrowing Base, as applicable, as may be approved by the Agent from time to time, in its sole discretion, shall in each case be deemed to satisfy the obligation of the Borrower to deliver such Borrowing Base Certificate to the Agent in accordance with the provisions of this Agreement, with the same legal effect as if such Borrowing Base Certificate had been manually executed by the Borrower and delivered to the Agent.

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

PARENT:

JACK COOPER VENTURES, INC.,
a Delaware corporation

By: _____
Title:
Name:

DOMESTIC BORROWERS:

JACK COOPER HOLDINGS CORP.,
a Delaware corporation

By: _____
Title:
Name:

AUTO HANDLING CORPORATION,
a Delaware corporation

By: _____
Title:
Name:

JACK COOPER LOGISTICS, LLC,
a Delaware limited liability company

By: _____
Title:
Name:

JACK COOPER TRANSPORT COMPANY, INC.,
a Delaware corporation

By: _____
Title:
Name:

JACK COOPER CT SERVICES, INC.,
a Delaware corporation

By: _____
Title:
Name:

AXIS LOGISTIC SERVICES, INC.,
a Delaware corporation

By: _____
Title:
Name:

JACK COOPER RAIL AND SHUTTLE, INC.,
a Delaware corporation

By: _____
Title:
Name:

CTEMS, LLC,
a California limited liability company

By: _____
Name: _____
Title: _____

NORTH AMERICA AUTO TRANSPORTATION CORP.,
a Delaware corporation

By: _____
Title:
Name:

CANADIAN BORROWERS:

JACK COOPER TRANSPORT CANADA INC.,
a corporation organized under the federal laws of Canada

By: _____
Title:
Name:

JACK COOPER CANADA 1 LIMITED PARTNERSHIP,
a partnership organized under the laws of the Province of Ontario, by its general partner,
JACK COOPER CANADA GP 1 INC.,
a corporation organized under the laws of the Province of Ontario

By: _____
Title:
Name:

JACK COOPER CANADA 2 LIMITED PARTNERSHIP,
a partnership organized under the laws of the Province of Ontario, by its general partner,
JACK COOPER CANADA GP 2 INC.,
a corporation organized under the laws of the Province of Ontario

By: _____
Title:
Name:

[Signatures continue next page]

WELLS FARGO CAPITAL FINANCE, LLC,
a Delaware limited liability company, as Agent and as a Lender

By: _____
Title:
Name:

WELLS FARGO CAPITAL FINANCE CORPORATION CANADA,
as Canadian Lender

By: _____
Title:
Name:

FIFTH THIRD BANK,
as a Lender

By:_____
Title:_____
Name:_____

Schedule 1.1

As used in the Agreement, the following terms shall have the following definitions:

"2016 Solus Term Credit Agreement" means that certain Amended and Restated Credit Agreement, dated as of the Second Amendment Effective Date, by and among 2016 Solus Term Loan Agent, the lenders party thereto (the "2016 Solus Term Lenders"), and Jack Cooper Ventures, whereby the 2016 Solus Term Lenders have made term loans to Jack Cooper Ventures in an initial principal amount not to exceed $41,000,000, as the same may be amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced, from time to time, in whole or in part, in one or more agreements, including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case, as and to the extent permitted by this Agreement and the Intercreditor Agreement.

"2016 Solus Term Facility" means the credit facility under the 2016 Solus Term Credit Agreement.

"2016 Solus Term Indebtedness" means Indebtedness incurred by Jack Cooper Ventures or any of its Subsidiaries under the 2016 Solus Term Facility.

"2016 Solus Term Lenders" has the meaning ascribed to such term in the definition of 2016 Solus Term Credit Agreement.

"2016 Solus Term Loan Agent" means Wilmington Trust, National Association or any of its successors, assigns or replacements, in its capacity as administrative agent and collateral agent under the 2016 Solus Term Credit Agreement and the 2016 Solus Term Loan Documents.

"2016 Solus Term Loan Documents" means the "Loan Documents" (or comparable term) as defined in the 2016 Solus Term Loan Credit Agreement.

"2018 Solus Term Credit Agreement" means that certain Amended and Restated Credit Agreement dated as of the Second Amendment Effective Date, by and among the lenders party there to from time to time (the "2018 Solus Term Lenders"), the 2018 Solus Term Loan Agent, Jack Cooper Ventures, and the guarantors signatory thereto, whereby the 2018 Solus Term Lenders have made term loans to Jack Cooper Ventures in an initial principal amount not to exceed $261,625,000, as the same may be amended, restated, modified, supplemented, extended, renewed, refunded, replaced or refinanced, from time to time, in whole or in part, in one or more agreements, including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case, as and to the extent permitted by this Agreement and the Intercreditor Agreement.

"2018 Solus Term Indebtedness" means Indebtedness incurred by Jack Cooper Ventures or any of its Subsidiaries under the 2018 Solus Term Facility.

"2018 Solus Term Loan Agent" means Wilmington Trust, National Association, as collateral and administrative agent for the 2018 Solus Term Lenders, and any of its successors or assigns in either such capacity.

"2018 Solus Term Loan Documents" means the "Loan Documents" (or comparable term) as defined in the 2018 Solus Term Credit Agreement.

"2018 Solus Term Lenders" has the meaning ascribed to such term in the definition of 2018 Solus Term Credit Agreement.

"Account" means an account (as that term is defined in the Code, or, to the extent applicable, the PPSA).

"Account Debtor" means any Person who is obligated on an Account, chattel paper, or a general intangible.

"Accounting Changes" means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions).

"Acquisition" means (a) the purchase or other acquisition by a Person or its Subsidiaries of all or substantially all of the assets of (or any division or business line of) any other Person, or (b) the purchase or other acquisition (whether by means of a merger, amalgamation, consolidation, or otherwise) by a Person or its Subsidiaries of all or substantially all of the Stock of any other Person.

"Additional Documents" has the meaning specified therefor in Section 5.12 of the Agreement.

"Adequate Protection Liens" has the meaning specified therefor in the applicable DIP Order.

"Adequate Protection Orders" means all orders entered by the Bankruptcy Court pertaining to adequate protection.

"Administration Charge" has the meaning set forth in the Canadian Supplemental Order.

"Administrative Borrower" has the meaning specified therefor in Section 17.14 of the Agreement.

"Advances" means a Domestic Advance or a Canadian Advance as the context requires

"Affected Lender" has the meaning specified therefor in Section 2.13(b) of the Agreement.

"Affiliate" means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the

management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, for purposes of the definition of Eligible Accounts and Section 6.12 of the Agreement: (a) any Person which owns directly or indirectly 10% or more of the Stock having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

"Agent" has the meaning specified therefor in the preamble to the Agreement.

"Agent-Related Persons" means Agent, together with its Affiliates, officers, directors, employees, attorneys, advisors and agents.

"Agent's Account" means Agent's Canadian Account (CAD), Agent's Canadian Account (Dollars), or Agent's Domestic Account, as the context requires.

"Agent's Applicable Canadian Account" means Agent's Canadian Account (CAD) or Agent's Canadian Account (Dollars), as the context requires.

"Agent's Canadian Account (CAD)" means the Deposit Account of Agent identified on Schedule A-1 to the Agreement as the Agent's Canadian Account (CAD) (or such other Deposit Account of Agent that has been designated as such, in writing, by Agent to Canadian Borrowers and the Lenders).

"Agent's Canadian Account (Dollars)" means the Deposit Account of Agent identified on Schedule A-1 to the Agreement as the Agent's Canadian Account (Dollars) (or such other Deposit Account of Agent that has been designated as such, in writing, by Agent to Canadian Borrowers and the Lenders).

"Agent's Canadian Liens" means the Liens granted by Parent or its Subsidiaries to the Agent under the Loan Documents and securing the Canadian Obligations.

"Agent's Domestic Account" means the Deposit Account of Agent identified on Schedule A-1 to the Agreement as the Agent's Domestic Account (or such other Deposit Account of Agent that has been designated as such, in writing, by Agent to Domestic Borrowers and the Lenders).

"Agent's Domestic Liens" means the Liens granted by Parent or its Domestic Subsidiaries to Agent under the Loan Documents and securing the Domestic Obligations.

"Agent's Liens" means the Agent's Canadian Liens or Agent's Domestic Liens as the context requires.

"Agreement" means the Credit Agreement to which this Schedule 1.1 is attached.

"Anti-Corruption Laws" means the FCPA, the U.K. Bribery Act of 2010, as amended, and all other applicable laws and regulations or ordinances concerning or relating to bribery, money

laundering or corruption in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business.

"Anti-Money Laundering Laws" means the applicable laws or regulations in any jurisdiction in which any Loan Party or any of its Subsidiaries or Affiliates is located or is doing business that relates to money laundering, any predicate crime to money laundering, or any financial record keeping and reporting requirements related thereto.

"Applicable Currency" means (a) Dollars or (b) CAD, as the context requires.

"Applicable Designee" means any office, branch or Affiliate of a Canadian Lender designated thereby from time to time with the consent of Agent (which such consent shall not be unreasonably withheld) to fund any Canadian Advances. As of the Interim Facility Effective Date, the Applicable Designees of each Canadian Lender are set forth on Schedule C-1 to the Agreement (which schedule may be updated from time to time upon written notice by any Canadian Lender to Agent). For all purposes of the Agreement, any designation of an Applicable Designee by a Canadian Lender shall not affect such Canadian Lender's rights and obligations with respect to its Canadian Revolver Commitment and the Loan Parties, the other Canadian Lenders and Agent shall continue to deal solely and directly with such Canadian Lender in connection with such Canadian Lender's rights and obligations under the Agreement and the other Loan Documents, except as otherwise expressly provided in the Agreement.

"Applicable Margin" means, as of any date of determination and with respect to Base Rate Loans, LIBOR Rate Loans or Canadian CDOR Rate Loans, as applicable, the applicable margin set forth in the following table:

Applicable Margin Relative to Base Rate Loans (the "Base Rate Margin")	Applicable Margin Relative to LIBOR Rate Loans (the "LIBOR Rate Margin") and to Canadian CDOR Rate Loans (the "Canadian CDOR Rate Margin")
2.50%	3.50%

"Applicable Unused Line Fee Percentage" means 0.250 percentage points.

"Application Event" means (a) the occurrence of a failure by Borrowers to repay all of the Obligations in full on the Maturity Date or any earlier date on which the Obligations become due and payable in full, or (b) the occurrence and continuance of an Event of Default and the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 2.4(b)(ii) of the Agreement.

"Assignee" has the meaning specified therefor in Section 13.1(a) of the Agreement.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1 to the Agreement.

"Authorized Person" has the meaning specified therefor in Section 2.3(b) of this Agreement. For the avoidance of doubt, the defined term "Authorized Person" shall also include any one of the individuals identified on Schedule A-2 to the Existing Credit Agreement, as such schedule may have been updated from time to time by written notice from Administrative Borrower to the Agent under the Existing Credit Agreement.

"Auto Handling Corporation" means Auto Handling Corporation, a Delaware corporation.

"Availability" means, as of any date of determination, the sum of (a) Domestic Availability at such time plus (b) Canadian Availability at such time.

"Axis Logistic Services" means Axis Logistic Services, Inc., a Delaware corporation.

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

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

"Bank Product Agreements" means the Domestic Bank Product Agreements or the Canadian Bank Product Agreements, as the context requires.

"Bank Product Collateralization" means , with respect to the Domestic Bank Product Obligations or the Canadian Bank Product Obligations, as applicable, providing cash collateral (pursuant to documentation reasonably satisfactory to Agent) in the Applicable Currency to be held by Agent for the benefit of the Bank Product Providers (other than the Hedge Providers) in an amount determined by Agent as sufficient to satisfy the reasonably estimated credit exposure with respect to the then existing Bank Product Obligations (other than Hedge Obligations).

"Bank Product Provider" means any Lender or any of its Affiliates, including each of the foregoing in its capacity, if applicable, as a Hedge Provider; provided, that no such Person (other than Wells Fargo or its Affiliates) shall constitute a Bank Product Provider with respect to a Bank Product unless and until Agent receives a Bank Product Provider Agreement from such Person (a) on or prior to the Interim Facility Effective Date (or such later date as Agent shall agree to in writing in its sole discretion) with respect to Bank Products provided on or prior to the Interim Facility Effective Date, or (b) on or prior to the date that is 10 days after the provision of such Bank Product to a Loan Party or its Subsidiaries (or such later date as Agent shall agree to in writing in its sole discretion) with respect to Bank Products provided after the Interim Facility Effective Date; provided further, that if, at any time, a Lender ceases to be a Lender under the Agreement (prior to payment in full of the Obligations), then, from and after the date on which it so ceases to be a Lender thereunder, neither it nor any of its Affiliates shall constitute Bank Product Providers and the obligations with respect to Bank Products provided by such former Lender or any of its Affiliates shall no longer constitute Bank Product Obligations.

"Bank Product Provider Agreement" means an agreement in substantially the form attached hereto as Exhibit B-2 to the Agreement, in form and substance satisfactory to Agent, duly executed by the applicable Bank Product Provider, the applicable Loan Parties, and Agent.

"Bank Product Reserve Amounts" means, the Domestic Bank Product Reserve Amount or the Canadian Bank Product Reserve Amount as the context requires.

"Bank Product Obligations" means the Domestic Bank Product Obligations or the Canadian Bank Product Obligations as the context requires.

"Bank Products" means the Domestic Bank Products or the Canadian Bank Products, as the context requires.

"Bankruptcy Code" has the meaning specified therefor in the Recitals.

"Bankruptcy Court" means the United States Bankruptcy Court for the Northern District of Georgia.

"Base Rate" means the Canadian Base Rate with respect to Base Rate Loans denominated in CAD and the Domestic Base Rate with respect to Base Rate Loans denominated in US Dollars.

"Base Rate Loan" means each portion of the Advances that bears interest at a rate determined by reference to the Base Rate.

"Base Rate Margin" has the meaning specified therefor in the definition of Applicable Margin.

"Benefit Plan" means a "defined benefit plan" (as defined in Section 3(35) of ERISA) (excluding any Multiemployer Plan) for which Parent or any of its Subsidiaries or ERISA Affiliates has been an "employer" (as defined in Section 3(5) of ERISA) within the past six years.

"Bid Procedures" means the bidding procedures approved by the Bankruptcy Court pursuant to the Bid Procedures Order.

"Bid Procedures Order" means an order in form and substance satisfactory to Agent, entered by the Bankruptcy Court approving, among other things, the Bid Procedures and the stalking horse bidder.

"Board of Directors" means, as to any Person, the board of directors (or comparable managers) of such Person or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"Board of Governors" means the Board of Governors of the United States Federal Reserve

"Borrower" and "Borrowers" means individually and collectively, the Canadian Borrowers and the Domestic Borrowers, as the context requires.

"Borrowing" means a Domestic Borrowing or a Canadian Borrowing, as the context requires.

"Borrowing Base Certificate" means a certificate in the form of Exhibit B-1.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the state of California, except that, if a determination of a Business Day shall relate to a LIBOR Rate Loan, the term "Business Day" also shall exclude any day on which banks are closed for dealings in Dollar deposits in the London interbank market. In addition, with respect to transactions conducted in Canada or by the Canadian Loan Parties, the term "Business Day" shall exclude any day on which banks in Toronto, Canada are closed for the purposes of making wire transfers or any other electronic transfer of funds.

"CAD Equivalent" means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in CAD as determined by Agent at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of CAD with Dollars.

"Canadian Advances" has the meaning specified therefor in Section 2.1(b) of the Agreement.

"Canadian Anti-Terrorism Laws" means the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws, whether within Canada or elsewhere, the Criminal Code (Canada), the United Nations Act (Canada), United Nations Al-Qaida and Taliban Regulations, the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism, and any similar laws in effect in Canada from time to time.

"Canadian Availability" means, as of any date of determination, the Dollar Equivalent amount that Canadian Borrowers are entitled to borrow as Canadian Advances under Section 2.1 of the Agreement (after giving effect to the then outstanding Canadian Revolver Usage).

"Canadian Bank Product" means any one or more of the following financial products or accommodations extended to a Canadian Loan Party or any Foreign Subsidiary of a Canadian Loan Party by a Bank Product Provider: (a) credit cards (including commercial credit cards (including so-called "procurement cards" or "p-cards")), (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) Cash Management Services, or (f) transactions under Hedge Agreements.

"Canadian Bank Product Agreements" means those agreements entered into from time to time by a Canadian Loan Party with a Bank Product Provider in connection with the obtaining of any of the Canadian Bank Products.

"Canadian Bank Product Obligations" means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by Canadian Loan Parties to any Bank Product Provider pursuant to or evidenced by a Canadian Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, (b) all Canadian Hedge Obligations, and (c) all amounts that

Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Canadian Bank Products provided by such Bank Product Provider to Canadian Loan Parties.

"Canadian Bank Product Reserve Amount" means, as of any date of determination, the amount of Dollar or CAD reserves that Agent has determined it is necessary or appropriate to establish (based upon the Bank Product Providers' reasonable determination of their credit exposure to Canadian Loan Parties in respect of Canadian Bank Product Obligations) in respect of Canadian Bank Products then provided or outstanding.

"Canadian Base Rate" means, for any day, a rate per annum equal to the greater of (a) the CDOR Rate existing on such day (which rate shall be calculated based upon an Interest Period of one (1) month), plus one (1) percentage point, and (b) the "prime rate" for Canadian Dollar commercial loans made in Canada as reported by Thomson Reuters under Reuters Instrument Code <CAPRIME=> on the "CA Prime Rate (Domestic Interest Rate) – Composite Display" page (or any successor page or such other commercially available service or source (including the Canadian Dollar "prime rate" announced by a major Schedule I bank under the Bank Act (Canada)) as Agent may designate from time to time), and, if any such reported or announced rate is below zero, then the rate determined pursuant to this clause (b) shall be deemed to be zero). Each determination of the Canadian Base Rate shall be made by Agent and shall be conclusive in the absence of manifest error.

"Canadian Base Rate Loan" means each portion of an Advance denominated in Canadian Dollars that bears interest at a rate determined by reference to the Canadian Base Rate.

"Canadian Borrower" and "Canadian Borrowers" have the respective meanings specified therefor in the preamble to the Agreement. On the Interim Facility Effective Date, the Canadian Borrowers consists of Jack Cooper Transport Canada Inc., a corporation organized under the federal laws of Canada, Jack Cooper Canada 1 Limited Partnership, a partnership organized under the laws of the Province of Ontario, and Jack Cooper Canada 2 Limited Partnership, a partnership organized under the laws of the Province of Ontario. After the Interim Facility Effective Date, Canadian Borrowers shall also consist of any parties that have executed a joinder to this Agreement as a Canadian Borrower.

"Canadian Borrowing" means a borrowing consisting of Canadian Advances made on the same day by the Canadian Lenders (or Agent on behalf thereof), or by Canadian Swing Lender in the case of a Canadian Swing Loan, or by Agent in the case of a Canadian Protective Advance.

"Canadian Borrowing Base" means, as of any date of determination, the amount calculated as follows:

(a) the result of:

(1) 85% of the amount of Canadian Eligible Accounts,

minus

(2) the amount, if any, of the Canadian Dilution Reserve,

minus

(b) The aggregate amount of reserves, if any, established by Agent under Section 2.1(d) of the Agreement with respect to the Canadian Borrowing Base.

"Canadian CDOR Rate Loan" means each portion of an Advance denominated in Canadian Dollars that bears interest at a rate determined by reference to the CDOR Rate.

"Canadian CDOR Rate Margin" has the meaning set forth in the definition of Applicable Margin.

"Canadian CDOR Rate Option" has the meaning specified therefor in Section 2.12(a) of the Agreement.

"Canadian Collateral" means Collateral of the Canadian Loan Parties.

"Canadian Court" has the meaning specified therefor in the recitals to this Agreement.

"Canadian Defined Benefit Pension Plan" means any Canadian Pension Plan which contains a "defined benefit provision" as defined in subsection 147.1(1) of the Income Tax Act (Canada).

"Canadian Deposit Accounts" means a Deposit Account of a Canadian Loan Party listed on Schedule 4.15 to the Agreement.

"Canadian Designated Account" means the Canadian Deposit Accounts (CAD and Dollars) of the Canadian Borrowers identified on Schedule D-1 to the Agreement (or such other Deposit Accounts of Canadian Borrowers located at Canadian Designated Account Bank that has been designated as such, in writing, by Administrative Borrower to Agent).

"Canadian Designated Account Bank" has the meaning specified therefor in Schedule D-1 to the Agreement (or such other bank that is located within Canada that has been designated as such, in writing, by Administrative Borrower to Agent).

"Canadian Dilution" means, as of any date of determination, a percentage, based upon the immediately prior 90 consecutive days, that is the result of dividing the Dollar Equivalent amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Canadian Borrowers' Accounts during such period, by (b) Canadian Borrowers' billings with respect to Accounts during such period.

"Canadian Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Canadian Eligible Accounts by 1 percentage point for each percentage point by which Canadian Dilution is in excess of 5%.

"Canadian Dollars" or "C$" or "CAD" means Canadian dollars.

"Canadian Eligible Accounts" means those Accounts created by any Canadian Borrower in the ordinary course of its business, that arise out of such Canadian Borrower's rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any audit performed by (or on behalf of) Agent from time to time after the Interim Facility Effective Date. In determining the amount to be included, Canadian Eligible Accounts shall be calculated net of customer deposits, unapplied cash, taxes, discounts, credits, allowances, and rebates. Canadian Eligible Accounts shall not include the following:

(a) (i) Accounts that the Account Debtor has failed to pay within the earlier of 90 days of original invoice date or 60 days of the due date, and (ii) Accounts with selling terms of more than 60 days,

(b) Accounts owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with respect to which the Account Debtor is an Affiliate of a Borrower or an employee or agent of a Borrower or any Affiliate of a Borrower,

(d) Accounts with respect to which the payment by the Account Debtor may be conditional,

(e) Accounts that are not payable in Dollars or Canadian Dollars,

(f) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in Canada or the United States, or (ii) is not organized under the laws of Canada or any province thereof or the United States or any state thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (y) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent, or (z) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Agent,

(g) Accounts with respect to which the Account Debtor is, (i) Canada or any department, agency, or instrumentality of Canada (exclusive of Accounts with respect to which Canadian Borrowers have complied, to the reasonable satisfaction of Agent, with the Financial Administration Act (Canada), as amended) or (ii) any province of Canada,

(h) Accounts with respect to which the Account Debtor is a creditor of a Borrower, has or has asserted a right of recoupment or setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of recoupment or setoff, or dispute,

(i) Accounts with respect to an Account Debtor whose total obligations owing to Borrowers exceed 70% (solely with respect to General Motors LLC and its affiliates, collectively), 50% (solely with respect to Ford Motor Company and its affiliates, collectively), 30% (solely with respect to Toyota Motor Sales, U.S.A., Inc., and its affiliates, collectively) or 15% (in all other cases) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, however, that each such percentage, as applied to a particular Account Debtor, is subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates; and provided further, however, that, in each case, the amount of Canadian Eligible Accounts that are excluded because they exceed any of the foregoing percentages shall be determined by Agent based on all of the otherwise Canadian Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(j) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which a Canadian Borrower has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(k) Accounts, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful by reason of the Account Debtor's financial condition,

(l) Accounts that are not subject to a valid and perfected first priority Agent's Lien,

(m) Accounts with respect to which the services giving rise to such Account have not been performed and billed to the Account Debtor,

(n) Accounts not governed by the laws of Canada or any province thereof or the United States or any state thereof,

(o) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity, or

(p) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by Canadian Borrowers of the subject contract for goods or services.

"Canadian Excess Availability" means, as of any date of determination, Canadian Availability minus the Dollar Equivalent of the aggregate amount, if any, of all trade payables of Canadian Borrowers and its Subsidiaries aged in excess of historical levels with respect thereto and all book overdrafts of Canadian Borrowers and its Subsidiaries in excess of historical practices with respect thereto, in each case, as determined by Agent in its Permitted Discretion.

"Canadian Final DIP Recognition Order" means an order of the Canadian Court in the Recognition Proceedings, which order shall be satisfactory in form and substance to the Agent, which order shall, *inter alia*, recognize and enforce the terms and conditions of the Final Order in Canada.

"Canadian Guarantee" means individually and collectively each guarantee, executed and delivered in accordance with the terms of this Agreement, by each Canadian Guarantor, in favor of Agent, for the ratable benefit of the Lender Group and Bank Product Providers, in each case, in form and substance reasonably satisfactory to Agent.

"Canadian Guarantor" means (i) each Subsidiary of Parent (other than a Canadian Borrower) incorporated in any legal jurisdiction of Canada and (ii) the Domestic Loan Parties.

"Canadian Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of any Canadian Loan Party arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

"Canadian Initial Orders" means, collectively, the Canadian Initial Recognition Order and the Canadian Supplemental Order.

"Canadian Initial Recognition Order" means an order of the Canadian Court, in form and substance satisfactory to the Agent, which order shall, *inter alia*, recognize the Chapter 11 Cases as "foreign main proceedings" under Part IV of the CCAA and grant an interim stay in Canada.

"Canadian Lender" means a Lender with a Canadian Revolver Commitment or that is holding outstanding Canadian Revolver Usage.

"Canadian Letter of Credit" means a letter of credit (as that term is defined in the Code) issued for the account of any Canadian Borrower pursuant to the terms of the Agreement.

"Canadian Letter of Credit Disbursement" means a payment made by Issuing Lender or Underlying Issuer pursuant to a Canadian Letter of Credit.

"Canadian Letter of Credit Exposure" means, as of any date of determination with respect to any Lender, such Lender's Pro Rata Share of the Canadian Letter of Credit Usage on such date.

"Canadian Letter of Credit Usage" means, as of any date of determination, the aggregate undrawn amount of all outstanding Canadian Letters of Credit.

"Canadian Loan Account" has the meaning specified therefor in Section 2.9 of the Agreement.

"Canadian Loan Party" means, collectively, (a) each Canadian Borrower, (b) each Canadian Guarantor organized under the laws of Canada or any province thereof, and (c) each other Person organized under the laws of Canada or any province thereof that at any time becomes a Canadian Loan Party under the Loan Documents; and "Canadian Loan Party" means any one of them.

"Canadian Maximum Revolver Amount" means the Dollar Equivalent of $5,000,000, decreased by the amount of reductions in the Canadian Revolver Commitments made in accordance with Section 2.4(c) of the Agreement.

"Canadian Obligations" means (a) all loans (including the Canadian Advances (inclusive of Canadian Protective Advances)), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), reimbursement or indemnification obligations with respect to Canadian Reimbursement Undertakings or with respect to Canadian Letters of Credit (irrespective of whether contingent), premiums, liabilities (including all amounts charged to the Canadian Loan Account pursuant to the Agreement), obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter), Lender Group Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), guaranties, covenants, and duties of any kind and description owing by any Canadian Loan Party pursuant to or evidenced by the Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that any Canadian Borrower is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, (b) all debts, liabilities, or obligations (including reimbursement obligations, irrespective of whether contingent) owing by any Canadian Borrower or any other Canadian Loan Party to an Underlying Issuer now or hereafter arising from or in respect of Canadian Underlying Letters of Credit, and (c) all Canadian Bank Product Obligations. Without limiting the generality of the foregoing, the Canadian Obligations of Canadian Borrowers under the Loan Documents include the obligation to pay (i) the principal of the Canadian Advances, (ii) interest accrued on the Canadian Advances, (iii) the amount necessary to reimburse the Issuing Lender for amounts paid or payable pursuant to Canadian Letters of Credit, (iv) Canadian Letter of Credit commissions, fees (including fronting fees) and charges, (v) Lender Group Expenses of any Canadian Loan Party, (vi) fees payable by any Canadian Loan Party under the Agreement or any of the other Loan Documents, (vii) indemnities and other amounts payable by any Canadian Loan Party under any Loan Document, and (viii) any liability for the Domestic Obligations arising by virtue of Section 2.15. Any reference in the Agreement or in the Loan Documents to the Canadian Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

"Canadian Overadvance" has the meaning specified therefor in Section 2.5 of the Agreement.

"Canadian Pension Event" shall mean (a) the termination in whole or in part of any Canadian Defined Benefit Pension Plan, (b) the merger of a Canadian Pension Plan, of which a Loan Party is the administrator or plan sponsor, with another pension plan, where either plan contains a defined benefit provision and has at any time been funded by a trust, (c) a material change in the contribution rates payable by a Canadian Borrower to a Canadian Pension Plan, (d) the receipt by any Canadian Borrower of any notice concerning liability arising from the withdrawal or partial withdrawal of any Canadian Borrower or any other party from a Canadian Pension Plan, (e) the occurrence of an event under the Income Tax Act (Canada) that could reasonably be expected to affect the registered status of any Canadian Pension Plan, (f) the receipt by any Canadian Borrower of any order or notice of intention to issue an order from the applicable pension standards regulator that could reasonably be expected to affect the registered status or

cause the termination (in whole or in part) of any Canadian Defined Benefit Pension Plan, (g) the receipt of notice by the administrator or the funding agent of any failure to remit contributions to a Canadian Pension Plan by the applicable Canadian Borrower, (h) the adoption of any amendment to a Canadian Pension Plan that would require the provision of security pursuant to applicable law, or (i) the receipt by any Canadian Borrower of notice of any other event or condition with respect to a Canadian Pension Plan that could reasonably be expected to result in liability of any Loan Party in excess of $2,000,000.

"Canadian Pension Plan" means a pension plan that is a "registered pension plan" (as defined in the Income Tax Act (Canada)) or that is required to be registered under, or is subject to, the Pension Benefits Act (Ontario) or other Canadian federal or provincial law with respect to pension benefits standards and that is maintained or contributed to by a Loan Party or any of its Subsidiaries for its Canadian employees or former employees, but does not include the Canada Pension Plan or the Quebec Pension Plan as maintained by the Government of Canada or the Province of Quebec, respectively.

"Canadian Priority Payables Reserves" means, without duplication, reserves (determined from time to time by Agent in its Permitted Discretion) representing: (a) the amount past due and owing by any Canadian Loan Party, or the accrued amount for which any Canadian Loan Party has an obligation to remit, to a Governmental Authority or other Person pursuant to any applicable law, rule or regulation, in respect of (i) goods and services taxes, sales taxes, employee income taxes, municipal taxes and other taxes payable or to be remitted or withheld; (ii) workers' compensation or employment insurance; (iii) vacation or holiday pay; (iv) Canada Pension Plan or other statutory pension plan contributions; (v) freight carrier fees and charges payable by the Canadian Loan Parties in excess of the amount available under the IO Load Brokers Trust to satisfy such fees and charges; and (vi) other like charges and demands to the extent that any Governmental Authority or other Person may claim a Lien, trust, deemed trust or other claim ranking or capable of ranking in priority to or pari passu with one or more of the Liens granted in the Loan Documents; and (b) the aggregate amount of any other liabilities of any Canadian Loan Party (i) in respect of which a Lien, trust or deemed trust has been or may be imposed on any Collateral to provide for payment, or (ii) in respect of unpaid or unremitted pension plan contributions, normal cost contributions or special payments under Canadian Pension Plans, or(iii) representing any unfunded liability, solvency deficiency or wind-up deficiency, whether or not due, with respect to a Canadian Pension Plan that is a Canadian Defined Benefit Pension Plan, or (iv) which are secured by a Lien, charge, right or claim on any Collateral or (v) in respect of the Administration Charge; in all cases, pursuant to any applicable law, rule or regulation only to the extent such Lien, trust, deemed trust, charge, right or claim ranks or, in the Permitted Discretion of Agent, is capable of ranking in priority to or pari passu with one or more of the Liens granted in the Loan Documents (such as claims by employees for unpaid wages and other amounts payable under the Wage Earner Protection Program Act (Canada)).

"Canadian Protective Advances" has the meaning specified therefor in Section 2.3(e)(i) of the Agreement.

"Canadian Reimbursement Undertaking" has the meaning specified therefor in Section 2.11(b)(i) of the Agreement.

"Canadian Revolver Commitment" means, with respect to each Canadian Lender, its Canadian Revolver Commitment, as the context requires, and, with respect to all Canadian Lenders, their Canadian Revolver Commitments, as the context requires, in each case as such Dollar amounts are set forth beside such Canadian Lender's name under the applicable heading on Schedule C-1 to the Agreement or in the Assignment and Acceptance pursuant to which such Canadian Lender became a Canadian Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Canadian Revolver Usage" means, as of any date of determination, the sum of (a) the amount of outstanding Canadian Advances, *plus* (b) the amount of the Canadian Letter of Credit Usage.

"Canadian Security Agreement" means a Canadian security agreement, dated as of even date with the Agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by each Canadian Loan Party to Agent.

"Canadian Supplemental Order" means an order of the Canadian Court, in form and substance satisfactory to Agent, which order shall, inter alia, grant a broad stay of proceedings, recognize the Interim Order, provide for a super priority charge over the Collateral of the Canadian Borrowers and Collateral located in Canada of the other Loan Parties in respect of the Agent's and Lenders' claims, and grant customary additional relief in the Recognition Proceedings.

"Canadian Swing Lender" means Wells Fargo Capital Finance Corporation Canada or any other Canadian Lender that, at the request of the Borrowers and with the consent of the Agent agrees, in such Lender's sole discretion, to become a Canadian Swing Lender under Section 2.3(c)(ii) of the Agreement.

"Canadian Swing Loan" has the meaning specified in Section 2.3(c)(ii) of the Agreement.

"Capital Expenditures" means, with respect to any Person for any period, the aggregate of all expenditures by such Person and its Subsidiaries during such period that are capital expenditures as determined in accordance with GAAP, whether such expenditures are paid in cash or financed, but excluding, without duplication (a) expenditures made during such period with the cash proceeds received from insurance for a casualty event and used to replace the asset subject to such event of loss (or reasonably similar thereto) within 270 days after the initial receipt of such monies, (b) with respect to the purchase price of assets that are purchased substantially contemporaneously with the trade-in of existing assets during such period, the amount that the gross amount of such purchase price is reduced by the credit granted by the seller of such assets for the assets being traded in at such time, (c) [Reserved], (d) expenditures made during such period to the extent made with the identifiable proceeds of an equity investment in Parent or any of its Subsidiaries which equity investment is made within 60 days of the making of the expenditure, and (e) expenditures during such period that, pursuant to a written agreement, are reimbursed by a third Person (excluding Parent or any of its Affiliates).

"Capitalized Lease Obligation" means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

"Carve Out" has the meaning set forth in the Interim Order or the Final Order, as applicable.

"Carve Out Account" has the meaning set forth in the DIP Order.

"Carve Out Trigger Notice" has the meaning set forth in the DIP Order.

"Cash Equivalents" means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 1 year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within 1 year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Rating Group ("S&P") or Moody's Investors Service, Inc. ("Moody's"), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody's, (d) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within 1 year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than $250,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than $250,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above, and (i) solely with respect to any Canadian Loan Party, substantially similar investments to those outlined in paragraphs (a) through (h) above of reasonably comparable credit quality deposited with or guaranteed by Canadian banks or other Canadian Persons of equivalent creditworthiness and denominated in Canadian Dollars or Dollars.

"Cash Management Services" means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant store value cards, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"CBA Term Sheet" means the term sheet attached as Exhibit 2 to the Restructuring Term Sheet (as defined in the Restructuring Support Agreement).

"CBAs" means individually and collectively, the collective bargaining agreements entered into with each of the labor unions representing employees of the Debtors which CBAs are consistent with the CBA Term Sheet, the Multiemployer Plan Term Sheet, and the RSA Term Sheet, as each was approved by Agent and Purchaser prior to the Petition Date.

"CCAA" means the *Companies' Creditors Arrangement Act (Canada)*, R.S.C. 1985, C-36, as amended.

"CCAA Proceedings" means the recognition proceedings pursuant to the CCAA before the Canadian Court.

"CCQ" means the Civil Code of Quebec, and, where applicable, the regulations promulgated thereunder.

"CDOR Rate" means the average rate per annum as reported on the Reuters Screen CDOR Page (or any successor page or such other page or commercially available service displaying Canadian interbank bid rates for Canadian Dollar bankers' acceptances as the Agent may designate from time to time, or if no such substitute service is available, the rate quoted by a Schedule I bank under the Bank Act (Canada) selected by Agent at which such bank is offering to purchase Canadian Dollar bankers' acceptances) as of 10:00 a.m. Eastern (Toronto) time on the date of commencement of the requested Interest Period, for a term, and in an amount, comparable to the Interest Period and the amount of the Canadian CDOR Rate Loan requested (whether as an initial Canadian CDOR Rate Loan or as a continuation of a Canadian CDOR Rate Loan or as a conversion of a Canadian Base Rate Loan to a Canadian CDOR Rate Loan) by Administrative Borrower or Canadian Borrowers in accordance with this Agreement (and, if any such reported rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero). Each determination of the CDOR Rate shall be made by Agent and shall be conclusive in the absence of manifest error.

"Central States Plan" means the Central States, Southeast and Southwest Areas Pension Plan.

"Certificate" means, with respect to a Vehicle, the certificate of title, vehicle permit or equivalent certificate or document, issued by the relevant Jurisdiction, evidencing ownership of such Vehicle.

"CFC" means (i) a controlled foreign corporation (as that term is defined in the IRC) and (ii) any Subsidiary which has no material assets other than Stock of one or more CFCs described in clause (i) above.

"Change in Law" means the occurrence after the date of the Agreement of: (a) the adoption or effectiveness of any law, rule, regulation, judicial ruling, judgment or treaty, (b) any change in any law, rule, regulation, judicial ruling, judgment or treaty or in the administration, interpretation, implementation or application by any Governmental Authority of any law, rule, regulation, guideline or treaty, or (c) the making or issuance by any Governmental Authority of any request, rule, guideline or directive, whether or not having the force of law; provided that notwithstanding anything in the Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection

therewith and (ii) all requests, rules, guidelines or directives concerning capital adequacy promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities shall, in each case, be deemed to be a "Change in Law," regardless of the date enacted, adopted or issued.

"Change of Control" means that (a) [reserved], (b) any "person" or "group" (within the meaning of Sections 13(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders, becomes the beneficial owner (as defined in Rules 13d-3 13d-5 under the Exchange Act, except that for purposes of this clause (b) such "person" or "group" or Permitted Holder shall be deemed to have "beneficial ownership" of all shares that any such person or group has the right to acquire by conversion or exercise of other securities, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 50%, or more, of the Stock of Parent having the right to vote for the election of members of the Board of Directors, (c) a majority of the members of the Board of Directors do not constitute Continuing Directors, (d) Parent fails to own and control, directly or indirectly, 100% of the Stock of each other Loan Party and of each other Subsidiary whose Stock is pledged by a Loan Party (other than pursuant to a transaction of a type permitted under Section 6.3 or Section 6.4 of the Agreement and other than any minority interest of any Foreign Subsidiary of Parent as required by law), or (e) a "Change of Control" as defined in the 2018 Solus Term Credit Agreement occurs.

"Chapter 11 Cases" has the meaning specified therefor in the Recitals.

"Closing Date" means August [__], 2019.

"Code" means the California Uniform Commercial Code, as in effect from time to time.

"Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by Parent or its Subsidiaries in or upon which a Lien is granted by such Person in favor of Agent or the Lenders under any of the Loan Documents.

"Collateral Access Agreement" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in Parent's or its Subsidiaries' books and records, Equipment, or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

"Collections" means *all* cash, checks, notes, instruments, and other items of payment (including insurance proceeds, cash proceeds of asset sales, rental proceeds, and tax refunds) paid or payable to a Loan Party.

"Commitment" means, with respect to each Lender, its Domestic Commitment or its Canadian Revolver Commitment as the context requires and, with respect to all Lenders, their Domestic Commitments or their Canadian Revolver Commitments as the context requires.

"Committee" means any statutory official committee of unsecured creditors appointed in the Chapter 11 Cases.

"Commodity Exchange Act" means the Commodity Exchange Act (7 U.S.C. § 1 et seq.) as amended from time to time and any successor statute.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 to the Agreement delivered by the chief financial officer of Administrative Borrower to Agent.

"Confidential Information" has the meaning specified therefor in Section 17.9(a) of the Agreement.

"Continuing Director" means (a) any member of the Board of Directors who was a director (or comparable manager) of Parent on the Petition Date, and (b) any individual who becomes a member of the Board of Directors after the Petition Date if such individual was approved, appointed or nominated for election to the Board of Directors by either the Permitted Holders or a majority of the Continuing Directors.

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by Parent or one of its Subsidiaries, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Controlled Account Agreement" has the meaning specified therefor in the US Security Agreement and the Canadian Security Agreement.

"Copyright Security Agreement" has the meaning specified therefor in the US Security Agreement.

"Covenant Liquidity" means, as of any time (i) cash and Cash Equivalents of the Loan Parties plus (ii) as of such time, Excess Availability after giving effect to minimum Excess Availability covenant plus (iii) as of such time, the principal amount of Term Loans available for borrowing under the DIP Term Loan Facility.

"CSPF Term Sheet" means the term sheet attached as Exhibit 4 to the Restructuring Term Sheet (as defined in the Restructuring Support Agreement).

"Daily Balance" means, as of any date of determination and with respect to any Obligation, the amount of such Obligation owed at the end of such day.

"Debtor" or "Debtors" has the meaning specified therefor in the Recitals.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

"Default Declaration" has the meaning specified therefor in Section 9.1.

"Default Declaration Date" has the meaning specified therefor in Section 9.1.

"Default Rate" has the meaning specified therefor in Section 2.6(c).

"Defaulting Lender" means any Lender that (a) has failed to make available to Agent amounts required pursuant to a Settlement or to make a required payment in connection with a Letter of Credit Disbursement within 2 Business Days of the date that it is required to do so under the Agreement, (b) has failed to fund any other amounts required to be funded by it under the Agreement within 2 Business Days of the date that it is required to do so under the Agreement unless such Lender notifies the Agent and Borrowers in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding of such amounts (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, (c) has notified any Borrower, Agent, or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under the Agreement, unless such writing relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) cannot be satisfied, (d) has made a public statement to the effect that it does not intend to comply with its funding obligations under the Agreement or under other agreements generally (as reasonably determined by Agent) under which it has committed to extend credit, unless such public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) cannot be satisfied, (e) failed, within 2 Business Days after written request by Agent, to confirm that it will comply with the terms of the Agreement relating to its obligations to fund any amounts required to be funded by it under the Agreement, (f) otherwise failed to pay over to Agent or any other Lender any other amount required to be paid by it under the Agreement on the date that it is required to do so under the Agreement, or (g) (i) becomes or is insolvent or has a parent company that has become or is insolvent, (ii) becomes the subject of a bankruptcy or Insolvency Proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or Insolvency Proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment, or (iii) becomes, or has a parent company that has become, the subject of a Bail-in Action.

"Defaulting Canadian Lender" means a Defaulting Lender that is a Canadian Lender.

"Defaulting Domestic Lender" means a Defaulting Lender that is a Domestic Lender.

"Defaulting Lender Rate" means (a) for the first 3 days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Advances that are Base Rate Loans (inclusive of the Base Rate Margin applicable thereto).

"Deposit Account" means any deposit account (as that term is defined in the Code) or any account maintained for the deposit of funds with a Canadian bank accepting funds for deposit in Canada.

"DIP Budget" has means the Initial DIP Budget or, after delivery of any Revised DIP Budget, the Revised DIP Budget.

"DIP ABL Facility" has the meaning specified therefor in the Recitals.

"DIP Facilities" means, collectively, the DIP ABL Facility and the DIP Term Loan Facility.

"DIP Liens" means the Liens and security interests granted to the Agent pursuant to the Loan Documents and approved by the DIP Order.

"DIP Motion" means the Debtors' motion for interim and final approval of the DIP Facilities, which shall be in form and substance acceptable to the Agent.

"DIP Order" means the Interim Order or the Final Order, or both, as applicable.

"DIP Recognition Order" means the Canadian Supplemental Order or Canadian Final DIP Recognition Order, or both, as applicable.

"DIP Term Loan Agreement" means that certain Debtor-in-Possession Credit Agreement, dated as of the date hereof, by and among the Parent, as Borrower, certain Subsidiaries of Parent, as guarantors, the lenders party thereto, and Wilmington Trust, National Association, as agent for the Lenders, as amended, restated, supplemented and otherwise modified from time to time.

"DIP Term Loan Facility" means the junior priority secured debtor-in-possession credit facility consisting of up to $15 million of term loans provided to Parent pursuant to the terms of the DIP Term Loan Agreement.

"Dollar Equivalent" means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in an Applicable Currency (other than Dollars), the equivalent amount thereof in Dollars as determined by Agent, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Applicable Currency. Unless otherwise specified herein, the Dollar Equivalent shall be determined as of the most recent Revaluation Date.

"Dollars" or "$" means United States dollars.

"Domestic Advances" has the meaning specified therefor in Section 2.1(a) of the Agreement.

"Domestic Availability" means, as of any date of determination, the Dollar amount that Domestic Borrowers are entitled to borrow as Domestic Advances under Section 2.1 of the Agreement (after giving effect to the then outstanding Domestic Revolver Usage).

"Domestic Bank Product" means any one or more of the following financial products or accommodations extended to Parent or its Domestic Subsidiaries by a Bank Product Provider: (a) credit cards (including commercial cards (including so-called "purchase cards", "procurement

cards" or "p-cards")), (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) Cash Management Services, or (f) transactions under Hedge Agreements.

"Domestic Bank Product Agreements" means those agreements entered into from time to time by Parent or its Domestic Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Domestic Bank Products.

"Domestic Bank Product Obligations" means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by Parent and its Domestic Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Domestic Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, (b) all Hedge Obligations, and (c) all amounts that Agent or any Domestic Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Domestic Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Domestic Bank Products provided by such Bank Product Provider to Parent or one of its Domestic Subsidiaries.

"Domestic Bank Product Reserve Amount" means, as of any date of determination, the Dollar amount of reserves that Agent has determined it is necessary or appropriate to establish (based upon the Bank Product Providers' reasonable determination of their credit exposure to Domestic Loan Parties in respect of Domestic Bank Product Obligations) in respect of Domestic Bank Products then provided or outstanding.

"Domestic Base Rate" means the greatest of (a) the Federal Funds Rate plus ½%, (b) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of 1 month and shall be determined on a daily basis), plus 1 percentage point, and (c) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate (and, if any such announced rate is below zero, then the rate determined pursuant to this clause (c) shall be deemed to be zero).

"Domestic Borrower and Domestic Borrowers" have the respective meanings specified therefor in the preamble to the Agreement. On the Interim Facility Effective Date, the Domestic Borrowers consist of Holdings, Jack Cooper Transport, Pacific Motor, Auto Handling Corporation, Jack Cooper Logistics, Axis Logistic Services, Jack Cooper Rail & Shuttle, and Jack Cooper CT Services. After the Interim Facility Effective Date, Borrowers shall also consist of any parties that have executed a joinder to this Agreement as a Borrower.

"Domestic Borrowing" means a borrowing consisting of Domestic Advances made on the same day by the Domestic Lenders (or Agent on behalf thereof), or by Domestic Swing Lender in the case of a Domestic Swing Loan, or by Agent in the case of a Domestic Protective Advance.

"Domestic Borrowing Base" means, as of any date of determination, the amount determined as follows:

(a) the result of:

(i) 85% of the amount of Domestic Eligible Accounts, *minus*

(ii) the amount, if any, of the Domestic Dilution Reserve, *minus*

(b) The aggregate amount of reserves, if any, established by Agent under Section 2.1(d) of the Agreement with respect to the Domestic Borrowing Base.

"Domestic Collateral" means, collectively, Collateral of the Domestic Loan Parties.

"Domestic Commitment" means, with respect to each Domestic Lender, its Domestic Revolver Commitment, and, with respect to all Domestic Lenders, their Domestic Revolver Commitments, in each case as such Dollar amounts are set forth beside such Domestic Lender's name under the applicable heading on Schedule C-1 to the Agreement or in the Assignment and Acceptance pursuant to which such Domestic Lender became a Domestic Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Domestic Designated Account" means the Deposit Account of Administrative Borrower identified on Schedule D-1 to the Agreement as the Domestic Designated Account (or such other Deposit Account of a Domestic Borrower located at Domestic Designated Account Bank that has been designated as such, in writing, by the Administrative Borrower to Agent).

"Domestic Designated Account Bank" has the meaning specified therefor in Schedule D-1 to the Agreement (or such other bank that is located within the United States that has been designated as such, in writing, by the Administrative Borrower to Agent).

"Domestic Dilution" means, as of any date of determination, a percentage, based upon the immediately prior 90 consecutive days, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Domestic Borrowers' Accounts during such period, by (b) Domestic Borrowers' billings with respect to Accounts during such period.

"Domestic Dilution Reserve" means, as of any date of determination, an amount sufficient to reduce the advance rate against Domestic Eligible Accounts by 1 percentage point for each percentage point by which Domestic Dilution is in excess of 5%.

"Domestic Eligible Accounts" means those Accounts created by any Domestic Borrower in the ordinary course of its business, that arise out of such Domestic Borrower's rendition of services, that comply with each of the representations and warranties respecting Domestic Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any audit performed by (or on behalf of) Agent from time to time after the Interim Facility Effective Date. In determining the amount to be included, Domestic Eligible Accounts shall be calculated net of customer deposits, unapplied cash, taxes, discounts, credits, allowances, and rebates. Domestic Eligible Accounts shall not include the following:

(a) (i) Accounts that the Account Debtor has failed to pay within the earlier of 90 days of original invoice date or 60 days of the due date, and (ii) Accounts with selling terms of more than 60 days,

(b) Accounts owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with respect to which the Account Debtor is an Affiliate of a Borrower or an employee or agent of a Borrower or any Affiliate of a Borrower,

(d) Accounts with respect to which the payment by the Account Debtor may be conditional,

(e) Accounts that are not payable in Dollars,

(f) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States or Canada, or (ii) is not organized under the laws of the United States or any state thereof, or Canada, or any province thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (y) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent, or (z) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Agent,

(g) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which Borrowers have complied, to the reasonable satisfaction of Agent, with the Assignment of Claims Act, 31 USC §3727), or (ii) any state of the United States,

(h) Accounts with respect to which the Account Debtor is a creditor of a Borrower, has or has asserted a right of recoupment or setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of recoupment or setoff, or dispute,

(i) Accounts with respect to an Account Debtor whose total obligations owing to Borrowers exceed 70% (solely with respect to General Motors LLC and its affiliates, collectively), 50% (solely with respect to Ford Motor Company and its affiliates, collectively), 30% (solely with respect to Toyota Motor Sales, U.S.A., Inc., and its affiliates, collectively) or 15% (in all other cases) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, however, that each such percentage, as applied to a particular Account Debtor, is subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates; and provided further, however, that, in each case, the amount of Domestic Eligible Accounts that are excluded because they exceed any of the foregoing percentages shall be determined by Agent based on all of the otherwise

Domestic Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

(j) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which a Domestic Borrower has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(k) Accounts, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful by reason of the Account Debtor's financial condition,

(l) Accounts that are not subject to a valid and perfected first priority Agent's Lien,

(m) Accounts with respect to which the services giving rise to such Account have not been performed and billed to the Account Debtor,

(n) Accounts with respect to which the Account Debtor is a Sanctioned Person or Sanctioned Entity, or

(o) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by Domestic Borrowers of the subject contract for goods or services.

"Domestic Excess Availability" means, as of any date of determination, (a) Domestic Availability minus the aggregate amount, if any, of all trade payables of Domestic Borrowers and their Subsidiaries aged in excess of historical levels with respect thereto and all book overdrafts of Domestic Borrowers and their Subsidiaries in excess of historical practices with respect thereto, in each case, as determined by Agent in its Permitted Discretion.

"Domestic Guarantor" means (a) each Domestic Subsidiary of Parent (other than a Domestic Borrower) and (b) each other Person that becomes a guarantor after the Interim Facility Effective Date pursuant to Section 5.11 of the Agreement.

"Domestic Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of any Domestic Loan Party arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

"Domestic Lender" means a Lender with a Domestic Commitment or that is holding outstanding Domestic Revolver Usage.

"Domestic Letter of Credit" means a letter of credit (as that term is defined in the Code) issued for the account of any Domestic Borrower pursuant to the terms of the Agreement.

"Domestic Letter of Credit Disbursement" means a payment made by Issuing Lender pursuant to a Domestic Letter of Credit.

"Domestic Letter of Credit Exposure" means, as of any date of determination with respect to any Lender, such Lender's Pro Rata Share of the Domestic Letter of Credit Usage on such date.

"Domestic Letter of Credit Usage" means, as of any date of determination, the aggregate undrawn amount of all outstanding Domestic Letters of Credit.

"Domestic Loan Account" has the meaning specified therefor in Section 2.9 of the Agreement.

"Domestic Loan Party" means any Domestic Borrower or any Domestic Guarantor.

"Domestic Obligations" means (a) all loans (including the Advances (inclusive of Protective Advances)), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), reimbursement or indemnification obligations with respect to Reimbursement Undertakings or with respect to Letters of Credit (irrespective of whether contingent), premiums, liabilities (including all amounts charged to the Loan Account pursuant to the Agreement), obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter), Lender Group Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), guaranties, covenants, and duties of any kind and description owing by any Loan Party pursuant to or evidenced by the Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that any Borrower is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, (b) all debts, liabilities, or obligations (including reimbursement obligations, irrespective of whether contingent) owing by any Borrower or any other Loan Party to an Underlying Issuer now or hereafter arising from or in respect of Underlying Letters of Credit, and (c) all Bank Product Obligations. Without limiting the generality of the foregoing, the Domestic Obligations of Borrowers under the Loan Documents include the obligation to pay (i) the principal of the Loans, (ii) interest accrued on the Loans, (iii) the amount necessary to reimburse the Issuing Lender for amounts paid or payable pursuant to Letters of Credit, (iv) Letter of Credit commissions, fees (including fronting fees) and charges, (v) Lender Group Expenses, (vi) fees payable by any Loan Party under the Agreement or any of the other Loan Documents, and (vii) indemnities and other amounts payable by any Loan Party under any Loan Document. Any reference in the Agreement or in the Loan Documents to the Domestic Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding. For the avoidance of doubt, "Domestic Obligations" includes without limitation, the Canadian Obligations.

"Domestic Overadvance" has the meaning specified therefor in Section 2.5 of the Agreement.

"Domestic Protective Advances" has the meaning specified therefor in Section 2.3(e)(i) of the Agreement.

"Domestic Reimbursement Undertaking" has the meaning specified therefor in Section 2.11(a)(i) of the Agreement.

"Domestic Revolver Commitment" means, with respect to each Domestic Lender, its Domestic Revolver Commitment, with respect to all Domestic Lenders, their Domestic Revolver Commitments, in each case, in such Dollar amounts set forth beside such Domestic Lender's name under the applicable heading on Schedule C-1 to the Agreement or in the Assignment and Acceptance pursuant to which such Domestic Lender became a Domestic Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to and in accordance with the provisions of Sections 2.4 or 13.1 of the Agreement.

"Domestic Revolver Usage" means, as of any date of determination, the sum of (a) the amount of outstanding Domestic Advances, *plus* (b) the amount of the Domestic Letter of Credit Usage.

"Domestic Subsidiary" means a Subsidiary of Parent other than a Foreign Subsidiary.

"Domestic Swing Lender" means Wells Fargo or any other Domestic Lender that, at the request of Borrowers and with the consent of Agent agrees, in such Lender's sole discretion, to become Domestic Swing Lender under Section 2.3(c)(i) of the Agreement.

"Domestic Swing Loan" has the meaning specified therefor in Section 2.3(c)(i) of the Agreement.

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

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

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

"Eligible Accounts" means Domestic Eligible Accounts and Canadian Eligible Accounts, as the context requires.

"Eligible Transferee" means (a) a commercial bank organized under the laws of the United States, or any state thereof, or Canada, and having total assets in excess of $250,000,000, (b) a commercial bank organized under the laws of any other country which is a member of the Organization for Economic Cooperation and Development or a political subdivision of any such country and which has total assets in excess of $250,000,000, provided that such bank is acting through a branch or agency located in the United States, or, with respect to the Canadian Borrowers, Canada, (c) a finance company, insurance company, or other financial institution, or

fund that is engaged in making, purchasing, or otherwise investing in commercial loans in the ordinary course of its business and having (together with its Affiliates) total assets in excess of $250,000,000, (d) any Affiliate (other than individuals) of a pre-existing Lender, (e) so long as no Event of Default has occurred and is continuing, any other Person approved by Agent and Administrative Borrower (which approval of Administrative Borrower shall not be unreasonably withheld, delayed, or conditioned), and (f) during the continuation of an Event of Default, any other Person approved by Agent.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of Parent or any of its Subsidiaries or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by Parent, any Subsidiary of Parent, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on Parent or its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

"Environmental Lien" means any Lien in favor of any Governmental Authority for Environmental Liabilities.

"Equipment" means equipment (as that term is defined in the Code or to the extent applicable, the PPSA).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

"ERISA Affiliate" means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of Parent or any of its Subsidiaries under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of Parent or any of its Subsidiaries under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which Parent or any of its Subsidiaries is a member under IRC Section 414(m), or (d) solely for purposes of Section

302 of ERISA and Section 412 of the IRC, any Person subject to ERISA that is a party to an arrangement with Parent or any of its Subsidiaries and whose employees are aggregated with the employees of Parent or any of its Subsidiaries under IRC Section 414(o).

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

"Event of Default" has the meaning specified therefor in Section 8 of the Agreement.

"Excess Availability" means, as of any date of determination, the amount equal to Availability *minus* the aggregate amount, if any, of all trade payables of Parent and its Subsidiaries aged in excess of historical levels with respect thereto and all book overdrafts of Parent and its Subsidiaries in excess of historical practices with respect thereto, in each case as determined by Agent in its Permitted Discretion.

"Exchange Act" means the Securities Exchange Act of 1934, as in effect from time to time.

"Excluded Kennesaw Real Property" means that certain Real Property owned in fee by Holdings located at 630 Kennesaw Due West Road, Kennesaw, Georgia 30152.

"Excluded Kennesaw Real Property Mortgage" means that certain Deed to Secure Debt and Security Agreement dated as of September 14, 2011 between Holdings and Westside Bank in respect of the Excluded Kennesaw Real Property, recorded with the Clerk of Superior Court in Cobb County, Georgia in Deed Book 14878 between Page 5945 and Page 5970.

"Excluded Real Property" means (a) any Real Property owned in fee having a fair market value of $3,000,000 or less as of the Interim Facility Effective Date or, if acquired after the Petition Date, as of the date of such acquisition, and (b) the Excluded Kennesaw Real Property.

"Excluded Swap Obligation" means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal.

"Excluded Taxes" means (i) any Tax imposed on the net income or net profits of any Lender or any Participant (including any branch profits Taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender or Participant is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender's or such Participant's principal office is located in each case as a result of a present or former connection between such Lender or Participant and the jurisdiction or taxing authority imposing the Tax (other than any such connection arising solely from such Lender

or Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under the Agreement or any other Loan Document); (ii) Taxes resulting from a Lender's or a Participant's failure to comply with the requirements of Section 16.2 of the Agreement (whether or not such Lender or Participant was legally entitled to deliver such documentation), (iii) any United States or Canadian federal withholding Taxes that would be imposed on amounts payable to a Lender based upon the applicable withholding rate in effect at the time such Lender becomes a "Lender" under this Agreement (or designates a new lending office), except that Taxes shall include (A) any amount that such Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16.1 of the Agreement, if any, with respect to such withholding Tax at the time such Lender becomes a party to the Agreement (or designates a new lending office), and (B) additional United States or Canada federal withholding Taxes that may be imposed after the time such Lender becomes a party to the Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, order or other decision with respect to any of the foregoing by any Governmental Authority, and (iv) any United States federal withholding Taxes imposed under FATCA.

"Existing Agent" means Wells Fargo Capital Finance, LLC, in its capacity as administrative agent for the Existing Lenders.

"Existing Credit Agreement" is defined in Recital A of this Agreement.

"Existing Lenders" means the lenders from time to time party to the Existing Credit Agreement.

"Existing Loan Documents" means the "Loan Documents" as defined in the Existing Credit Agreement.

"Existing Secured Obligations" means all outstanding principal, accrued interest, accrued fees and expenses and any other indebtedness and amounts owing to Existing Agent or Existing Lenders under the Existing Loan Documents.

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

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it (and, if any such rate is below zero, then the rate determined pursuant to this definition shall be deemed to be zero).

"Fee Letter" means that certain letter agreement, dated of even date herewith, among Borrowers and Agent, in form and substance reasonably satisfactory to Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Final Order" means a final order of the Bankruptcy Court approving, among other things, the DIP Facilities, which order shall be consistent in all material respects with the Restructuring Support Agreement, this Agreement and the DIP Term Loan Facility Agreement and otherwise in form and substance acceptable to Agent.

"Financing Orders" means individually and collectively, the Final Order or any other order of the Bankruptcy Court or the Canadian Court regarding the DIP Facilities, including, but not limited to, the Interim Order, the Final Order, the Canadian Supplemental Order and the DIP Recognition Order.

"First Day Orders" means the orders entered by the Bankruptcy Court in respect of first day motions and applications.

"Foreign Lender" means (a) with respect to any Domestic Borrower, any Lender or Participant that is not a United States person within the meaning of IRC section 7701(a)(30) and (b) with respect to any Canadian Borrower, a Lender or Participant that is organized under the laws of a jurisdiction other than Canada or a province thereof.

"Foreign Representative" has the meaning specified therefor in the recitals to this Agreement.

"Foreign Subsidiary" means each direct or indirect Subsidiary of the Parent which is organized in a jurisdiction other than the United States of America or any state thereof.

"Funding Date" means the date on which a Borrowing occurs.

"Funding Losses" has the meaning specified therefor in Section 2.12(b)(ii) of the Agreement.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied; provided, however, that (i) all calculations relative to liabilities shall be made without giving effect to Statement of Financial Accounting Standards No. 159 and (ii) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any change to, or modification of, GAAP which would require the capitalization of leases characterized as "operating leases" as of Interim Facility Effective Date. For the avoidance of doubt, any lease existing as of Interim Facility Effective Date that constitutes an operating lease in accordance with GAAP as in effect as of the Interim Facility Effective Date shall be deemed not to be a Capital Lease hereunder, and any future lease, if it were in effect on Interim Facility Effective Date, that would be treated as an operating lease for purposes of GAAP as of Interim Facility Effective Date shall be treated as an operating lease.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

"Governmental Authority" means any federal, state, provincial, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

"Guarantors" means, collectively, Domestic Guarantors and Canadian Guarantors, as the context requires.

"Guarantors" means (a) each Subsidiary of Parent that is not a Borrower (other than any Subsidiary that is not required to become a Guarantor pursuant to Section 5.11 of the Agreement), and (b) each other Person that becomes a guarantor after the Interim Facility Effective Date pursuant to Section 5.11 of the Agreement, and "Guarantor" means any one of them.

"Guaranty" means, individually and collectively, any general continuing guaranty, executed and delivered in accordance with the terms of this Agreement, by each Domestic Guarantor in favor of Agent, for the benefit of the Lender Group and the Bank Product Providers, as applicable, in form and substance reasonably satisfactory to Agent.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable Environmental Law as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"Hedge Agreement" means a "swap agreement" as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

"Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of Parent or its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

"Hedge Provider" means any Bank Product Provider that is a party to a Hedge Agreement with a Loan Party or its Subsidiaries or otherwise provides Bank Products or Hedge Products under clause (f) of the definitions of Canadian Bank Products or Domestic Bank Products, as applicable; provided, that if, at any time, a Lender ceases to be a Lender under this Agreement (prior to the payment in full of the Obligations), then, from and after the date on which it ceases to be a Lender thereunder, neither it nor any of its Affiliates shall constitute Hedge Providers and the obligations with respect to Hedge Agreements entered into with such former Lender or any of its Affiliates shall no longer constitute Hedge Obligations.

"Holdings" means Jack Cooper Holdings Corp., a Delaware corporation.

"Holdout Lender" has the meaning specified therefor in Section 14.2(a) of the Agreement.

"Hybrid Plan Participation Agreement" has the meaning specified therefor in the Restructuring Support Agreement.

"Hypothecs" means, collectively, any hypothecs entered into by any Credit Party and Agent, for the ratable benefit of the Lender Group and Bank Product Providers, as required by this Agreement or any other Loan Document."

"IAM" means the International Association of Machinists and Aerospace Workers.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any Letter of Credit, the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adopted by the International Chamber of Commerce on the date such Letter of Credit is issued.

"Indebtedness" as to any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices), (f) all obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) any Prohibited Preferred Stock of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness described in clause (d) above shall be the lower of the amount of the obligation and the fair market value of the assets of such Person securing such obligation.

"Indemnified Liabilities" has the meaning specified therefor in Section 10.3 of the Agreement.

"Indemnified Person" has the meaning specified therefor in Section 10.3 of the Agreement.

"Indemnified Taxes" means, any Taxes other than Excluded Taxes.

"Initial DIP Budget" a rolling 13-week forecast of projected receipts, disbursements, net cash flow, liquidity, loans and availability for the consecutive 13-week period immediately following the Petition Date, set forth on a weekly basis, in form and substance satisfactory to the

Agent; it being acknowledged and agreed that the DIP Budget attached to the DIP Motion is satisfactory to Agent.

"Initial Orders" means the First Day Orders, the Second Day Orders and the Canadian Initial Orders.

"Information Officer" means Alvarez & Marsal Canada Inc, in its capacity as court-appointed information officer of the Loan Parties in connection with the Recognition Proceedings.

"Insolvency Laws" means (i) the Bankruptcy Code, (ii) the Bankruptcy and Insolvency Act (Canada), (iii) the Companies Creditors' Arrangement Act (Canada), (iv) the Winding-Up and Restructuring Act (Canada), (v) the Canada Business Corporations Act or provincial corporate laws where such statute is used by a Person to propose an arrangement or compromise of some or all of the debts of a Person or a stay of proceedings to enforce some or all claims of creditors against a Person and/or (vi) any similar legislation in a relevant jurisdiction, in each case as applicable and in effect from time to time.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any applicable Insolvency Laws.

"Intercompany Subordination Agreement" means an intercompany subordination agreement, dated as of even date herewith, executed and delivered by Parent each of its Subsidiaries, and Agent, the form and substance of which is reasonably satisfactory to Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Intercreditor Agreement" means that certain Intercreditor Agreement by and among Agent, DIP Term Loan Agent , and dated of even date herewith, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"Interest Period" means, with respect to each LIBOR Rate Loan or Canadian CDOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Base Rate Loan to a LIBOR Rate Loan) or such Canadian CDOR Rate Loan (or the continuation of a Canadian CDOR Rate Loan or the conversion of a Canadian Base Rate Loan to a Canadian CDOR Rate Loan) and ending 1, 2, or 3 months thereafter; provided, however, that (a) interest shall accrue at the applicable rate based upon the LIBOR Rate or Canadian CDOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (b) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (c) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1, 2, or 3 months after the date on which the Interest Period began, as applicable, and (d) Borrowers may not elect an Interest Period which will end after the Maturity Date.

"Interim Facility Effective Date" has the meaning specified therefor in Section 3.1.

"Interim Order" means the interim order of the Bankruptcy Court approving the DIP Facilities on an interim basis and entered by the Bankruptcy Court in the form of Exhibit IO, as the same may be amended, modified or supplemented from time to time with the express written consent of the Agent and the Required Lenders.

"Inventory" means inventory (as that term is defined in the Code or, to the extent applicable, the PPSA).

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (b) *bona fide* Accounts arising in the ordinary course of business), or acquisitions of Indebtedness, Stock, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

"IO Load Brokers Trust" means the trust in the initial amount of Canadian $500,000 to be established in accordance with the Canadian Initial Orders with the Information Officer for the payment of claims of independent operators and third party carriers in either case engaged by the Canadian Loan Parties.

"IRC" means the Internal Revenue Code of 1986, as in effect from time to time.

"Issuer Document" means, with respect to any Letter of Credit, a letter of credit application, a letter of credit agreement, or any other document, agreement or instrument entered into (or to be entered into) by a Borrower in favor of the Issuing Lender and relating to such Letter of Credit.

"Issuing Lender" means WFCF or any other Lender that, at the request of any Borrower and with the consent of Agent, agrees, in such Lender's sole discretion, to become an Issuing Lender for the purpose of issuing Letters of Credit or Reimbursement Undertakings pursuant to Section 2.11 of the Agreement and the Issuing Lender shall be a Lender.

"Jack Cooper Logistics" means Jack Cooper Logistics, LLC, a Delaware limited liability company.

"Jack Cooper Transport" means Jack Cooper Transport Company, Inc., a Delaware corporation.

"Jack Cooper Ventures" means Jack Cooper Ventures, Inc., a Delaware corporation.

"Junior Term Facility Agent" means the 2016 Solus Term Facility Agent and the 2018 Solus Term Facility Agent, individually or collectively, as the context may require, and any of its successors or assigns thereunder.

"Jurisdiction" means, with respect to a Vehicle, the state, province, commonwealth, or other governmental entity that is responsible for issuing the Certificate for such Vehicle.

"Lender" has the meaning set forth in the preamble to the Agreement, shall include each Domestic Lender, each Canadian Lender, the Issuing Lender and each Swing Lender, and shall also include any other Person made a party to the Agreement pursuant to the provisions of Section 13.1 of the Agreement and "Lenders" means each of the Lenders or any one or more of them. Furthermore, with respect to (a) each provision of the Agreement relating to the funding or participation in any Advance or Letters of Credit denominated in CAD or the repayment or the reimbursement thereof by a Borrower in connection therewith, (b) any rights of set-off, (c) any rights of indemnification or expense reimbursement, and (d) reserves, capital adequacy or other provisions, each reference to a Lender shall be deemed to include such Lender's Applicable Designee. Notwithstanding the designation by any Lender of an Applicable Designee, Borrowers and Agent shall deal solely and directly with such Lender in connection with such Lender's rights and obligations under the Agreement; provided, that each Applicable Designee shall be subject to the provisions obligating or restricting Lenders under the Agreement.

"Lender Group" means each of the Lenders (including the Issuing Lender and each Swing Lender) and Agent, or any one or more of them.

"Lender Group Expenses" means all (a) costs or expenses (including taxes, vehicle registration fees and charges, and insurance premiums) required to be paid by Parent or any of its Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group, (b) documented out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group's transactions with Parent or any of its Subsidiaries under any of the Loan Documents, including, the fees and charges of the Vehicle Collateral Agent, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, litigation, UCC and PPSA searches and including searches with the patent and trademark office, the copyright office, or any department of motor vehicles or equivalent), filing, recording, publication, appraisal (including periodic collateral appraisals or business valuations to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement or the Fee Letter), real estate surveys, real estate title policies and endorsements, lien registration, and environmental audits, (c) Agent's customary fees and charges imposed or incurred in connection with any background checks or OFAC/PEP searches related to Parent or its subsidiaries, (d) Agent's customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of any Borrower (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, (e) customary charges imposed or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (f) reasonable and documented out-of-pocket costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (g) reasonable and documented out-of-pocket audit fees and expenses (including travel, meals, and lodging) of Agent related to any inspections or audits to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement or the Fee Letter, (h) Agent's reasonable costs and expenses (including reasonable documented attorneys fees and out-of-pocket expenses of outside counsel) relative to third party claims or any other lawsuit or adverse proceeding paid or incurred by the Lender Group, whether in enforcing or defending the Loan Documents or otherwise in connection with the transactions contemplated by the Loan

Documents, Agent's Liens in and to the Collateral, or the Lender Group's relationship with Parent or any of its Subsidiaries, (i) Agent's and each Lender's reasonable and documented costs and expenses (including reasonable and documented attorneys fees and due diligence expenses) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating (including reasonable costs and expenses relative to CUSIP, DXSyndicate™, SyndTrak or other communication costs incurred in connection with a syndication of the loan facilities), or amending, waiving or modifying the Loan Documents, and (j) Agent's and each Lender's reasonable and documented costs and expenses (including reasonable and documented attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning Parent or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether a lawsuit or other adverse proceeding is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral.

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of the Agreement.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, advisors, and agents.

"Letter of Credit" means a Domestic Letter of Credit or a Canadian Letter of Credit as the context requires.

"Letter of Credit Collateralization" means with respect to the Domestic Letter of Credit Obligations or the Canadian Letter of Credit Obligations, as applicable, either (a) the Domestic Borrowers or the Canadian Borrowers, as applicable, providing cash collateral (pursuant to documentation reasonably satisfactory to Agent, including provisions that specify that the applicable Letter of Credit Fees and all commissions, fees, charges and expenses provided for in the Agreement (including any fronting fees) will continue to accrue while the applicable Letters of Credit are outstanding) to be held by Agent for the benefit of the applicable Revolving Lenders in an amount equal to 105% of the then existing applicable Letter of Credit Usage, (b) the Domestic Borrowers or the Canadian Borrowers, as applicable, delivering to Agent documentation executed by all beneficiaries under the applicable Letters of Credit, in form and substance reasonably satisfactory to Agent and Issuing Lender terminating all of such beneficiaries' rights under the Letters of Credit, or (c) the Domestic Borrowers or the Canadian Borrowers, as applicable, providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank acceptable to Agent (in its sole discretion) in an amount equal to 105% of the then existing applicable Letter of Credit Usage (it being understood that the applicable Letter of Credit Fee and all fronting fees set forth in the Agreement will continue to accrue while the applicable Letters of Credit are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit).

"Letter of Credit Disbursement" means a Domestic Letter of Credit Disbursement or a Canadian Letter of Credit Disbursement as the context requires.

"Letter of Credit Fee" has the meaning specified therefor in Section 2.6(b) of the Agreement.

"Letter of Credit Exposure" means the Domestic Letter of Credit Exposure or Canadian Letter of Credit Exposure as the context requires.

"Letter of Credit Usage" means the Domestic Letter of Credit Usage or the Canadian Letter of Credit Usage as the context requires.

"Liberty Mutual Payments" means any payments by Borrowers to Liberty Mutual Insurance Company relating to that certain Confidential Settlement Agreement and Release, dated as of June 1, 2012, by and between Liberty Mutual Insurance Company and Liberty Mutual Fire Insurance Company, Inc. (collectively, "Liberty Mutual"), on the one hand, and Jack Cooper Transport and certain of its Subsidiaries and Affiliates, on the other hand, with respect to certain contingent obligations of Jack Cooper Transport to Liberty Mutual.

"LIBOR Deadline" has the meaning specified therefor in Section 2.12(b)(i) of the Agreement.

"LIBOR/Canadian CDOR Rate Notice" means a written notice in the form of Exhibit L-1.

"LIBOR/Canadian CDOR Rate Option" has the meaning specified therefor in Section 2.12(a) of the Agreement.

"LIBOR Rate" means the rate per annum as published by ICE Benchmark Administration Limited (or any successor page or other commercially available source as the Agent may designate from time to time) as of 11:00 a.m., London time, two Business Days prior to the commencement of the requested Interest Period, for a term, and in an amount, comparable to the Interest Period and the amount of the LIBOR Rate Loan requested (whether as an initial LIBOR Rate Loan or as a continuation of a LIBOR Rate Loan or as a conversion of a Base Rate Loan to a LIBOR Rate Loan) by Borrowers in accordance with this Agreement (and, if any such published rate is below zero, then the LIBOR Rate shall be deemed to be zero). Each determination of the LIBOR Rate shall be made by the Agent and shall be conclusive in the absence of manifest error.

"LIBOR Rate Loan" means each portion of a Domestic Advance or Canadian Advance that bears interest at a rate determined by reference to the LIBOR Rate.

"LIBOR Rate Margin" has the meaning specified therefor in the definition of Applicable Margin.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, hypothec, deposit arrangement in the nature of a security interest, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement in the nature of a security interest, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"Liquidity Forecast" means a rolling 13-week forecast of projected liquidity for the consecutive 13-week period immediately following the date of delivery of such forecast as certified in a certificate delivered by Administrative Borrower.

"Loan" means any Advance, Swing Loan or Protective Advance made (or to be made) hereunder.

"Loan Account" means the Domestic Loan Account or the Canadian Loan Account as the context requires.

"Loan Documents" means the Agreement, any Borrowing Base Certificate, the Canadian Guarantee, the Canadian Security Agreement, the Controlled Account Agreements, the Control Agreements, the Fee Letter, the Guaranty, the Hypothecs, the Intercompany Subordination Agreement, the Letters of Credit, the Mortgages, the US Security Agreement, the Patent Security Agreement, the Copyright Security Agreement, the Trademark Security Agreement, any note or notes executed by any Borrower in connection with the Agreement and payable to any member of the Lender Group, any letter of credit application entered into by any Borrower in connection with the Agreement, and any other agreement entered into, now or in the future, by Parent or any of its Subsidiaries and any member of the Lender Group in connection with the Agreement.

"Loan Parties" means the Domestic Loan Parties or the Canadian Loan Parties as the context requires.

"Margin Stock" as defined in Regulation U of the Board of Governors as in effect from time to time.

"Material Adverse Change" means (a) a material adverse change in the business, operations, results of operations, assets, liabilities or financial condition of Parent and its Subsidiaries, taken as a whole, (b) a material impairment of Parent's and its Subsidiaries' ability to perform their obligations under the Loan Documents to which they are parties or of the Lender Group's ability to enforce the Obligations or realize upon any Collateral in an aggregate value in excess of $250,000 (and not as a result of an action or failure to act of any member of the Lender Group), or (c) a material impairment of the enforceability or priority of Agent's Liens with respect to the Collateral as a result of an action or failure to act on the part of Parent or its Subsidiaries.

"Material Contract" means, with respect to any Person, (i) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of $10,000,000 or more (other than purchase orders in the ordinary course of the business of such Person or such Subsidiary and other than contracts that by their terms may be terminated by such Person or Subsidiary in the ordinary course of its business upon less than 91 days' notice without penalty or premium), and (ii) all other contracts or agreements, the loss of which could reasonably be expected to result in a Material Adverse Change.

"Maturity Date" has the meaning specified therefor in Section 3.3 of the Agreement.

"Maximum Revolver Amount" means $85,000,000, as such amount may be decreased pursuant to the terms of the Agreement (including any reductions made in accordance with Section 2.4(c) of the Agreement).

"Moody's" has the meaning specified therefor in the definition of Cash Equivalents.

"Mortgages" means, individually and collectively, one or more mortgages, charges, hypothecs, deeds of trust, or deeds to secure debt, executed and delivered by Parent or its Subsidiaries in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber the Real Property Collateral.

"Multiemployer Plan" has the meaning given to such term in Section 3(37) or Section 4001(a)(3) of ERISA or Section 414(f) of the IRC.

"Non-Defaulting Canadian Lender" means each Canadian Lender other than a Defaulting Lender.

"Non-Defaulting Domestic Lender" means each Domestic Lender other than a Defaulting Lender.

"Obligations" means the Domestic Obligations and the Canadian Obligations, without duplication.

"OFAC" means The Office of Foreign Assets Control of the U.S. Department of the Treasury.

"Originating Lender" has the meaning specified therefor in Section 13.1(e) of the Agreement.

"Overadvance" means a Domestic Overadvance or Canadian Overadvance as the context requires.

"Pacific Motor" means Pacific Motor Trucking Company, a Missouri corporation.

"Parent" means Jack Cooper Ventures.

"Participant" has the meaning specified therefor in Section 13.1(e) of the Agreement.

"Participant Register" has the meaning specified therefor in Section 13.1(e)(iii) of the Agreement.

"Patent Security Agreement" has the meaning specified therefor in the US Security Agreement.

"Patriot Act" has the meaning specified therefor in Section 4.18 of the Agreement.

"Payoff Date" means the first date on which all of the Obligations are paid in full and the Commitments of the Lenders are terminated.

"PBGC" means the Pension Benefit Guaranty Corporation established under Title IV of ERISA or any other governmental agency, department, or instrumentality succeeding to the functions of said corporation.

"Pension Plan" means any employee pension benefit plan as defined in Section 3(2) of ERISA (excluding a Multiemployer Plan) and to which the Borrowers or any ERISA Affiliate may have any liability including by reason of having been a substantial employer within the meaning of Section 4063 of ERISA by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"Permitted Business" means any business similar in nature to any business conducted by Parent, its Subsidiaries on the Interim Facility Effective Date and any business reasonably ancillary, incidental, complementary or related to the business conducted by Parent, its Subsidiaries on the Interim Facility Effective Date or a reasonable extension, development or expansion thereof, in each case, as determined in good faith by the Board of Directors of Parent.

"Permitted Disbursement Variance" means a positive variance of 15% between the actual disbursements for the applicable one week period and the disbursements as set forth in the DIP Budget for the applicable one week period.

"Permitted Discretion" means a determination made in the exercise of good faith and reasonable (from the perspective of a secured lender) business judgment.

"Permitted Dispositions" means:

(a) sales, abandonment, or other dispositions of Equipment at fair market value that is substantially worn, damaged, or obsolete in the ordinary course of business,

(b) sales of Inventory to buyers in the ordinary course of business,

(c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the Bankruptcy Court, the Canadian Court, the terms of the Agreement or the other Loan Documents,

(d) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(e) the granting of Permitted Liens,

(f) [reserved],

(g) any involuntary loss, damage, or destruction of property,

(h) any involuntary condemnation, seizure, or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property,

(i) the leasing or subleasing of assets and the assignment of leases of Parent or its Subsidiaries in the ordinary course of business,

(j) the sale or issuance of Stock of Parent or any Subsidiary to the extent permitted by Section 6.14 of the Agreement,

(k) the lapse of registered patents, trademarks and other intellectual property of Parent and its Subsidiaries to the extent not economically desirable in the conduct of their business and so long as such lapse is not materially adverse to the interests of the Lenders,

(l) the making of a Restricted Junior Payment that is expressly permitted to be made pursuant to the Agreement,

(m) the making of a Permitted Investment,

(n) dispositions in the form of improvements made to leasehold properties in respect of leases that expire or are terminated so long as the fair market value of the assets so disposed of does not exceed $250,000 in the aggregate in any 12-month period,

(o) [reserved].

(p) dispositions of assets (other than Accounts) not otherwise permitted in clauses (a) through (o) above or clauses (q) through (u) below so long as (i) such disposition is made at fair market value, (ii) the aggregate fair market value of the assets so disposed since the Petition Date does not exceed $200,000, and (iii) at least 75% of the consideration for such disposition is in the form of cash and Cash Equivalents,

(q) dispositions of Vehicles, not otherwise permitted hereunder so long as (i) such disposition is made at fair market value, (ii) the aggregate fair market value of the disposition (including the proposed disposition) of all such assets since the Petition Date does not exceed $200,000 and (iii) at least 75% of the consideration for such disposition is in the form of cash and Cash Equivalents,

(r) any surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind in the ordinary course of business,

(s) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements or similar binding agreements,

(t) transactions permitted under Section 6.3 of the Agreement, and

(u) dispositions of property in exchange for credit against the purchase price for similar replacement property or the cash proceeds are used to purchase such replacement property.

"Permitted Holder" means (i) T. Michael Riggs and (ii) any Related Party of T. Michael Riggs.

"Permitted Indebtedness" means:

(a) Indebtedness evidenced by the Agreement or the other Loan Documents, as well as Indebtedness owed to Underlying Issuers with respect to Underlying Letters of Credit or Indebtedness owed under the Existing Credit Agreement,

(b) Indebtedness set forth on Schedule 4.19 of the Agreement,

(c) Permitted Purchase Money Indebtedness,

(d) endorsement of instruments or other payment items for deposit,

(e) Indebtedness consisting of (i) unsecured guarantees incurred in the ordinary course of business with respect to surety bonds, warranty bonds, release bonds, statutory bonds, performance bonds, bid bonds, appeal bonds, judgment bonds, completion guarantee and warranties (including guarantees thereof), advance payment bonds, indemnity bonds, customs bonds and similar obligations; (ii) unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with Permitted Dispositions; (iii) unsecured guarantees with respect to Indebtedness of Parent or one of its Subsidiaries, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness and unsecured guarantees of other obligations not constituting Indebtedness to the extent permitted hereunder; and (iv) in respect of workers' compensation claims, general liability or trucker's liability claims, unemployment or other insurance and self-insurance obligations, payment obligations in connection with health or other types of social security benefits,

(f) Indebtedness incurred in the ordinary course of business under performance, surety, statutory, and appeal bonds,

(g) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to Parent or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year,

(h) the incurrence by Parent or any of its Subsidiaries of Indebtedness under Hedge Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with Parent's and its Subsidiaries' operations and not for speculative purposes,

(i) Indebtedness incurred in respect of (i) credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards"), or Cash Management Services or (ii) cash pooling, setting-off arrangements and the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds provided such Indebtedness pursuant to this clause (ii) is extinguished within 5 Business Days of its incurrence, and in each case, incurred in the ordinary course of business,

(j) [reserved],

(k) Indebtedness composing Permitted Investments,

(l) [reserved],

(m) [reserved],

(n) the incurrence by Parent or any of its Subsidiaries of Indebtedness in respect of workers' compensation, general liability and auto liability claims relating to the dispute between Borrowers and American Zurich Insurance Company, Zurich Services Corporation, and Liberty Mutual Insurance Company,

(o) [reserved],

(p) Indebtedness of Borrower or its Subsidiaries not otherwise permitted pursuant to this definition (including, without limitation, additional Capital Lease Obligations), in an aggregate principal amount not to exceed $100,000 at any time outstanding,

(q) Indebtedness, or pension withdrawal liabilities reflected in the most recent consolidated balance sheet of Borrower as of the Petition Date that subsequently becomes Indebtedness of Borrower or any Subsidiary outstanding at the time of the date of this Agreement (other than clause (w), (y), (z) or (aa)),

(r) [reserved],

(s) Indebtedness in respect of customer deposits and advance payments received in the ordinary course of business from customers for goods or services purchased in the ordinary course of business,

(t) [reserved],

(u) [reserved]

(v) Indebtedness incurred pursuant to (i) the 9.25% Notes and (ii) the PIK Toggle Notes and, in each case, existing on the Petition Date;

(w) Senior Term Indebtedness,

(x) Indebtedness of Holdings secured by the Excluded Kennesaw Real Property Mortgage,

(y) 2016 Solus Term Indebtedness,

(z) the 2018 Solus Term Indebtedness, and

(aa) the DIP Term Loan Facility.

"Permitted Intercompany Advances" means loans made by (a) a Domestic Loan Party to another Domestic Loan Party so long as the parties thereto are party to the Intercompany Subordination Agreement, (b) a Canadian Loan Party to another Loan Party so long as the parties thereto are party to the Intercompany Subordination Agreement, (c) a Domestic Loan Party to another Loan Party so long as the parties thereto are party to the Intercompany Subordination Agreement, (d) a Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party, or (e) a Subsidiary that is not a Loan Party to a Loan Party, so long as the parties thereto are party to the Intercompany Subordination Agreement.

"Permitted Investments" means:

(a) Investments in cash and Cash Equivalents,

(b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business,

(c) advances made in connection with purchases of goods or services in the ordinary course of business,

(d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of any Loan Party or any of its Subsidiaries,

(e) Investments owned by any Loan Party or any of its Subsidiaries on the Interim Facility Effective Date and set forth on Schedule P-1 to the Agreement,

(f) guarantees permitted under the definition of Permitted Indebtedness and guarantees of other obligations of Parent and its Subsidiaries not constituting Indebtedness to the extent permitted hereunder,

(g) Permitted Intercompany Advances,

(h) Stock or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to any Loan Party or any of its Subsidiaries (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims or upon the settlement of litigation, arbitration or other disputes,

(i) deposits and pledges (x) of cash made in the ordinary course of business to secure performance of operating leases and (y) to the extent permitted by the definition of Permitted Liens,

(j) non-cash loans made prior to the Closing Date to former and current employees, officers, and directors of Parent or any of its Subsidiaries for the purpose of purchasing Stock in Parent so long as the proceeds of such loans are used in their entirety to purchase such stock in Parent,

(k) [reserved],

(l) Investments in the form of capital contributions and the acquisition of Stock made by (i) any Loan Party in any other Loan Party (other than capital contributions to or the acquisition of Stock of Parent), and (ii) any non-Loan party in another non-Loan Party,

(m) Investments resulting from entering into (i) Bank Product Agreements, or (ii) agreements relative to Indebtedness that is permitted under clause (h) of the definition of Permitted Indebtedness,

(n) [reserved],

(o) [reserved],

(p) [reserved], and

(q) any Investment in any Person to the extent such Investments represents the non-cash portion of the consideration received in connection with a Permitted Disposition.

"Permitted Liens" means

(a) Liens granted to, or for the benefit of, Agent to secure the Obligations or granted to, or for the benefit of, the Existing Agent to secure the "Obligations" under the Existing Credit Agreement,

(b) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) do not have priority over Agent's Liens and the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests,

(c) judgment Liens arising solely as a result of the existence of judgments, orders, requirements or awards that do not constitute an Event of Default under Section 8.3 of the Agreement,

(d) Liens set forth on Schedule P-2 to the Agreement; provided, however, that to qualify as a Permitted Lien, any such Lien described on Schedule P-2 to the Agreement shall only secure the Indebtedness that it secures on the Interim Facility Effective Date,

(e) the interests of lessors under operating leases and non-exclusive licensors under license agreements and Liens arising from precautionary UCC or PPSA financing statement filings in respect of operating leases,

(f) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure Permitted Purchase Money Indebtedness and so long as (i) such Lien attaches only to the asset purchased or acquired and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired,

(g) Liens arising by operation of law in favor of warehousemen, landlords, lessors, carriers, mechanics, materialmen, laborers, or suppliers, or other similar Liens, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens either (i) are for sums not more than 30 days past due after giving effect to any applicable grace period, or (ii) are the subject of Permitted Protests,

(h) Liens on amounts deposited to secure Parent's and its Subsidiaries' obligations in connection with worker's compensation, unemployment insurance or government sponsored pension plans,

(i) Liens on amounts deposited to secure Parent's and its Subsidiaries' obligations in connection with the making or entering into of bids, tenders, leases, purchase,

construction, sales or servicing contracts and other similar obligations incurred in the ordinary course of business and not in connection with the borrowing of money,

(j) Liens on amounts deposited to secure Parent's and its Subsidiaries' reimbursement obligations with respect to surety, performance, or appeal bonds obtained in the ordinary course of business,

(k) with respect to any Real Property, minor survey exceptions, minor imperfections of title, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning restrictions or other restrictions as to the use of such Real Property that do not in the aggregate materially impair the use or operation thereof,

(l) non-exclusive licenses of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(m) a trust established by the Canadian Loan Parties for the payment of amounts due or that may become due to (i) independent operators in Canada or (ii) third party carriers, in an amount not exceeding C$500,000 and held in a segregated account,

(n) rights of setoff or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business and Liens granted to secure Indebtedness arising pursuant to clause (i) of the definition of Permitted Indebtedness,

(o) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness,

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

(q) [reserved],

(r) [reserved],

(s) Liens in favor of the 2018 Solus Term Loan Agent, any of its successors and assigns, and any collateral agent, trustee or other representative holding Liens on behalf of any 2018 Solus Term Lender to secure the 2018 Solus Term Indebtedness, subject to the terms of the Intercreditor Agreement,

(t) Liens in favor of any Loan Party,

(u) [reserved],

(v) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business or pursuant to a disposition otherwise permitted hereunder which do not

materially interfere with the ordinary conduct of the business of Parent or its Subsidiaries and do not secure any Indebtedness,

(w) [reserved],

(x) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes,

(y) pledges or deposits to obtain or secure obligations with respect to banker's acceptances, guarantees, bonds or other sureties or assurances given in connection with the activities described in clauses (i) and (j) above, in each case not incurred or made in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of property or services or imposed by ERISA or the IRC in connection with a Plan,

(z) Liens securing Hedge Agreements that are otherwise permitted hereunder,

(aa) Liens existing on the Petition Date on any property or assets of a Loan Party (A) granted to the trustee under any indenture securing compensation, re-imbursement and indemnity obligations of the Loan Parties to such trustee and (B) securing the amount owed under any indenture deposited with the trustee under any indenture to repay or re-deem any such Indebtedness,

(bb) [reserved],

(cc) reserve or escrow accounts for the benefit of warrantholders of a Loan Party as required pursuant to the terms of the applicable warrant and with respect to distributions and dividends which were otherwise permitted hereunder at the time so reserved or deposited into escrow,

(dd) Liens existing on the Petition Date on any property or assets of a Loan Party in favor of Senior Term Facility Agent, any of its successors and assigns as holders of Senior Term Indebtedness, and any collateral agent, trustee or other representative holding Liens on behalf of any such Person to secure Senior Term, subject to the terms of the Intercreditor Agreement,

(ee) the Adequate Protection Liens, the Carve Out, the Administration Charge, and Liens pursuant to the Financing Orders,

(ff) Liens existing on the Petition Date on any property or assets of a Loan Party in favor of the 2016 Solus Term Facility Agent, any of its successors and assigns as administrative agent under the 2016 Solus Term Facility, and any collateral agent, trustee or other representative holding Liens on behalf of the lenders under the 2016 Solus Term Facility to secure 2016 Solus Term Indebtedness, subject to the terms of the Intercreditor Agreement, and

(gg) Liens in favor of Wilmington Trust, National Association, any of its successors and assigns as administrative agent under the DIP Term Loan Facility, and any collateral agent, trustee or other representative holding Liens on behalf of the Lender to secure the DIP Term Loan Facility, subject to the terms of the Intercreditor Agreement.

"Permitted Priority Liens" means all Liens permitted to have priority over the Liens in favor of Agent, solely to the extent that such Liens are valid, perfected and nonavoidable as of the Petition Date (or as may be permitted to be perfected after the Petition Date pursuant to section 546 of the Bankruptcy Code) and were not subordinated by agreement or applicable law, subject to the terms of the DIP Order, the DIP Recognition Order and otherwise agreed to by Agent.

"Permitted Protest" means the right of Parent or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien or a requirement to pay issued by a Canadian Governmental Authority), or rental payment, provided that (a) a reserve with respect to such obligation is established on Parent's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by Parent or its Subsidiary, as applicable, in good faith, and (c) Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent's Liens.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Purchase Money Indebtedness incurred after the Interim Facility Effective Date in an aggregate principal amount outstanding at any one time not in excess of $200,000.

"Permitted Receipt Variance" means a negative variance of 15% between the actual receipts for the applicable one week period and the receipts as set forth in the DIP Budget for the applicable one week period.

"Permitted Variances" means individually and collectively, as the context requires, the Permitted Receipt Variances and the Permitted Disbursement Variances.

"Person" means natural persons, corporations, limited liability companies, unlimited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Petition Date" has the meaning specified therefor in the Recitals.

"Plan" has the meaning given to such term in Section 3(3) of ERISA.

"PPSA" means the Personal Property Security Act (Ontario) and the regulations thereunder, as from time to time in effect; provided, however, if attachment, perfection or priority of Agent's Lien on any Collateral are governed by the personal property security laws of any jurisdiction in Canada other than the laws of the Province of Ontario, "PPSA" means those personal property security laws (including the CCQ) in such other jurisdiction in Canada for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

"Prepetition Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of June 28, 2018, by and among Wells, in its capacity as "ABL Agent", Cerberus, in its capacity as "Senior Term Agent", and Wilmington Trust, National Association, in its capacity as "Junior Term Agent".

"Pre-Petition Payment" means a payment (by way of adequate protection or otherwise) of principal or interest or otherwise on account of any pre-petition Indebtedness, trade payables or other pre-petition claims against any Loan Party.

"Preferred Stock" means, as applied to the Stock of any Person, the Stock of any class or classes (however designated) that is preferred with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Stock of any other class of such Person.

"Prohibited Preferred Stock" means any Preferred Stock that by its terms is mandatorily redeemable (other than upon a change of control) or subject to any other payment obligation (including any obligation to pay dividends, other than dividends of shares of Preferred Stock of the same class and series payable in kind or dividends of shares of common stock) on or before a date that is less than 91 days after the Maturity Date, or, on or before the date that is less than 91 days after the Maturity Date, is redeemable at the option of the holder thereof for cash or assets or securities (other than distributions in kind of shares of Preferred Stock of the same class and series or of shares of common stock).

"Prohibited Transaction" means any transaction described in Section 406 of ERISA which is not exempt by reason of Section 408 of ERISA, and any transaction described in Section 4975(c) of the IRC which is not exempt by reason of Section 4975(c)(2) or Section 4975(d) of the IRC.

"Projections" means Parent's forecasted (a) balance sheets, (b) profit and loss statements, and (c) cash flow statements, all prepared on a basis consistent with Parent's historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

"Pro Rata Share" means, as of any date of determination:

(a) with respect to a Lender's obligation to make all or a portion of the Domestic Advances or Canadian Advances, as applicable, with respect to such Lender's right to receive payments of interest, fees, and principal with respect to the Advances, and with respect to all other computations and other matters related to the Revolver Commitments or the Advances, the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender by (ii) the aggregate Revolving Loan Exposure of all Lenders;

(b) with respect to a Lender's obligation to participate in the Domestic Letters of Credit and Canadian Letters of Credit, as applicable, with respect to such Lender's obligation to reimburse Issuing Lender, and with respect to such Lender's right to receive payments of Letter of Credit Fees, and with respect to all other computations and other matters related to the Letters of Credit, the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender by (ii) the aggregate Revolving Loan Exposure of all Lenders; provided, however, that if all of the Advances have been repaid in full and Letters of Credit remain outstanding, Pro Rata Share under this clause shall be determined based upon subclause (i) of this clause as if the Revolver Commitments had not been terminated or reduced to zero and based upon the Revolver Commitments as they existed immediately prior to their termination or reduction to zero; and

(c) with respect to all other matters and for all other matters as to a particular Lender (including the indemnification obligations arising under Section 15.7 of the Agreement), the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender by (ii) the aggregate Revolving Loan Exposure of all Lenders, in any such case as the applicable percentage may be adjusted by assignments permitted pursuant to Section 13.1 of the Agreement; provided, that if all of the Loans have been repaid in full, all Letters of Credit have been collateralized pursuant to the terms of the Agreement, and all Commitments have been terminated, Pro Rata Share under this clause shall be determined as if the Revolving Loan Exposures had not been repaid, collateralized, or terminated and shall be based upon the Revolving Loan Exposures as they existed immediately prior to their repayment, collateralization, or termination.

"Properties" means any properties or assets owned, leased, or primarily operated by Parent or any of its Subsidiaries.

"Protective Advances" means the Domestic Protective Advances and the Canadian Protective Advances, as the context requires.

"Purchase Money Indebtedness" means Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within 20 days after, the acquisition of any fixed assets for the purpose of financing all or any part of the acquisition cost thereof.

"Purchaser" means a newly formed entity 100% owned by an investment vehicle affiliated with Solus.

"Qualified Cash" means, as of any date of determination, the amount of unrestricted cash of the Loan Parties that is in Deposit Accounts and which such Deposit Accounts are the subject of a Control Agreement (or otherwise subject to Agent's perfected Lien in the case of Deposit Accounts maintained in banks located in Canada) and is maintained by a branch office of the bank located within the United States or Canada.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by Parent or its Subsidiaries and the improvements thereto.

"Real Property Collateral" means the Real Property identified on Schedule R-1 to the Agreement and any Real Property hereafter acquired by Parent or its Subsidiaries (other than Excluded Real Property).

"Recognition Proceedings" has the meaning specified therefor in the recitals to this Agreement.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Register" has the meaning specified therefor in Section 2.3(g) of the Agreement.

"Reimbursement Undertaking" means a Domestic Reimbursement Undertaking or a Canadian Reimbursement Undertaking, as the context requires.

"Related Fund" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Related Party" means: (i) any family member (in the case of an individual) of a Person described in clause (i) of the definition of Permitted Holder; or (ii) any trust, corporation, partnership, limited liability company or other entity, the beneficiaries, stockholders, partners, members, owners or Persons beneficially holding an 50% or more controlling or beneficial interest of which consist of any one or more Permitted Holder.

"Remedial Action" means all actions taken to comply with Environmental Law, including (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

"Replacement Lender" has the meaning specified therefor in Section 2.13(b) of the Agreement.

"Report" has the meaning specified therefor in Section 15.16 of the Agreement.

"Reportable Event" has the meaning given to such term in Section 4043 of ERISA or the regulations thereunder, excluding any event for which the PBGC has by regulation waived the 30 day notice requirement, or a withdrawal from a plan described in Section 4063 of ERISA.

"Required Lenders" means, at any time, Lenders having or holding more than 50% of the aggregate Revolving Loan Exposure of all Lenders; provided, that (a) the Revolving Loan Exposure of any Defaulting Lender shall be disregarded in the determination of the Required Lenders, (b) at any time there are 2 or more Lenders, "Required Lenders" must include at least 2 Lenders (who are not Affiliates of one another).

"Restricted Junior Payment" means to (a) declare or pay any dividend or make any other payment or distribution (i) on account of Stock issued by Parent (including any payment in connection with any merger, amalgamation or consolidation involving Parent) or (ii) on account of Stock issued (x) by any Subsidiary of Parent or (y) to the direct or indirect holders of Stock issued by a Borrower in their capacity as such (other than dividends or distributions payable in Stock (other than Prohibited Preferred Stock) issued by Parent or dividends or distributions to a Borrower (other than Parent)), (b) purchase, redeem, make any sinking fund or similar payment, or otherwise acquire or retire for value (including in connection with any merger, amalgamation or consolidation involving Parent) any Stock issued by Parent, or (c) make any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Stock of Parent now or hereafter outstanding.

"Restructuring Support Agreement" means that certain Restructuring Support Agreement, dated as of August 6, 2019 and attached as Exhibit RSA.

"Revaluation Date" means (a) with respect to any Advance denominated in CAD, each of the following: (i) each date of a Borrowing of such Advance, (ii) each date of a continuation of such Advance pursuant to Section 2.13 of the Agreement, and (iii) such additional dates as Agent shall determine or the Required Lenders shall require, (b) with respect to any Letter of Credit denominated in CAD, each of the following: (i) each date of issuance of such Letter of Credit, (ii) each date of an amendment of such Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by the Issuing Lender under such Letter of Credit, and (iv) such additional dates as Agent or the Issuing Lender shall determine or the Required Lenders shall require and (c) with respect to any other Obligations denominated in CAD, each date as Agent shall determine unless otherwise prescribed in the Agreement or any other Loan Documents.

"Revised DIP Budget" means a DIP Budget delivered on Friday, September 6, 2019 and on each fourth Friday thereafter for the immediately following consecutive 13-week period after the date of delivery, which Revised DIP Budget shall be substantially in the form of the Initial Budget and otherwise shall be in form and substance acceptable to Agent in its Permitted Discretion.

"Revolver Commitment" means, with respect to each Lender, its Domestic Revolver Commitment or Canadian Revolver Commitment, and, with respect to all Lenders, their Domestic Revolver Commitments or Canadian Revolver Commitment, as applicable, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 to the Agreement or in the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Revolver Usage" means the Domestic Revolver Usage or the Canadian Revolver Usage as the context requires.

"Revolving Lender" means a Domestic Lender or a Canadian Lender as the context requires.

"Revolving Loan Exposure" means, with respect to any Revolving Lender, as of any date of determination (a) prior to the termination of the Revolver Commitments, the amount of such Lender's Revolver Commitment, and (b) after the termination of the Revolver Commitments, the aggregate outstanding principal amount of the Advances of such Lender.

"RSA Term Sheet" means that certain Jack Cooper Ventures, Inc., et al Summary of Principal Terms of Restructuring, dated as of August 6, 2019 as approved by Agent on August 6, 2019 and attached as Exhibit A to the Restructuring Support Agreement.

"Sale Closing Date" means the date of the closing of the Sale Transaction.

"Sale and Bidding Procedures Motion" means a motion, in form and substance satisfactory to Agent, filed with the Bankruptcy Court seeking approval of, among other things, the stalking horse bidder, the Bid Procedures, and the Sale Transaction, which must be in form and substance satisfactory to Agent.

"Sale Order" means a final non-appealable order, in form and substance satisfactory to Agent, approving the sale of assets "free and clear" of all claims and interests in accordance with the terms set forth in the Restructuring Support Agreement.

"Sale Transaction" means 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 and the terms of the Sale Transaction APA or similar agreement.

"Sale Transaction Acquired Assets" means the assets acquired by the Purchaser or any other successful bidder.

"Sale Transaction APA" means an asset purchase agreement in the form and substance satisfactory to Agent and attached hereto as Exhibit APA.

"Sanctioned Entity" means (a) a country or territory or a government of a country or territory, (b) an agency of the government of a country or territory, (c) an organization directly or indirectly controlled by a country or territory or its government, or (d) a Person resident in or determined to be resident in a country or territory, in each case of clauses (a) through (d) that is a target of Sanctions, including a target of any country sanctions program administered and enforced by OFAC or any Canadian Governmental Authority.

"Sanctioned Person" means, at any time (a) any Person named on the list of Specially Designated Nationals and Blocked Persons maintained by OFAC, OFAC's consolidated Non-SDN list or any other Sanctions-related list maintained by any Governmental Authority (including any Canadian Governmental Authority), (b) a Person or legal entity that is a target of Sanctions, (c) any Person operating, organized or resident in a Sanctioned Entity, or (d) any Person directly or indirectly owned or controlled (individually or in the aggregate) by or acting on behalf of any such Person or Persons described in clauses (a) through (c) above.

"Sanctions" means individually and collectively, respectively, any and all economic sanctions, trade sanctions, financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes anti-terrorism laws and other sanctions laws, regulations or embargoes, including those imposed, administered or enforced from time to time by: (a) the United States of America, including those administered by OFAC, the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future executive order, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) Her Majesty's Treasury of the United Kingdom, or (e) any other Governmental Authority (including any Canadian Governmental Authority) with jurisdiction over any member of Lender Group or any Loan Party or any of their respective Subsidiaries or Affiliates.

"S&P" has the meaning specified therefor in the definition of Cash Equivalents.

"SEC" means the United States Securities and Exchange Commission and any successor thereto.

"Second Amendment Effective Date" means June 28, 2018.

"Second Day Orders" means the orders entered by the Bankruptcy Court in respect of second day motions and applications.

"Securities Account" means a securities account (as that term is defined in the Code).

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Security Agreement" means the US Security Agreement, the Canadian Security Agreement and the Hypothecs, individually and collectively, in each case, as applicable.

"Senior Term Agent" means Cerberus Business Finance, LLC, a Delaware limited liability company, and any of its successors or assigns thereunder.

"Senior Term Credit Agreement" means that certain Credit Agreement, dated as of June 28, 2018, by and among Senior Term Agent, the lenders party thereto (the "Senior Term Lenders"), and Jack Cooper Ventures, as amended, restated, supplemented or otherwise modified from time to time, including any agreement extending the maturity thereof or otherwise restructuring all or any portion of the Indebtedness thereunder or increasing the amount loaned or issued thereunder or altering the maturity thereof, in each case, as and to the extent permitted by this Agreement and the Intercreditor Agreement.

"Senior Term Facility" means the credit facility under the Senior Term Credit Agreement.

"Senior Term Indebtedness" means Indebtedness incurred by Parent or any of its Subsidiaries under the Senior Term Facility.

"Senior Term Lenders" has the meaning ascribed to such term in the definition of Senior Term Credit Agreement.

"Settlement" has the meaning specified therefor in Section 2.3(f)(i) of the Agreement.

"Settlement Date" has the meaning specified therefor in Section 2.3(f)(i) of the Agreement.

"Solus" means Solus Alternative Asset Management LP.

"Superpriority Claims" has the meaning specified therefor in Section 4.4(c) of the Agreement.

"Solvent" means, as of any date of determination, (a) the sum of the debt (including contingent liabilities) of Parent and its Subsidiaries, taken as a whole, does not exceed the present fair salable value (including the earning potential of such assets as part of a reasonable going concern sale process conducted with appropriate diligence and speed by a reputable investment bank) of the assets of Parent and its Subsidiaries, taken as a whole; (b) the capital of Parent and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of Parent and its Subsidiaries, taken as a whole, contemplated as of as of such date; (c) Parent and its Subsidiaries, taken as a whole, do not intend to incur, or believe that they will incur, debts including current obligations beyond their ability to pay such debt as they mature in the ordinary

course of business; and (d) with respect to any Canadian Loan Party, such entity is "solvent" or not "insolvent", as applicable, within the meanings given to those terms and similar terms under applicable laws relating to bankruptcy, insolvency and fraudulent transfers. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Spot Rate" means, for a currency, the rate determined by Agent to be the rate quoted by Agent acting in such capacity as the spot rate for the purchase by Agent of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. (New York time) on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided, that Agent may obtain such spot rate from another financial institution designated by Agent if Agent acting in such capacity does not have as of the date of determination a spot buying rate for any such currency.

"Stock" means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"Subsidiary" of a Person means a corporation, partnership, limited liability company, unlimited liability company or other entity in which that Person directly or indirectly owns or controls the shares of Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

"Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Swing Lender" means the Domestic Swing Lender and the Canadian Swing Lender, as applicable**.**

"Swing Loans" has the meaning specified therefor in Section 2.3(c) of the Agreement.

"Swing Loan Exposure" means, as of any date of determination with respect to any Lender, such Lender's Pro Rata Share of the applicable Swing Loans on such date.

"Taxes" means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein and all interest, penalties or similar liabilities with respect thereto.

"Tax Lender" has the meaning specified therefor in Section 14.2(a) of the Agreement.

"Total Commitment" means, with respect to each Lender, its Total Commitment, and, with respect to all Lenders, their Total Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 attached hereto or on

the signature page of the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Trademark Security Agreement" has the meaning specified therefor in the US Security Agreement.

"UCP" means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any subsequent revision thereof adopted by the International Chamber of Commerce on the date such Letter of Credit is issued.

"Underlying Issuer" means Wells Fargo or one of its Affiliates.

"Underlying Canadian Letter of Credit" means a Canadian Letter of Credit that has been issued by an Underlying Issuer.

"Underlying Domestic Letter of Credit" means a Domestic Letter of Credit that has been issued by an Underlying Issuer.

"Underlying Letter of Credit" means an Underlying Domestic Letter of Credit or an Underlying Canadian Letter of Credit Letter of Credit, as the context requires.

"United States" means the United States of America.

"US Security Agreement" means a second amended and restated security agreement, dated as of even date with the Agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by each Domestic Loan Party to Agent.

"Variance Testing Period" has the meaning specified therefor in Section 7(a)(iii) of the Agreement.

"Vehicle" shall mean all trucks, trailers, tractors, and other substantially similar mobile equipment and other substantially similar vehicles used in the transportation of automobiles, wherever located.

"Vehicle Collateral Agent" means Corporation Services Company, a Delaware corporation.

"Voidable Transfer" has the meaning specified therefor in Section 17.8 of the Agreement.

"Welfare Plan" has the meaning given to such term in Section 3(1) of ERISA.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"WFCF" means Wells Fargo Capital Finance, LLC, a Delaware limited liability company.

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

Schedule 3.6

1. On or before the date the Canadian Initial Recognition Order is entered, the Canadian Loan Parties will deliver the Canadian Security Agreement, the Hypothecs, and the Canadian Guarantee and evidence satisfactory to the Agent that the Hypothecs have been filed in the appropriate filling offices in Quebec will be delivered to the Agent.

2. To the extent not already in place on the Interim Facility Effective Date, on or before the date that is 60 calendar days after the Interim Facility Effective Date (or such longer period as agreed to by Agent in writing in its discretion), each Loan Party will enter into Control Agreements in respect of all Deposit Accounts maintained by the Loan Parties, in form and substance reasonably satisfactory to Agent.

3. On or before August 23, 2019, Borrowers will deliver the insurance endorsements required under Section 5.6.

4. The IO Load Brokers Trust shall be established and funded no later than August 30, 2019.

5. Within five (5) calendar days following the Interim Facility Effective Date, the Canadian Court shall have granted the Canadian Initial Orders (which shall be in full force and effect).

6. Within five (5) calendar days following the Interim Facility Effective Date, the Canadian Initial Orders, to the extent affecting the rights or obligations of the Agent and the Lenders, or the agent or the lenders under any pre-petition credit agreement, or which may give rise to a post-petition claim, administrative in nature or otherwise shall be in form and substance reasonably satisfactory to the Agent (acting at the direction of Required Lenders).

7. Within five (5) calendar days following the Interim Facility Effective Date, Agent shall have received proper PPSA financing statements or other applicable financing statements necessary or, in the reasonable opinion of the Lenders, desirable to perfect the security interests purported to be created by the Canadian Initial Orders.

8. Within five (5) calendar days following the Interim Facility Effective Date, all orders entered by the Canadian Court pertaining to cash management and adequate protection and all other motions and documents filed or to be filed with, and submitted to, the Canadian Court in connection therewith, shall be in form and substance satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of Agent, Agent).

Schedule 5.1

Deliver to Agent (and if so requested by Agent, with copies for each Lender), each of the financial statements, reports, or other items set forth below at the following times in form reasonably satisfactory to Agent in its Permitted Discretion:

on Friday of each week beginning with the first full calendar week after the Petition Date	(a) a weekly DIP variance report/reconciliation for the prior week and for the period from the commencement of the DIP Budget to the end of the prior week in each case (i) showing actual results for the following items: (A) receipts, (B) disbursements, (C) net operating cash flow, (D) liquidity and Excess Availability, (E) the outstanding Term Loans under the DIP Term Loan Facility, and (F) professional fees and expenses (including an estimate of accrued fees and expenses (not yet invoiced as of such date) and fees and expenses invoiced and not yet paid), noting therein variances from values set forth for such periods in both the Initial DIP Budget and the most recent DIP Budget and (ii) an explanation for all material variances, certified by the chief financial officer of Holdings,
on the date that is four weeks after the Petition Date and every fourth week thereafter	(b) (i) a Revised DIP Budget and (ii) a Liquidity Forecast, which shall include any performance and timing changes with respect to any periods that were included in a previously delivered Liquidity Forecast and which shall be in form and substance acceptable to Agent each in their sole discretion,
as soon as available, but in any event (i) within 30 days after the end of any non-December month during each of Parent's fiscal years, and (ii) within 60 days after the end of each December month	(c) an unaudited consolidated balance sheet, income statement, statement of cash flow, and statement of shareholder's equity covering Parent's and its Subsidiaries' operations during such period and period-to-date and each compared to the prior applicable period and plan, together with a corresponding discussion and analysis of results from management, and
	(d) Compliance Certificate along with the underlying financial covenant calculations.
as soon as available, but in any event within 120 days after the end of each of Parent's fiscal years	(e) consolidated financial statements of Parent and its Subsidiaries for each such fiscal year, audited by independent certified public accountants reasonably acceptable to Agent and certified by such accountants to have been prepared in accordance with GAAP (such audited financial statements to include a balance sheet, income statement, statement of cash flow, and statement of shareholder's equity, and such audit opinion), and

	(f) a Compliance Certificate along with the underlying calculations, including the underlying financial covenant calculations.
as soon as available, but in any event within 30 days after the start of each of Parent's fiscal years,	(g) copies of Parent's Projections, in form and substance (including as to scope and underlying assumptions) reasonably satisfactory to Agent, in its Permitted Discretion, for the forthcoming fiscal year, month by month, certified by the chief financial officer of Parent as being such officer's good faith estimate of the financial performance of Parent during the period covered thereby.
if and when filed publicly by Parent,	(h) Form 10-Q quarterly reports, Form 10-K annual reports, and Form 8-K current reports,
	(i) any other filings made by Parent with the SEC, and
	(j) any other written information that is provided by Parent to its shareholders generally but solely in their capacity as shareholders.
promptly, to the extent reasonably feasible,	(k) copies of all material pleadings, motions, applications or financial information filed by any Loan Party with the Bankruptcy Court or the Canadian Court; provided that any such documents that are publicly available shall be deemed to have been delivered,
promptly	(l) copies of all amendments, restatements, supplements or other modifications to the DIP Term Loan Facility,
if and when provided by Parent,	(m) any financial reporting given to the Senior Term Agent and/or the Junior Term Agent pursuant to the 2016 Term Loan Documents and/or the 2018 Term Loan Documents (unless already provided to Agent under the Loan Documents).
promptly, but in any event within 5 Business Days after Parent has knowledge of any event or condition that constitutes a Default or an Event of Default,	(n) notice of such event or condition and a statement of the curative action that the Parent proposes to take with respect thereto.
promptly, but in any event within 5 Business Days after Parent has knowledge of (i) the termination of any Material Contract or labor contract, (ii) the initiation	(o) notice and detailed summary of such event or condition.

of any labor negotiations with respect to any labor contract, or (iii) the occurrence of any labor strike affecting Borrowers,	
promptly after the commencement thereof, but in any event within 5 Business Days after the service of process with respect thereto on Parent or any of its Subsidiaries,	(p) notice of all actions, suits, or proceedings brought by or against Parent or any of its Subsidiaries before any Governmental Authority which reasonably could be expected to result in a Material Adverse Change, and
upon the request of Agent,	(q) any other information reasonably requested relating to the financial condition of Parent or its Subsidiaries
upon notice of Agent,	(r) access to the advisors to the Loan Parties at all times during the Chapter 11 Cases.

Schedule 5.2

Provide Agent (and if so requested by Agent, with copies for each Lender) with each of the documents set forth below at the following times in form reasonably satisfactory to Agent in its Permitted Discretion:

Weekly	(a) a Borrowing Base Certificate,
	(b) an Account roll-forward with supporting details supplied from sales journals, collection journals, credit registers and any other records.
	(c) a detailed aging, by total, of Borrowers' Accounts, together with a reconciliation and supporting documentation for any reconciling items noted (delivered electronically in an acceptable format, if Borrowers have implemented electronic reporting),
	(d) a detailed calculation of those Accounts that are not eligible for the Borrowing Base, if Borrowers have not implemented electronic reporting,
Monthly (no later than the 10th day of each month)	(e) a summary aging, by vendor, of Borrowers' and their Subsidiaries' accounts payable and any book overdraft (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting) and an aging, by vendor, of any held checks, and
	(f) a detailed report regarding Borrowers' and their Subsidiaries' cash and Cash Equivalents, including an indication of which amounts constitute Qualified Cash.
Upon request by Agent	(g) [reserved],
	(h) notice of all claims, offsets, or disputes asserted by Account Debtors with respect to Borrowers' and their Subsidiaries' Accounts,
	(i) copies of invoices together with corresponding shipping and delivery documents, and credit memos together with corresponding supporting documentation, with respect to invoices and credit memos in excess of an amount determined in the Permitted Discretion of Agent, from time to time,
	(j) such other reports as to the Collateral or the financial condition of Borrowers and their Subsidiaries, as Agent may reasonably request,
	(k) a detailed list of Borrowers' and their Subsidiaries' customers, with address and contact information, and
	(l) a report regarding Borrowers' and their Subsidiaries' accrued, but unpaid, *ad valorem* taxes.

Exhibit D

DIP Term Loan Agreement

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

by and among

JACK COOPER VENTURES, INC.,
as Borrower,

THE LENDERS THAT ARE SIGNATORIES HERETO
as the Lenders,
and
WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Agent

Dated as of August [__], 2019

TABLE OF CONTENTS

EXHIBITS AND SCHEDULES

DEBTOR-IN-POSSESSION CREDIT AGREEMENT

THIS DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "Agreement"), is entered into as of August [__], 2019, by and among the lenders identified on the signature pages hereof (each of such lenders, together with their respective successors and permitted assigns, are referred to hereinafter as a "Lender", as that term is hereinafter further defined), WILMINGTON TRUST, NATIONAL ASSOCIATION, as agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), JACK COOPER VENTURES, INC., a Delaware corporation ("Borrower") and the guarantors identified on the signature pages hereof (each of such guarantors are referred to hereinafter as "Guarantors", as that term is hereinafter further defined).

RECITAL

Borrower and certain of its Subsidiaries and Affiliates have commenced (i) voluntary cases (the "Chapter 11 Cases") under Chapter 11 of the Bankruptcy Code (as hereinafter defined) in the United States Bankruptcy Court for the Northern District of Georgia (the "Bankruptcy Court"), and the Loan Parties continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code and (ii) recognition proceedings pursuant to Part IV of the Companies' Creditors Arrangement Act (the "CCAA") (such proceedings, the "CCAA Proceedings") before the Ontario Superior Court of Justice (Commercial List) (the "CCAA Court");

Borrower has requested the Lenders to make post-petition loans and advances to Borrower comprising a priming term loan facility in an aggregate principal amount of up to $15,000,000. The Lenders have severally, and not jointly, agreed to extend such credit to Borrower subject to the terms and conditions hereinafter set forth; and

To provide security for the repayment of the Term Loans, and the payment of the other Obligations of the Loan Parties hereunder and under the Loan Documents, the Loan Parties will provide and grant to Agent, for its benefit and the benefit of the Lenders, certain security interests, liens, and other rights and protections pursuant to the terms hereof, and, in the case of the Loan Parties, security interests and liens pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and super-priority administrative expense claims pursuant to Section 364(c)(1) of the Bankruptcy Code, and other rights and protections, as more fully described herein and the Financing Orders (as hereinafter defined).

In consideration of the premises, agreements, provisions and covenants herein contained, the parties hereto agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions. Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1.

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP.

1.3 Code. Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, however, that (a) to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern and (b) to the extent applicable, any such terms used in this Agreement that are defined in the PPSA shall have the meanings ascribed to such terms in the PPSA when used in relation to Collateral subject to the PPSA.

1.4 Construction. Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (a) the payment or repayment in full in immediately available funds of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Term Loans, (ii) all Lender Group Expenses that have accrued and are unpaid regardless of whether demand has been made therefor, (iii) all fees or charges that have accrued hereunder or under any other Loan Document and are unpaid and (b) the receipt by Agent of cash collateral in order to secure any other contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including reasonable and documented attorneys' fees and out-of-pocket legal expenses of outside counsel), such cash collateral to be in such amount as Agent reasonably determines is appropriate to secure such contingent Obligations. Any reference herein to any Person shall be construed to include such Person's successors and permitted assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record. For the purposes of any Collateral located in the province of Québec or charged by any deed of hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of a Loan Document may be subject to the laws of the province of Québec or a court or tribunal exercising jurisdiction in the province of Québec, (c) "personal property" shall be deemed to include "movable property", (d) "real property" shall be deemed to include "immovable property", (e) "tangible property" shall be deemed to include "corporeal property", (f) "intangible property" shall be deemed to include "incorporeal property", (g) "security interest" and "mortgage" shall be deemed to include a "hypothec", (h) all references to filing, registering or recording under the UCC shall be deemed to include publication under the *Civil Code of Québec*, (i) all references to

"perfection" of or "perfected" Liens shall be deemed to include a reference to the "opposability" of such Liens to third parties, (j) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (k) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (l) an "agent" shall be deemed to include a "mandatary", and (m) "joint and several" shall be deemed to include "solidary".

1.5 Schedules and Exhibits. All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

2. TERM LOANS AND TERMS OF PAYMENT.

2.1 Term Loans.

(a) Subject to the terms and conditions set forth herein and in the Financing Orders, each Lender severally and not jointly agrees to make, on the applicable date of Borrowing, Term Loans to Borrower in an aggregate amount not to exceed such Lender's Commitment. Borrower may request Borrowings of the Commitments, of which (i) the first shall be made on the Effective Date in an aggregate principal amount of $7,000,000 (the "Initial Loan"), (ii) each subsequent Term Loan borrowed prior to the entry of the Final Order shall be in an aggregate principal amount not to exceed $3,000,000 (the "Additional Loans") and (iii) each subsequent Term Loan borrowed after the entry of the Final DIP Order shall be in an aggregate principal amount not to exceed $15,000,000 *minus* the amount of the Initial Loan and each Additional Loan made prior to such date (the "Final Loans").

(b) The outstanding principal amount of the Term Loans, together with interest accrued and unpaid thereon shall be due and payable on earlier of (i) the Maturity Date and (ii) the date of the acceleration of the Term Loans in accordance with the terms of this Agreement. Notwithstanding anything herein to the contrary, upon the closing date of the Sale Transaction, the outstanding principal amount of the Term Loans, together with interest accrued and unpaid thereon shall be credit bid as part of the purchase price for the Sale Transaction.

(c) Any principal of, interest on, and other amounts payable in respect of the Term Loans may not be reborrowed. All principal of, interest on, and other amounts payable in respect of the Term Loans shall constitute Obligations hereunder.

2.2 [Reserved].

2.3 Settlements.

(a) [Reserved].

(b) Notation. Agent, as a non-fiduciary agent for Borrower, shall maintain a register at the office set forth in Section 11 a copy of each assignment and assumption delivered to it and a register for the recordation of the names and addresses of the Lenders and the principal amounts showing the principal amount of the Term Loan owing to each Lender, and the interests therein of each Lender, from time to time (the "Register") and the Register shall, absent manifest error, conclusively be presumed to be correct and accurate, and Borrower, Agent, and each Lender

shall treat each person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. Notwithstanding anything to the contrary, any assignment of any Term Loan shall be effective only upon appropriate entries with respect thereto being made in the Register. The Register shall be available for inspection by Borrower, Agent and any Lender (solely with respect to its Term Loans), at any reasonable time and from time to time upon reasonable prior notice to Agent. This Section 2.3(c) shall be construed so that the Term Loans are at all times maintained in "registered form" within the meanings of Sections 163(f), 871(h)(2) and 881(c)(2) of the IRC and the Treasury Regulations thereunder.

2.4 Payments; Reductions of Commitments; Prepayments.

(a) Payments by Borrower.

(i) Except as otherwise expressly provided herein, all payments by Borrower shall be made to Agent for the account of the Lender Group and shall be made in immediately available funds, no later than 2:00 p.m. (New York time) on the date specified herein. Any payment received by Agent later than 2:00 p.m. (New York time) shall be deemed to have been received (unless Agent, in its sole discretion, elects to credit it on the date received) on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Borrower prior to the date on which any payment is due to the Lenders that Borrower will not make such payment in full as and when required, Agent may assume that Borrower has made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrower does not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the interest rate then applicable to the Term Loans for each day from the date such amount is distributed to such Lender until the date repaid.

(b) Apportionment and Application.

(i) So long as no Application Event has occurred and is continuing, all principal and interest payments received by Agent shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses received by Agent shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Obligation to which a particular fee or expense relates. All payments to be made hereunder by Borrower shall be remitted to Agent and all (subject to Section 2.4(b)(iv)) such payments, and all proceeds of Collateral received by Agent, shall be applied, so long as no Application Event has occurred and is continuing, to reduce the balance of the Term Loans outstanding and, thereafter, to Borrower or such other Person entitled thereto under applicable Law.

(ii) At any time that an Application Event has occurred and is continuing, subject to the Intercreditor Agreement (as applicable), all payments remitted to Agent and all proceeds of Collateral received by Agent shall be applied as follows:

(1) first, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent under the Loan Documents, until paid in full,

(2) second, to pay any fees or premiums then due to Agent under the Loan Documents until paid in full,

(3) third, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders under the Loan Documents, until paid in full,

(4) fourth, ratably, to pay any fees or premiums then due to any of the Lenders under the Loan Documents until paid in full,

(5) fifth, ratably, to pay interest accrued in respect of the Term Loans until paid in full,

(6) sixth, ratably to pay the principal of all Term Loans until paid in full, and

(7) seventh, to pay any other Obligations.

(iii) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive.

(iv) In each instance, so long as no Application Event has occurred and is continuing, Section 2.4(b)(i) shall not apply to any payment made by Borrower to Agent and specified by Borrower to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement or any other Loan Document.

(v) For purposes of Section 2.4(b)(ii), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding (or which would have accrued but for the commencement of such Insolvency Proceeding), default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(vi) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in this Agreement (including, but not limited to, Section 18.1 hereof) or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with

each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, then the terms and provisions of this Section 2.4 shall control and govern.

(c) [Reserved].

(d) Prepayments.

(i) Optional Prepayments. Borrower may voluntarily prepay the Term Loans at any time in whole or in part without premium or penalty upon 2 Business Days' prior written notice to Agent; provided that such prepayment shall be accompanied by accrued and unpaid interest thereon, if any. Each such prepayment pursuant this Section 2.4(d)(i) shall be applied to the installments of principal on the Term Loans as directed by Borrower. Each prepayment pursuant to this clause (d)(i) shall be irrevocable. Notwithstanding anything to the contrary in this Section 2.4, upon at least 10 days prior written notice to Agent, Borrower may terminate this Agreement by paying in full the Obligations, if any, payable in connection with the termination of this Agreement on the date set forth as the date of termination of this Agreement in such notice; provided that such notice of termination may be rescinded by Borrower if such notice is conditioned upon the closing of a replacement financing facility or other event.

(ii) Mandatory Prepayments.

(1) [Reserved].

(2) Asset Sales. Subject to the Intercreditor Agreement, within 3 Business Days of the receipt by Borrower, any Guarantor or any of their Subsidiaries of Net Cash Proceeds from any Asset Sale in excess of $1,000,000 since the Petition Date in any calendar year, Borrower shall prepay the outstanding principal amount of the Term Loans, together with any accrued and unpaid interest therein in accordance with Section 2.4(d)(iii), in an amount equal to the Net Cash Proceeds received from such Asset Sale that are in excess of the $1,000,000 threshold referenced above; provided that the aggregate amount the Term Loans and interest required to be so paid shall not exceed the aggregate amount of such Net Cash Proceeds received in excess of $1,000,000; provided further that Borrower or any of its Subsidiaries, may apply such Net Cash Proceeds to an Investment permitted under this Agreement in (a) [reserved], (b) properties, (c) capital expenditures or (d) other assets that, in each of clauses (b), (c) and (d), replace the businesses, properties and assets that are the subject of such Asset Sale or are used or useful in the Permitted Business (clauses (b), (c) and (d) together, the "Additional Assets"), so long as Borrower delivers a certificate to Agent within 15 days after such Asset Sale (other than in connection with an Asset Sale, the assets or property subject to such Asset Sale are Vehicles), stating that such Net Cash Proceeds shall be used to make an Investment in such Additional Assets within a period specified in such certificate not to exceed 180 days after receipt of such Net Cash Proceeds.

(3) Indebtedness. Subject to the Intercreditor Agreement, within three (3) Business Days of the receipt by any Loan Party of any Net Cash Proceeds from the incurrence of any Indebtedness (other than Permitted Indebtedness), Borrower shall prepay the outstanding principal amount of the Term Loans, in an amount equal to the Net Cash Proceeds received from such incurrence of Indebtedness, together with any accrued and unpaid interest

thereon in accordance with Section 2.4(d)(iii); provided that the aggregate amount the Term Loans, and interest required to be so paid shall not exceed the aggregate amount of such Net Cash Proceeds received. The provisions of this Section do not constitute consent to the incurrence of any Indebtedness by Borrower or any of its Subsidiaries.

(iii) Application of Payments. The application of the proceeds of any Collateral shall be subject to Section 18.1 hereof and the provisions of the Intercreditor Agreement.

(iv) Application Override. Notwithstanding anything in this Section 2.4(d) to the contrary, prior to the First Lien Termination Date, no prepayments of outstanding Term Loans that would otherwise be required to be made pursuant to this Section 2.4(d) with the proceeds of Collateral shall be permitted or required to be made (and, for the avoidance of doubt, any such prepayments that would have been permitted or required to be made hereunder prior to the First Lien Termination Date but for this Section 2.4(d)(iv) shall be permitted or required to be made upon or following the occurrence of the First Lien Termination Date).

2.5 Promise to Pay. Borrower promises to pay the Obligations (including principal, interest, fees, costs, and expenses) in full on the Maturity Date or, if earlier, on the date on which the Obligations become due and payable pursuant to the terms of this Agreement. Borrower shall not be required to make any prepayments on the principal of the Term Loans prior to the Maturity Date (or, if earlier, on the date on which the Obligations become due and payable pursuant to the terms of this Agreement) except as otherwise expressly required pursuant Section 2.4(d) and upon acceleration of the Obligations in accordance with Section 9.1.

2.6 Interest Rates: Rates, Payments, and Calculations.

(a) Interest Rates. Except as provided in Section 2.6(c), all outstanding Term Loans shall bear interest at a rate per annum equal to [●]%. The interest on the Term Loans shall be due and payable monthly in arrears on the last Business Day of each calendar month, commencing with August 30, 2019 (each date, an "Interest Payment Date") and on the Maturity Date. Notwithstanding anything to the contrary contained herein, any interest on the Term Loans prior to the Maturity Date shall be automatically paid in kind (and deemed timely paid hereunder) by adding the amount of such interest payment to the principal amount of the Term Loans on such Interest Payment Date (it being understood that the full amount of such accrued interest may be applied to the credit bid as described in Section 2.1(b)).

(b) [Reserved].

(c) Default Rate. If any principal of or interest on any Term Loan or any fee or other amount payable by Borrower pursuant to this Agreement is not paid when due, whether at stated maturity, upon acceleration or otherwise (following any applicable grace period), such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to 2.00% per annum above the per annum rate otherwise applicable pursuant to Section 2.6(a).

(d) Payment of Fees. All costs, expenses, and Lender Group Expenses payable hereunder or under any of the other Loan Documents shall be due and payable promptly and in any event no later than 30 days following written demand therefor. All fees payable under the Fee Letter shall be paid when due and payable thereunder.

(e) Computation. All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 365 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue.

(f) Intent to Limit Charges to Maximum Lawful Rate. In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrower and the Lender Group, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable Law, then, *ipso facto*, as of the date of this Agreement, Borrower is and shall be liable only for the payment of such maximum as allowed by law, and payment received from Borrower in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

2.7 Crediting Payments. The receipt of any payment item by Agent shall not be considered a payment on account unless such payment item is a wire transfer of immediately available federal funds made to an account designated by Agent from time to time (such account, "Agent's Account") or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrower shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 2:00 p.m. (New York time). If any payment item is received into Agent's Account on a non-Business Day or after 2:00 p.m. (New York time) on a Business Day, it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day (unless Agent, in its sole discretion, elects to credit it on the date received).

2.8 Fees.

(a) Agent Fee. Borrower shall pay to Agent for its own account such fees as may be set forth in the Fee Letter.

(b) Commitment Fee. Borrower shall pay to Agent for the ratable benefit of the Lenders a commitment fee equal to 1.00% per annum times the average daily unused amount of the Commitments, as in effect from time to time. Such fee shall be payable in arrears on the Maturity Date.

2.9 Tax Treatment. Each of the Loan Parties and the Lenders agree (i) to treat and report the Term Loans as debt instruments that are not "contingent payment debt instruments" for U.S. federal and applicable state, provincial and local income tax purposes, and (ii) that Borrower will provide any information reasonably requested from time to time by any Lender regarding the original issue discount (if any) associated with the Term Loans for U.S. and Canadian federal income tax purposes.

2.10 [Reserved].

2.11 Interest Payment Dates. Interest on the Term Loans shall be payable on (x) the earliest of (i) the applicable Interest Payment Date, (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof, or (iii) the Maturity Date and (y) the date of any prepayment made pursuant to Sections 2.4(d)(i) and (ii).

3. CONDITIONS; TERM OF AGREEMENT.

3.1 Conditions Precedent to the Initial Loan. The obligation of each Lender to enter into this Agreement on the Effective Date is subject to the fulfillment, to the satisfaction of Agent and each Lender, of each of the following conditions precedent:

(a) The conditions precedent set forth on Schedule 3.1;

(b) The representations and warranties contained in Section 4 of this Agreement shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the Effective Date, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case, such representations and warranties shall be true and correct in all material respects on such earlier date (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof)); and

(c) no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof.

3.2 Conditions Precedent to Each Subsequent Loan.

(a) The obligation of each Lender to make each Additional Loan is subject to the satisfaction (or waiver) of the following further conditions precedent:

(i) The conditions precedent set forth on Schedule 3.2;

(ii) The representations and warranties contained in Section 4 of this Agreement shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case, such representations and warranties shall be true and correct in all material respects on such earlier date (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof)); and

(iii) No Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof.

(b) The obligation of each Lender to make each Final Loan is subject to the satisfaction (or waiver) of the following further conditions precedent:

(i) The conditions precedent set forth on Schedule 3.2;

(ii) The representations and warranties contained in Section 4 of this Agreement shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case, such representations and warranties shall be true and correct in all material respects on such earlier date (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof));

(iii) No Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof; and'

(iv) (A) The Bankruptcy Court shall have entered the Final DIP Order which shall be in full force and effect and shall not have been, in whole or in part, vacated, reversed, stayed, or set aside and shall not have been varied, modified or amended in a manner adverse to the Lenders (other than immaterial modifications or amendments to correct grammatical, ministerial or typographical errors) without the consent of Agent, the Lenders and Solus and (B) the CCAA Court shall have granted the CCAA DIP Approval Order (as defined in the Revolver Facility Agreement) (which shall remain in full force and effect).

3.3 Maturity. The Obligations shall mature in accordance with Section 3.4 on the date that is the earliest of (a) December 31, 2019, (b) the substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the "effective date" thereof) of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the Bankruptcy Court; (c) the acceleration of the Term Loans and the termination of the Commitments in accordance with Section 8 hereof; and (d) a sale of all or substantially all of the assets of JCHC (or Borrower and the Loan Parties), pursuant to Section 363 of the Bankruptcy Code or Section 36 of the CCAA, as applicable (such earliest date, the "Maturity Date").

3.4 Effect of Maturity. On the Maturity Date, all of the Obligations immediately shall become due and payable without notice or demand and Borrower shall be required to repay all of the Obligations in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full. When all of the Obligations (other than any contingent and unasserted reimbursement or indemnity obligations) have been paid in full, Agent will, at Borrower's sole expense, to the extent requested by Borrower, deliver all possessory Collateral and execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by or on behalf of Agent.

4. REPRESENTATIONS AND WARRANTIES.

In order to induce the Lender Group to enter into this Agreement, Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), on the date hereof and on each date of Borrowing (except to the extent that such representations and warranties relate solely to an earlier date, in which case, such representations and warranties shall be true and correct in all material respects on such earlier date (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof)) and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1 Due Organization and Qualification; Subsidiaries.

(a) Borrower and each Loan Party (i) is duly organized and existing and in good standing under the laws of the jurisdiction of its organization, (ii) is qualified to do business in any state, province or other jurisdiction where the failure to be so qualified could reasonably be expected to result in a Material Adverse Change, and (iii) subject to the entry and terms of the Financing Orders and other orders of the Bankruptcy Court or CCAA Court, as applicable, has all requisite organizational power and authority to own and operate its properties, to carry on its business as now conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) Set forth on Schedule 4.1(b) is a complete and accurate description of the authorized capital Stock of Borrower and each of its Subsidiaries, by class, and, as of the Effective Date, a description of the number of shares of each such class that are issued and outstanding and, in the case of Subsidiaries of Borrower, the number and the percentage of the outstanding shares of each such class owned directly or indirectly by Borrower. Other than as described on Schedule 4.1(b), (i) there are no subscriptions, options, warrants, or calls relating to any shares of any such Person's capital Stock, including any right of conversion or exchange under any outstanding security or other instrument and (ii) neither Borrower nor any of its Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital Stock or any security convertible into or exchangeable for any of its capital Stock. All of the outstanding capital Stock of each such Subsidiary of Borrower has been validly issued and, to the extent applicable, is fully paid and non-assessable.

4.2 Due Authorization; No Conflict.

(a) As to each Loan Party, subject to the entry and the terms of the Financing Orders, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party, and the borrowing of the Term Loans hereunder, have been duly authorized by all necessary action on the part of such Loan Party.

(b) As to each Loan Party, subject to the entry and the terms of the Financing Orders, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party, and the borrowing of the Term Loans hereunder, do not and will not (i) violate

any material provision of federal, state, or local Law or regulation applicable to any Loan Party or its Subsidiaries, the Governing Documents of any Loan Party or its Subsidiaries, or any order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party or its Subsidiaries, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Material Contract of any Loan Party or its Subsidiaries except to the extent that any such conflict, breach or default could not individually or in the aggregate reasonably be expected to have a Material Adverse Change, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens, or (iv) require any approval of any Loan Party's interestholders or any approval or consent of any Person under any Material Contract of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect and except, in the case of Material Contracts, for consents or approvals, the failure to obtain could not individually or in the aggregate reasonably be expected to cause a Material Adverse Change.

4.3 Governmental Consents. Other than the Financing Orders, the execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than registrations, consents, approvals, notices, or other actions that have been obtained and that are still in force and effect and except for filings and recordings with respect to the Collateral to be made, or otherwise delivered in accordance with the Loan Documents for filing or recordation, as of the Effective Date or as of such later date as is permitted or contemplated pursuant to the Loan Documents.

4.4 Binding Obligations; Perfected Liens.

(a) Subject to the entry of the Financing Orders, each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(b) Upon entry of the Financing Orders, Agent's Liens are validly created and perfected subject to the priority described in the Financing Orders.

4.5 Title to Assets; No Encumbrances. Subject to Permitted Liens, Borrower and each of its Subsidiaries has (a) good, marketable and legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Schedule 3.1, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby (or assets disposed of in the ordinary course of business, and not with respect to any of the transactions contemplated hereby, prior to the Effective Date). All of such assets are free and clear of Liens except for Permitted Liens.

4.6 Jurisdiction of Organization; Location of Chief Executive Office; Organizational Identification Number; Commercial Tort Claims.

(a) As of the Effective Date, the name of (within the meaning of Section 9-503 of the Code) and jurisdiction of organization of Borrower and each of its Subsidiaries is set forth on Schedule 4.6(a).

(b) As of the Effective Date, the chief executive office of Borrower and each of its Subsidiaries is located at the address indicated on Schedule 4.6(b).

(c) As of the Effective Date, Borrower's and each of its Subsidiaries' tax identification numbers and organizational identification numbers, if any, are identified on Schedule 4.6(c).

(d) As of the Effective Date, neither Borrower nor any of its Subsidiaries holds any commercial tort claims that exceed $500,000 in amount, except as set forth on Schedule 4.6(d).

4.7 Litigation.

(a) Except for the Chapter 11 Cases, the CCAA Proceedings and any events leading up to the Chapter 11 Cases and the Recognition Proceedings and as set forth on Schedule 4.7(a), there are no actions, suits, or proceedings pending or, to the knowledge of Borrower, after due inquiry, threatened in writing against Borrower or any of its Subsidiaries that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Change.

(b) Schedule 4.7(b) sets forth a complete and accurate description, with respect to each of the actions, suits, or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, $1,000,000 (except to the extent covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) that, as of the Effective Date, is pending or, to the knowledge of Borrower, after due inquiry, threatened in writing against Borrower or any of its Subsidiaries, of, as of the Effective Date, (i) the parties to such actions, suits, or proceedings, (ii) the nature of the dispute that is the subject of such actions, suits, or proceedings, and (iii) the procedural status with respect to such actions, suits, or proceedings.

4.8 Compliance with Laws. Neither Borrower nor any of its Subsidiaries (a) is in violation of any applicable Laws, rules, regulations, executive orders, or codes (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

4.9 Financial Statements; No Material Adverse Change. All historical financial statements relating to Borrower and its Subsidiaries that have been delivered by Borrower to Agent, including the Financial Statements, have been prepared in accordance with GAAP in all

material respects (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, Borrower's and its Subsidiaries' respective financial condition (consolidated to the extent specified in such financial statements) as of the date thereof and results of operations for the period then ended. All material indebtedness and other liabilities (including, without limitation, Indebtedness, liabilities for Taxes, long-term leases and other unusual forward or long-term commitments), direct or contingent, of Borrower and its Subsidiaries are set forth in the Financial Statements for the periods covered thereby in accordance with GAAP in all material respects. Borrower has heretofore furnished to Agent the DIP Budget. Since December 31, 2018, except for the commencement of the Chapter 11 Cases and the CCAA Proceedings and any events leading up to the Chapter 11 Cases and the CCAA Proceedings, no event, circumstance, or change, either individually or in the aggregate, has occurred that has or could reasonably be expected to result in a Material Adverse Change with respect to Borrower and its Subsidiaries, taken as a whole.

4.10 Fraudulent Transfer.

(a) [Reserved].

(b) No transfer of property is being made by any Loan Party and no obligation is being incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of such Loan Party.

4.11 Employee Benefits. Except as set forth on Schedule 4.11, neither Borrower nor any of its Subsidiaries, nor any of their ERISA Affiliates maintains or contributes to any Benefit Plan.

4.12 Environmental Condition. (a) To Borrower's knowledge, neither Borrower's nor any of its Subsidiaries' Properties has ever been used by Borrower, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to Borrower's knowledge, after due inquiry, neither Borrower's nor any of its Subsidiaries' Properties has ever been designated or identified in any manner pursuant to any Environmental Law as a Hazardous Materials disposal site, (c) neither Borrower nor any of its Subsidiaries has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by a Loan Party or its Subsidiaries, and (d) neither Borrower nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability that, in each case of this Section 4.12, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

4.13 Intellectual Property. Borrower and each of its Subsidiaries own, or hold licenses in, all trademarks, trade names, copyrights, patents, and licenses that are necessary and material to the conduct of its business as currently conducted, and attached hereto as Schedule 4.13 is a true, correct, and complete listing of all material trademarks, trade names, copyrights, patents, and licenses as to which Borrower or one of its Subsidiaries is the owner or is an exclusive licensee.

4.14 Leases. Borrower and each of its Subsidiaries enjoy peaceful and undisturbed possession under any lease material to their business and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by Borrower or the applicable Subsidiaries exists under any of them.

4.15 Deposit Accounts and Securities Accounts. Set forth on Schedule 4.15 is a listing, as of the Effective Date, of all of Borrower's and its Subsidiaries' Deposit Accounts and Securities Accounts, including, with respect to each bank or securities intermediary (a) the name and address of such Person, and (b) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

4.16 Complete Disclosure. All factual information (other than forward-looking information, forward-looking pro formas, projections, third party data, information of a general economic or industry specific nature and general information about Borrower's industry), taken as a whole, furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, was, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided.

4.17 Material Contracts. Set forth on Schedule 4.17 is a listing of the Material Contracts of each Loan Party and its Subsidiaries as of the Effective Date. Except for matters which, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, and subject to the Financing Orders, each Material Contract (other than those that have expired at the end of their normal terms) (a) is in full force and effect and is binding upon and enforceable against Borrower or the applicable Subsidiary and, to Borrower's knowledge, after due inquiry, each other Person that is a party thereto in accordance with its terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws related to or limiting creditors' rights generally, (b) has not been otherwise amended or modified (other than amendments or modifications that could not reasonably be expected to result in a Material Adverse Change), and (c) is not in default due to the action or inaction of Borrower or the applicable Subsidiary.

4.18 Patriot Act. To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"). No part of the proceeds of the loans made hereunder will be used by any Loan Party or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the U.S.

Foreign Corrupt Practices Act of 1977, as amended (the "FCPA") or any other similar anti-corruption legislation in any other applicable jurisdiction.

4.19 Indebtedness. Set forth on Schedule 4.19 is a true and complete list of all Indebtedness in excess of $100,000 for any particular Indebtedness and $250,000 in the aggregate for all Indebtedness of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Effective Date that is to remain outstanding immediately after giving effect to the closing hereunder on the Effective Date and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Effective Date.

4.20 Payment of Taxes. Except as otherwise permitted under Section 5.5 or Taxes the payment of which are stayed by the Chapter 11 Cases or the CCAA Proceedings, all U.S. and Canadian federal and other material tax returns and reports of each Loan Party and its Subsidiaries required to be filed by any of them have been timely filed, and all U.S. federal income and material Taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable. Each Loan Party and each of its Subsidiaries have made adequate provision in accordance with GAAP for all Taxes not yet due and payable. Borrower has no knowledge of any proposed Tax assessment against the Loan Parties or any of their Subsidiaries in an amount in excess of $150,000.

4.21 Margin Stock. Neither Borrower nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the loans made to Borrower will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors of the United States Federal Reserve.

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

4.23 Anti-Money Laundering and Anti-Terrorism Laws.

(a) None of the Loan Parties, nor, to the knowledge of Borrower, any Affiliate of any of the Loan Parties, has violated or is in violation of any of the Anti-Money Laundering and Anti-Terrorism Laws in any material respect or has engaged in or conspired to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the Anti-Money Laundering and Anti-Terrorism Laws.

(b) None of the Loan Parties, nor, to the knowledge of Borrower, any Affiliate of any of the Loan Parties, nor any officer or director of any of the Loan Parties, nor any of the

Loan Parties' respective agents acting or benefiting in any capacity in connection with the Term Loans or other transactions hereunder, is a Blocked Person.

(c) None of the Loan Parties, nor, to the knowledge of Borrower, any of their agents acting in any capacity in connection with the Term Loans or other transactions hereunder, (A) conducts any business with or for the benefit of any Blocked Person or engages in making or receiving any contribution of funds, goods or services to, from or for the benefit of any Blocked Person, or (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked or subject to blocking pursuant to any OFAC Sanctions Programs.

4.24 Employee and Labor Matters. Except as set forth on Schedule 4.24, there is (i) no unfair labor practice charge or complaint pending or, to the knowledge of Borrower, threatened against Borrower or its Subsidiaries before any Governmental Authority, and no grievance or arbitration proceeding pending or threatened against Borrower or its Subsidiaries which arises out of or under any collective bargaining agreement, that could reasonably be expected to result in a material liability, (ii) no strike, lockout, slowdown, work stoppage or other material labor dispute pending or threatened against Borrower or its Subsidiaries that could reasonably be expected to result in a material liability, or (iii) to the knowledge of Borrower, after due inquiry, no union representation question existing with respect to the employees of Borrower or its Subsidiaries and no union organizing or decertification activity taking place with respect to any of the employees of Borrower or its Subsidiaries, in each case, to the extent such events could reasonably be expected to result in a material liability. Except as set forth on Schedule 4.24, neither Borrower, nor any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of Borrower or its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

4.25 Anti-Bribery and Anti-Corruption Laws.

(a) The Loan Parties are in compliance in all material respects with the FCPA and the anti-bribery and anti-corruption laws of those jurisdictions in which they do business (collectively, together with the FCPA, the "Anti-Corruption Laws").

(b) None of the Loan Parties has at any time:

(i) offered, promised, paid, given, or authorized the payment or giving of any money, gift or other thing of value, directly or indirectly, to or for the benefit of any employee, official, representative, or other person acting on behalf of any foreign (i.e., non-U.S.) Governmental Authority thereof, or of any public international organization, or any foreign political party or official thereof, or candidate for foreign political office (collectively, "Foreign Official"), for the purpose of: (1) influencing any act or decision of such Foreign Official in his, her, or its official capacity; or (2) inducing such Foreign Official to do, or omit to do, an act in violation of the lawful duty of such Foreign Official, or (3) securing any improper advantage, in order to obtain or retain business for, or with, or to direct business to, any Person; or

(ii) acted or attempted to act in any manner which would subject any of the Loan Parties to material liability under any Anti-Corruption Law.

(c) To the knowledge of the Loan Parties, as of the Effective Date, there are, and have been, no allegations, investigations or inquiries with regard to a potential violation of any Anti-Corruption Law by any of the Loan Parties or any of their respective current directors, officers, employees, or other persons acting or purporting to act on their behalf.

(d) The Loan Parties have adopted, implemented and maintain anti-bribery and anti-corruption policies and procedures that are reasonably designed to promote and achieve compliance with the Anti-Corruption Laws in all material respects.

4.26 Use of Proceeds. The proceeds of the Term Loans will be used in accordance in all material respects with the terms of the DIP Budget (subject to Permitted Disbursement Variance) and in compliance with Section 6.13.

4.27 Guarantors. (a) Each Subsidiary of Borrower, (b) any co-borrower or guarantor under the Revolver Facility and (c) all "Debtors" as defined in the Initial Orders shall be Guarantors under the Loan Documents.

4.28 Security. The provisions of the Interim DIP Order and Final DIP Order, as applicable, are effective (subject to their respective terms) to create in favor of Agent for the benefit of the Lenders a legal, valid, enforceable and perfected security interest on all right, title and interest of the respective Loan Parties in the Collateral described therein (with such priority as provided for in the Financing Orders). No filing or other action will be necessary to perfect the Liens on any Collateral under the Laws of the United States of America or the federal Laws of Canada or the Laws of any province therein.

4.29 Budget. The DIP Budget was prepared in good faith based on assumptions believed by the Loan Parties to be reasonable at the time made. The Liquidity Forecast was prepared in good faith based on assumptions believed by the Loan Parties to be reasonable at the time made.

4.30 Chapter 11 Cases. The Chapter 11 Cases were commenced on the Petition Date in accordance with the Bankruptcy Code and other applicable Law and proper notice has been given, and notice of the hearing for the approval of the Interim DIP Order has been given as identified in the certificate of service filed with the Bankruptcy Court. Each of the Interim DIP Order and, after it has been entered, the Final DIP Order, is in full force and effect and has not, in whole or in part, been reversed, modified, amended, stayed, vacated, appealed or subjected to a stay pending appeal or otherwise successfully challenged and is not subject to any pending or threatened challenge or proceeding in any court of competent jurisdiction, in each case, except in a manner acceptable to the Required Lenders.

4.31 ERISA. Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the IRC and other U.S., Canadian federal, provincial or state law. Each Plan which is intended to qualify under Section 401(a) of the IRC has received a favorable opinion or determination letter from the IRS and to the best knowledge of Borrower, nothing has occurred which would cause the loss of such qualification. Except as set forth on Schedule 4.31, Borrower and each ERISA Affiliate has made all required contributions to any Benefit Plan subject to

Section 412 of the IRC, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the IRC has been made with respect to any Benefit Plan. All payments due from Borrower or any of its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Borrower or such Subsidiary, except where the failure to do so could not individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

5. AFFIRMATIVE COVENANTS.

Borrower covenants and agrees that, until payment in full of the Obligations (other than any unasserted contingent reimbursement and indemnification obligations), Borrower shall and shall cause each of its Subsidiaries to comply with each of the following, as applicable:

5.1 Financial Statements, Reports, Certificates. Deliver (which delivery may be made by electronic communication (including email)) to Agent, with copies to each Lender, each of the financial statements, reports, and other items set forth on Schedule 5.1 no later than the times specified therein. Borrower agrees that no Subsidiary of Borrower will have a fiscal year different from that of Borrower. In addition, Borrower agrees to, and to cause each of its Subsidiaries to, maintain a system of accounting that enables Borrower to produce financial statements in accordance with GAAP in all material respects.

5.2 Restructuring Milestones. Borrower and the Guarantors each agree that they shall:

(a) No later than the Petition Date, file the DIP Motion and Sale and Bidding Procedures Motion;

(b) 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;

(c) No later than the Petition Date, the Debtors, the Purchaser, and the Central States Plan shall execute the Pension Plan Treatment Agreement attached to the RSA (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;

(d) Obtain entry by the Bankruptcy Court of the Interim DIP Order no later than 2 Business Days after the Petition Date;

(e) Obtain entry of an order by the CCAA Court recognizing the Interim DIP Order no later than 5 calendar days after the entry of the Interim DIP Order;

(f) 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 25 calendar days after the Petition Date;

(g) Obtain entry of an order by the CCAA Court recognizing the Final DIP Order and the Bidding Procedures 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;

(h) 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 (the "CBA Milestone");

(i) 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;

(j) Obtain entry by the Bankruptcy Court of the Sale Order no later than 65 calendar days after the Petition Date;

(k) Obtain entry of an order by the CCAA Court recognizing the Sale Order no later than 5 calendar days after the entry of the Sale Order; and

(l) cause the Closing Date to occur no later than 75 calendar days after the Petition Date.

All capitalized terms in this Section 5.2 not otherwise defined herein shall have the meanings set forth in the RSA.

5.3 Existence. Except as otherwise permitted under Section 6.3 or Section 6.4, at all times maintain and preserve in full force and effect its existence and good standing in its jurisdiction of organization and, except as could not reasonably be expected to result in a Material Adverse Change, good standing with respect to all other jurisdictions in which it is qualified to do business and any rights, franchises, licenses, permits, licenses, accreditations, authorizations, or other approvals material to its business.

5.4 Maintenance of Properties. Maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, casualty and condemnation and Permitted Dispositions excepted and except where the failure to do so would not reasonably be expected to have a Material Adverse Change.

5.5 Taxes. Cause all Taxes imposed, levied, or assessed against any Loan Party or its Subsidiaries, or any of their respective assets or in respect of any of its income, businesses, or franchises to be paid in full, before delinquency or before the expiration of any extension period, except with respect to such Taxes that do not exceed $150,000 in the aggregate at any one time. Borrower will and will cause each of its Subsidiaries to make timely payment or deposit of all Tax payments and withholding taxes required of it and them by applicable Laws (subject to the preceding sentence), including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, provincial and U.S. and Canadian federal income taxes, and will, upon reasonable

request, furnish Agent with proof reasonably satisfactory to the Required Lenders indicating that Borrower and its Subsidiaries have made such payments or deposits.

5.6 Insurance. At Borrower's expense, maintain insurance respecting each of the Loan Parties' and their Subsidiaries' assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. All such policies of insurance shall be with responsible and reputable insurance companies reasonably acceptable to the Required Lenders and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event in amount, adequacy and scope reasonably satisfactory to the Required Lenders (it being agreed that the amount, adequacy and scope of the policies of insurance of Borrower in effect as of the Effective Date are acceptable to the Required Lenders). All property insurance policies covering the Collateral are to be made payable to Agent for the benefit of Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard loss payable endorsement with a standard noncontributory "lender" or "secured party" clause and are to contain such other provisions as Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Agent, with the loss payable (but only in respect of Collateral) and additional insured endorsements in favor of Agent and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If Borrower fails to maintain such insurance, subject to the Intercreditor Agreement, Agent may arrange for such insurance, but at Borrower's expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Borrower shall give Agent prompt notice of any loss exceeding $1,000,000 covered by its casualty or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default, subject to the Intercreditor Agreement and Financing Orders, Agent shall have the first right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. Notwithstanding anything in this Section 5.6, the Loan Parties and their Subsidiaries shall be permitted to self-insure on a basis consistent with commercially reasonable business practices. The parties hereby acknowledge that the Loan Parties' self-insurance practices in effect on the Effective Date are commercially reasonable business practices as of the date of this Agreement.

5.7 Inspection. Permit Agent and each of its duly authorized representatives or agents to visit any of its properties for the purpose of inspecting any of its assets or books and records, conducting appraisals and valuations, examining and making copies of its books and records, and discussing its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as Agent may designate.

5.8 Compliance with Laws. Comply with the requirements of all applicable Laws and orders of any Governmental Authority, other than Laws and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material

Adverse Change or such compliance is stayed by the Chapter 11 Cases, the CCAA Proceedings or the Financing Orders.

5.9 [Reserved].

5.10 [Reserved].

5.11 Formation of Subsidiaries. No Loan Party shall form any Subsidiary or acquire any Subsidiary after the Effective Date without the prior written consent of the Required Lenders. If such consent is provided by the Required Lenders, such Loan Party shall, substantially contemporaneously with such formation or acquisition (or such later date as permitted by the Required Lenders in their sole discretion) cause any such new Subsidiary to provide to Agent a Security Agreement or joinder to an existing Security Agreement (a "Security Agreement Joinder"), together with such other security documents (including mortgages with respect to any Real Property owned in fee of such new Subsidiary to the extent required by the Loan Documents, other than Excluded Real Property), as well as appropriate financing statements (and with respect to all property subject to a mortgage, fixture filings), all in form and substance reasonably satisfactory to the Required Lenders (including being sufficient to grant Agent a Lien (subject to the Intercreditor Agreement and Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary), (b) no later than such formation or acquisition (or such later date as permitted by the Required Lenders in their sole discretion) provide to Agent a pledge agreement (or an addendum to an existing Security Agreement) and, subject to the terms of the Intercreditor Agreement and the Financing Orders, appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary reasonably satisfactory to the Required Lenders, (c) no later than substantially contemporaneously with such formation or acquisition (or such later date as permitted by the Required Lenders in their sole discretion) provide to Agent all other documentation, including, one or more opinions of counsel reasonably satisfactory to the Required Lenders, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance or other documentation with respect to all Real Property owned in fee and subject to a Mortgage) and (d) no later than substantially contemporaneously with such formation or acquisition (or such later date as permitted by the Required Lenders in their sole discretion) provide to Agent such other agreements, instruments, approvals, legal opinions or other documents reasonably requested by the Required Lenders in order to create, perfect, establish the priority of or otherwise protect any Lien purported to be covered by any such Security Agreement or Mortgage or otherwise to effect the intent that such Subsidiary shall become bound by all of the terms, covenants and agreements contained in the Loan Documents and that all property and assets of such new Subsidiary that is required to become Collateral for the Obligations pursuant to the terms of this Agreement and the other Loan Documents shall become Collateral for the Obligations. Any document, agreement, or instrument executed or issued pursuant to this Section 5.11 shall be a Loan Document.

5.12 Further Assurances. At any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, endorsements of certificates of title, mortgages, deeds of trust, opinions of counsel, and all other documents (the "Additional Documents") that Agent may reasonably request in form and substance reasonably satisfactory to Agent to the extent required under the Loan Documents,

to create, perfect, and continue perfected or to better perfect Agent's Liens in all of the assets of the Loan Parties (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal) to the extent required under the Loan Documents, to create and perfect Liens in favor of Agent in any Real Property of Borrower or its Subsidiaries, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable Law, if Borrower refuses or fails to execute or deliver any reasonably requested Additional Documents required to be delivered under this Section 5.12 within a reasonable period of time following the request to do so, Borrower hereby authorizes Agent to execute any such Additional Documents in any Loan Party's name, as applicable, and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of the Loan Parties and their Subsidiaries and all of the outstanding capital Stock of the Loan Parties' Subsidiaries (subject to exceptions and limitations contained in the Loan Documents).

5.13 Lender Calls. The Loan Parties and/or their advisors, as applicable (including appropriately senior members of management), shall, upon request of Agent, host the following telephonic conference calls with Agent, Solus, the Lenders and their respective advisors:

(a) promptly following the delivery of each variance report pursuant to clause (a) set forth on Schedule 5.1, a call to discuss the contents of such variance report; and

(b) no less frequently than bi-monthly, a call to discuss the DIP Budget and DIP Budget-related initiatives (including, but not limited to, selling, general and administrative expenses and Capital Expenditures).

5.14 Cash Management. The Loan Parties shall maintain their cash management systems as they existed prior to the Petition Date and may not make any changes to such cash management systems without the prior approval of Agent.

5.15 [Reserved].

5.16 ERISA Matters, Furnish to Agent.

(a) Notice of ERISA Matters. Upon Borrower or its Subsidiaries learning of the occurrence of any of the following which could reasonably be expected to result in a Material Adverse Change, written notice thereof which describes the same and the steps being taken by Borrower and its Subsidiaries with respect thereto: (i) a Prohibited Transaction in connection with any Benefit Plan (ii) the occurrence of a Reportable Event with respect to any Pension Plan subject to Title IV of ERISA, (iii) the institution of any steps by Borrower and its Subsidiaries, the PBGC or any other Person to terminate any Benefit Plan, (iv) the institution of any steps by Borrower and its Subsidiaries or any ERISA Affiliate to withdraw from any Pension Plan or Multiemployer Plan, (v) the failure to make a required contribution to any Pension Plan if such failure is sufficient to give rise to a lien under Section 303(k) of ERISA or any similar legislation, (vi) the taking of any action with respect to a Pension Plan which could result in the requirement that a Loan Party furnish a bond or other security to the PBGC, any similar regulatory authority or such Pension

Plan, (vii) [reserved], (viii) any and all claims, actions, or lawsuits (other than claims for benefits in the ordinary course) asserted or instituted, and of any threatened litigation or claims (other than claims for benefits in the ordinary course), against a Loan Party or against any ERISA Affiliate in connection with any Benefit Plan maintained, at any time, by a Loan Party or such ERISA Affiliate, or to which a Loan Party or such ERISA Affiliate has or had at any time any obligation to contribute, or/and against any such Benefit Plan itself, or against any fiduciary of or service provided to any such Benefit Plan or (ix) the occurrence of any event with respect to any Pension Plan or Multiemployer Plan which would result in Borrower or any of its Subsidiaries incurring any liability, fine or penalty.

(b) Copies of ERISA Information. Upon Agent's reasonable request, each of the following shall be delivered by Borrower to Agent: (i) a copy of each Benefit Plan (or, where any such plan is not in writing, complete description thereof) (and if applicable, related trust agreements or other funding instruments) and all amendments thereto, all written interpretations thereof and written descriptions thereof that have been distributed to employees or former employees of a Loan Party or any of its ERISA Affiliates; (ii) the most recent determination letter issued by the Internal Revenue Service with respect to each Pension Plan; (iii) for the 3 most recent plan years, Annual Reports on Form 5500 Series required to be filed with any governmental agency for each Benefit Plan; (iv) all actuarial reports prepared for the last 3 plan years for each Pension Plan; (v) a listing of all Multiemployer Plans, with the aggregate amount of the most recent annual contributions required to be made by a Loan Party or any ERISA Affiliate to each such Multiemployer Plan and copies of the collective bargaining agreements requiring such contributions; and (vi) to the extent any Loan Party has received or possesses such documents or information, any information that has been provided to a Loan Party or any ERISA Affiliate regarding withdrawal liability under any Multiemployer Plan.

5.17 Post-Closing Obligations. Borrower shall, and shall cause each of its Subsidiaries to, take each of the actions set forth in Schedule 5.17, no later than the time period set forth for such action in such schedule (or such later time as Agent agrees in its sole discretion). All provisions of this Agreement and the other Loan Documents (including, without limitation, all representations, warranties, covenants, Events of Default and other agreements herein and therein) shall be deemed modified to the extent necessary to reflect the fact that additional time has been provided for compliance with respect to such conditions subsequent.

5.18 Anti-Bribery and Anti-Corruption Laws Maintain, and cause each of its Subsidiaries to maintain, anti-bribery and anti-corruption policies and procedures that are reasonably designed to promote and achieve compliance with the Anti-Corruption Laws in all material respects.

6. NEGATIVE COVENANTS.

Each Loan Party covenants and agrees that, until the payment in full of the Obligations (other than any unasserted contingent reimbursement and indemnification obligations), such Loan Party will not and will not permit any of its Subsidiaries to do any of the following:

6.1 Indebtedness. Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

For purposes of determining compliance with this Section 6.1, (x) the outstanding principal amount of any Indebtedness shall be counted only once such that (without limitation) any obligation arising under any Guarantees or obligations with respect to letters of credit supporting Indebtedness otherwise included in the determination of such particular amount shall not be included and (y) in the event that an item of Indebtedness meets the criteria of more than one of the categories of Permitted Indebtedness, Borrower, in its sole discretion, shall classify, and from time to time may reclassify, all or any portion of such item of Indebtedness and such Indebtedness need not be permitted solely by reference to one provision of the definition of Permitted Indebtedness but may be permitted in part by one such provision and in part by one or more other provisions of such definition.

The accrual of interest, the accretion or amortization of original issue discount and the payment of interest on Indebtedness in the forms of additional Indebtedness or payment of dividends on Stock in the forms of additional shares of Stock with the same terms and changes in the amount outstanding due solely to the result of fluctuations in the exchange rates of currencies will not be deemed to be an incurrence of Indebtedness or issuance of Stock for purposes of this Section 6.1.

Notwithstanding anything to the contrary herein, the maximum amount of Indebtedness that may be outstanding pursuant to this Section 6.1 will not be deemed exceeded due to the results of fluctuations in exchange rates or currency values. For purposes of determining compliance with any U.S. dollar-denominated restriction on the incurrence of Indebtedness, the U.S. dollar equivalent principal amount of Indebtedness denominated in a foreign currency shall be calculated based on the relevant currency exchange rate in effect on the date such Indebtedness was incurred.

None of Borrower and Guarantors will incur any Indebtedness that pursuant to its terms is subordinate or junior in right of payment to any Indebtedness unless such Indebtedness is subordinated in right of payment to the Obligations to at least the same extent; provided that Indebtedness will not be considered subordinate or junior in right of payment to any other Indebtedness solely by virtue of being unsecured or secured to a greater or lesser extent or with greater or lower priority.

6.2 Liens. Create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for Permitted Liens.

For purposes of determining compliance with this Section 6.2, (A) a Lien securing an item of Indebtedness need not be permitted solely by reference to one category (or portion thereof) of Permitted Liens described in the definition of "Permitted Liens" but may be permitted in part under any combination thereof and (B) in the event that a Lien securing an item of Indebtedness (or any portion thereof) meets the criteria of one or more of the categories (or portions thereof) of Permitted Liens described in the definition of "Permitted Liens," Borrower shall, in its sole discretion, divide, classify or reclassify, or later divide, classify, or reclassify, such Lien securing such item of

Indebtedness (or any portion thereof) in any manner that complies (based on circumstances existing at the time of such division, classification or reclassification) with this Section 6.2.

6.3 Restrictions on Fundamental Changes.

(a) Other than pursuant to the restructuring contemplated by the RSA or otherwise with the prior written consent of the Required Lenders, which consent may be conditional, enter into any merger, consolidation, reorganization or recapitalization, or reclassify its Stock, or

(b) Other than pursuant to the restructuring contemplated by the RSA, liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except with the prior written consent of the Required Lenders (which consent may be conditional).

6.4 Disposal of Assets. Other than Permitted Dispositions or transactions expressly permitted by Sections 6.3 or 6.11, convey, sell, lease, license, assign, transfer, or otherwise dispose of (or, unless the effectiveness of such agreement is conditioned upon consent thereto by the Required Lenders or the payment in full of the Obligations, enter into an agreement to convey, sell, lease, license, assign, transfer, or otherwise dispose of) any assets of Borrower or its Subsidiaries.

6.5 Change Name. Change its or any of its Subsidiaries' name, organizational identification number, jurisdiction of organization, or organizational identity; provided, however, that Borrower or its Subsidiaries may change its name upon at least 10 days' prior written notice to Agent of such change.

6.6 Nature of Business. Make any change in the nature of its or their Permitted Business or acquire any properties or assets that are not reasonably related to the conduct of such Permitted Business.

6.7 Prepayments and Amendments. Make any voluntary or optional prepayment, redemption, defeasance, purchase, or other acquisition of any Subordinated Indebtedness; provided that the Borrower and the other Loan Parties may make payments and repayments as between each other.

6.8 Budget Covenants.

(a) Permitted Receipt Variance. Borrower shall cause negative variances with respect to any two-week period (beginning on the date that is two weeks after the Petition Date and for each two-week period thereafter) in aggregate receipts (excluding Borrowings under this Agreement or borrowings under the Revolver Facility Agreement) not to exceed Permitted Receipt Variances.

(b) Permitted Disbursement Variance. Borrower shall cause positive variances with respect to any two-week period (beginning on the date that is two weeks after the Petition Date and for each two-week period thereafter) in aggregate disbursements (excluding payments due under this Agreement, or loans or other amounts due under the Revolver Facility Agreement, including any refinancing thereof, any professional fees payable under the Chapter 11 Cases and

the CCAA Proceedings and adequate protection payments to lenders under the First Lien Credit Agreement) not to exceed Permitted Disbursement Variances.

(c) Minimum Liquidity. Borrower and the other Loan Parties shall not permit Covenant Liquidity as of the last Business Day of any week to be more than $2,000,000 below the level set forth in the DIP Budget.

6.9 Restricted Junior Payments. Make any Restricted Junior Payment; provided, however, that, so long as it is permitted by law, the following shall be permitted hereunder:

(a) [reserved],

(b) [reserved],

(c) [reserved],

(d) Borrower may, and Borrower's Subsidiaries may make distributions to Borrower for the sole purpose of allowing Borrower to, make payments, to the extent that such payments are required in the ordinary course of business and relate directly to Borrower and its Subsidiaries or to services provided for or on behalf of Borrower and its Subsidiaries or are attributable to any direct or indirect parent company's ownership of Borrower, in each case that are required to be paid in cash, when due of (i) corporate franchise fees and income taxes actually owed by Borrower or any direct or indirect parent company thereof to the extent attributable to the taxable income of Borrower or its Guarantor Subsidiaries, (ii) legal and accounting and other professional fees and expenses actually incurred by Borrower or any direct or indirect parent company thereof, (iii) costs incurred to comply with Borrower's or any direct or indirect parent company's reporting obligations under federal or state laws or as required to comply with this Agreement, the other Loan Documents and the Revolver Facility Agreement and (iv) other customary corporate overhead expenses and other operations conducted by Borrower or any direct or indirect parent company thereof, in each case, in the ordinary course of business,

(e) so long as Borrower is permitted to make the payments permitted by this Section 6.9, Borrower's Subsidiaries may make dividends or distributions to Borrower for the purpose of permitting Borrower to make such payments and Borrower agrees to use the proceeds of such dividends or distributions solely for such purpose,

(f) the payment of any dividend or other distribution on, or the consummation of any irrevocable redemption of, Stock in Borrower or any Subsidiary within 60 days after declaration or setting the record date for redemption thereof, as applicable, if at such date such payment would not have been prohibited by the provisions of this Section 6.9,

(g) [reserved],

(h) [reserved],

(i) [reserved],

(j) [reserved],

(k) [reserved],

(l) [reserved]; and

(m) distributions to minority shareholders of non-wholly owned Subsidiaries, on a pro rata basis with any other shareholders or in accordance with pre-existing agreements set forth on Schedule 6.09(m);

6.10 Accounting Methods. Modify or change its fiscal year.

6.11 Investments; Controlled Investments.

(a) Directly or indirectly, make or acquire any Investment, except for Permitted Investments. For purposes of this Section 6.11(a), if any Investment would be permitted pursuant to one or more of the exceptions contained in the definition of "Permitted Investments," Borrower may classify such Investment in any manner that complies with this Section 6.11(a).

(b) Subject to any applicable time period provided therefor under Section 5.17, other than (i) an aggregate amount of not more than $300,000 at any one time, in the case of Borrower and the other Loan Parties, (ii) [reserved] and (iii) amounts on deposit securing any Liens permitted under clauses (e), (p), (s) and (u) of the definition of Permitted Liens, and (iv) controlled disbursement accounts that do not maintain cash balances, zero balance accounts and local terminal accounts which do not receive deposits, make, acquire, or permit to exist Permitted Investments consisting of cash, Cash Equivalents, or amounts credited to Deposit Accounts or Securities Accounts, in each case, of the Loan Parties, unless Borrower or the applicable Loan Party and the applicable bank or securities intermediary have entered into Control Agreements with Agent governing such Permitted Investments in order to further establish Agent's Liens in such Permitted Investments. Subject to any applicable time period provided therefor under Section 5.17, except as otherwise provided in this Section 6.11(b), neither Borrower nor the other Loan Parties shall establish or maintain any Deposit Account or Securities Account unless Agent shall have received a Control Agreement in respect of such Deposit Account or Securities Account.

6.12 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any transaction with any Affiliate of Borrower or any of Subsidiary of Borrower except for:

(a) transactions (other than the payment of management, consulting, monitoring, or advisory fees) between Borrower or its Subsidiaries, on the one hand, and any Affiliate of Borrower or such Subsidiary, on the other hand, so long as such transactions (i) are fully disclosed to Agent prior to the consummation thereof, if they involve one or more payments by Borrower or such Subsidiary in excess of $100,000 for any single transaction or series of related transactions, (ii) are no less favorable, taken as a whole, to Borrower or such Subsidiary, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate and (iii) are consummated in the ordinary course of business,

(b) so long as it has been approved by Borrower's or such Subsidiary's Board of Directors (or comparable governing body) in accordance with applicable Law, any customary indemnity provided for the benefit of directors (or comparable managers), officers, employees and agents of Borrower or such Subsidiary in the ordinary course of business,

(c) so long as it has been approved by Borrower's or such Subsidiary's Board of Directors (or comparable governing body) in accordance with applicable Law, the payment (and any agreement, plan or arrangement relating thereto) of reasonable compensation (including bonuses), severance, or employee benefit arrangements (including retirement, health, option, deferred compensation and other benefit plans) to employees, officers, and directors of Borrower and its Subsidiaries in the ordinary course of business,

(d) [reserved],

(e) transactions entered into solely between (i) Loan Parties, (ii) to the extent not otherwise prohibited by this Agreement, any Loan Party and any Subsidiary of a Loan Party that is not a Loan Party or (iii) Subsidiaries of Loan Parties that are not Loan Parties,

(f) any agreement or arrangement described on Schedule 6.12,

(g) transactions permitted by Section 6.3, Section 6.9, Section 6.11, or Section 6.14 or any Permitted Intercompany Advance, and

(h) the existence of, or the performance by Borrower or any of its Subsidiaries of its obligations under the terms of, any stockholders agreement (including any registration rights agreement) to which it is a party as of the Effective Date.

6.13 Use of Proceeds.

(a) No part of the proceeds of the Term Loans made to Borrower will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors of the United States Federal Reserve.

(b) No part of the proceeds of the Term Loans made to Borrower will be used except to (i) fund general corporate needs, including, without limitation, working capital needs and (ii) pay administrative expenses of the Chapter 11 Cases and CCAA Proceedings, in each case, to be used in conformity with Section 6.8(b) hereof, including fees and expenses of professionals, provided, however, that payment of fees and expenses of professionals shall be without regard to the DIP Budget.

6.14 Limitation on Issuance of Stock. Other than as contemplated in Section 2.1(b) of this Agreement, issue or sell any of its Stock, except that any Subsidiary of Borrower may issue or sell common Stock or Preferred Stock so long as such common Stock or Preferred Stock (other than (i) any minority interests of any Foreign Subsidiary of Borrower as required by Law and (ii) so long as no Event of Default shall have occurred and be continuing, any minority interests of any Subsidiary of Borrower) is issued or sold to, and remains held by, a Loan Party.

6.15 Limitations of Negative Pledges. Enter into, incur or permit to exist, or permit any Subsidiary to enter into, incur or permit to exist, directly or indirectly, any agreement, instrument, deed, lease or other arrangement that prohibits, restricts or imposes any condition upon the ability of any Loan Party or any Subsidiary of any Loan Party to create, incur or permit to exist any Lien upon any Collateral, whether now owned or hereafter acquired, or that requires the grant of any

security for an obligation if security is granted for the Obligations, except the following: (i) this Agreement, the other Loan Documents, the Revolver Facility Agreement, the Prepetition ABL Facility and the Prepetition Term Loan Facilities, (ii) restrictions or conditions imposed by any agreement relating to Permitted Indebtedness or Permitted Liens if such restrictions or conditions apply only to the property or assets securing such Indebtedness or the obligation or liability secured by such Permitted Lien, (iii) any customary restrictions and conditions contained in agreements relating to the sale or other disposition of assets or of a Subsidiary pending such sale or other disposition; provided that such restrictions and conditions apply only to the assets or Subsidiary to be sold or disposed of and such sale or disposition is permitted hereunder, and (iv) customary provisions in leases restricting the assignment or sublet thereof.

6.16 Chapter 11 or CCAA Modifications. Without the consent of the Required Lenders:

(a) make or permit to be made any change, amendment or modification, or any application or motion for any change, amendment, or modification, to the Financing Orders or Sale Order;

(b) seek the use of cash collateral in a manner inconsistent with the terms of the Financing Orders;

(c) incur, create, assume or suffer to exist or permit any claim or Lien against any Loan Party ranking pari passu with or senior to the claims and Liens of Agent and the Lenders hereunder, except for, Permitted Liens and as provided in the Financing Orders, the Revolver Facility (and the Liens securing it), First Lien Term Loan Facility (and the Liens securing it), the Carve Out, the CCAA Priority Charges, the Adequate Protection Orders and any other applicable order of the Bankruptcy Court or the CCAA Court;

(d) file, assert, join, investigate, support, seek or prosecute any priority claims or administrative expense claims against the Loan Parties, except with respect to claims relating to this Agreement and the Revolver Facility;

(e) permit any order of the Bankruptcy Court which authorizes the return of any of the Loan Parties' property pursuant to Section 546(h) of the Bankruptcy Code;

(f) other than as permitted pursuant to the Initial Orders, permit the entry of any order which grants prepayments of Indebtedness or "adequate protection";

(g) file, assert, join, investigate, support, seek or prosecute a sale of all, or substantially all, assets or restructuring transaction other than the Sale Transaction in accordance with the Sale Motion and/or Bid Procedures;

(h) file, assert, join, investigate, support, seek or prosecute any order of the Bankruptcy Court in contravention of this Agreement or the Revolver Facility Agreement;

(i) (i) repay any pre-Petition Date Indebtedness or (ii) pay any Affiliates (other than any other Debtor), in each case, unless otherwise provided for in the applicable DIP Budget or the Initial Orders; or

(j) file with the Bankruptcy Court a motion to approve or otherwise seek to assume, assign or reject any material executory contract.

6.17 Compliance with DIP Budget. Except as otherwise provided herein or approved by Agent (at the direction of the Required Lenders, in their sole discretion), the Loan Parties will not, and will not permit any Subsidiary thereof to, directly or indirectly, (a) use any cash, including the proceeds of any Borrowings, in a manner or for a purpose other than those permitted under this Agreement or contemplated by the Financing Orders or the DIP Budget, (b) violate the provisions of Section 6.8(b), (c) make any payment with respect to any pre-Petition Date Indebtedness, pre-Petition Date trade payment or pre-Petition Date claim (by way of adequate protection or otherwise) or apply for authority to make any such payment, other than those permitted by this Agreement, the Financing Orders or the DIP Budget (subject to Section 6.8(b) hereof) and (d) make or commit to make payments to critical vendors, in each case as approved in writing by Agent at the direction of the Required Lenders (other than those critical vendors set forth in the Financing Orders or in the DIP Budget, which shall not require prior approval) in respect of any pre-petition amount in excess of the amount included in the DIP Budget.

7. RESERVED.

8. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under this Agreement:

8.1 Payments. If any Loan Party fails to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations, and such failure continues for a period of 3 Business Days or (b) all or any portion of the principal of the Obligations;

8.2 Covenants. If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe in any material respect any covenant or other agreement contained in any of (i) Section 5.1, 5.2 (unless extended or waived by the Required Lenders and Solus; provided, that, a failure to meet the CBA Milestone shall not result in an Event of Default until September 23, 2019), 5.3 (solely if any Loan Party is not in good standing in its jurisdiction of organization), 5.6, 5.7, 5.11, 5.13, or 5.17 of this Agreement, (ii) Section 6 of this Agreement, (iii) Section 7 of this Agreement, or (iv) the covenants contained in any Security Agreement; or

(b) fails to perform or observe in any material respect any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of 10 days after the earlier of (i) the date on which such failure shall first become known to any senior officer of a Loan Party or (ii) the date on which written notice thereof is given to Borrower by Agent;

8.3 Judgments. If one or more judgments, orders, or awards for the payment of money involving an aggregate amount of $2,000,000, or more (except to the extent covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against Borrower, any Loan Party or any of their Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of 60 consecutive days at any time after the entry of any such judgment, order, or award during which (1) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (2) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

8.4 Bankruptcy, etc.. Any Subsidiary that is not a Debtor (any such Subsidiary, an "Applicable Subsidiary") shall commence a voluntary case concerning itself under the Bankruptcy Code and such Applicable Subsidiary shall fail to become a Guarantor pursuant to Section 5.11 within 10 Business Days; or an involuntary case is commenced against an Applicable Subsidiary, and the petition is not controverted within 10 days, or is not dismissed within 45 days after the filing thereof, provided, however, that during the pendency of such period, each Lender shall be relieved of its obligation to extend credit hereunder; or a custodian (as defined in the Bankruptcy Code) is appointed for, or takes charge of, all or substantially all of the property of an Applicable Subsidiary, to operate all or any substantial portion of the business of an Applicable Subsidiary, commences any other proceeding (other than the CCAA Proceedings) under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to an Applicable Subsidiary, or there is commenced against an Applicable Subsidiary any such proceeding (other than the CCAA Proceedings) which remains undismissed for a period of 45 days after the filing thereof, or an Applicable Subsidiary is adjudicated insolvent or bankrupt; or any order of relief or other order approving any such case or proceeding is entered; or an Applicable Subsidiary makes a general assignment for the benefit of creditors; or any action is taken by an Applicable Subsidiary for the purpose of effecting any of the foregoing;

8.5 [Reserved];

8.6 Restraint of Business. If Borrower or any of its Subsidiaries (a) is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business or (b) suffers any strike, walkout, lockout, work stoppage or other material labor dispute causing material cessation or material reduction in business operations, in each case, for more than 2 Business Days;

8.7 Default Under Other Agreements. If there is a default in one or more agreements to which a Loan Party or any of its Subsidiaries is a party (including the Revolver Facility) with one or more third Persons relative to a Loan Party's or any of its Subsidiaries' Indebtedness involving an aggregate amount of $9,000,000 or more (other than the Prepetition ABL Facility or the Prepetition Term Loan Facilities), and such default (after giving effect to any grace period therefor) (a) occurs at the final maturity of the obligations thereunder, or (b) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder; provided that this Section 8.7 shall not apply (regardless of whether or not Agent or any Lender has exercised any of its remedies in connection therewith) to any secured Indebtedness that becomes due as a result of the sale, transfer or other disposition (including as a result of a casualty or condemnation event) of the property or assets securing such

Indebtedness to the extent such sale, transfer or other disposition is not prohibited under the Loan Documents and such amounts are timely paid (after giving effect to any applicable cure period) per the applicable documentation governing such Indebtedness); provided, further, that this Section 8.7 shall not apply (regardless of whether or not Agent or any Lender has exercised any of its remedies in connection therewith) to any breach or default that (x) is remedied by Borrower or the applicable Subsidiary or (y) waived (including in the form of amendment) by the requisite holders of the applicable item of Indebtedness, in either case, prior to the acceleration of all the Term Loans (and, for the avoidance of doubt, the Event of Default under this Section 8.7 will be deemed automatically waived or cured);

8.8 Representations, etc. If any warranty, representation or certificate made herein or in any other Loan Document or delivered in writing to Agent or any Lender in connection with this Agreement or any other Loan Document (other than forward-looking information, forward-looking pro formas, projections, third party data, information of a general economic or industry specific nature and general information about Borrower's industry) proves to be untrue in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

8.9 Guaranty. If the obligation of any Guarantor under the Guaranty is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement);

8.10 Collateral. The Financing Orders, together with the Loan Documents, shall cease to create a valid and perfected Lien, with the priority required by this Agreement (other than in accordance with their terms or as a result of the action or inaction of Agent or any Lender), subject to Permitted Liens, on a material portion of the Collateral purported to be covered thereby;

8.11 Loan Documents. The validity or enforceability of any Loan Document (including the Intercreditor Agreement) shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent) be declared to be null and void, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document;

8.12 ERISA. Excluding the matters disclosed on Schedule 8.12, (a) the institution by the PBGC, a Loan Party, or any ERISA Affiliate of steps to terminate a Benefit Plan or to organize, withdraw from or terminate from a Multiemployer Plan or (b) a contribution failure occurs with respect to any Benefit Plan sufficient to give rise to a lien under Section 303(k) of ERISA; or (c) the assets of a Loan Party or any ERISA Affiliate are encumbered as a result of security provided to a Benefit Plan pursuant to Section 412 of the IRC or Section 306 of ERISA in connection with a request for a minimum funding waiver or extension of the amortization period, or pursuant to Section 401(a)(29) of the IRC or Section 307 of ERISA as a result of a Pension Plan amendment; or (d) a Loan Party or an ERISA Affiliate fails to pay a PBGC premium with respect to a Pension Plan subject to Title IV of ERISA when due and it remains unpaid for more than 30 days thereafter; or (e) the occurrence of a Prohibited Transaction or Reportable Event with respect to a Benefit

Plan; or (f) a Loan Party or any of its ERISA Affiliates creates or permits the creation of any accumulated funding deficiency, whether or not waived; provided, however, that the events listed in clauses (a) through (f) shall not constitute an Event of Default unless the occurrence of any such event listed in clauses (a) through (f) above, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change;

8.13 Change of Control. A Change of Control shall have occurred;

8.14 Dismissal of Chapter 11 or CCAA. The filing of a motion for an order with the Bankruptcy Court to dismiss any of the Chapter 11 Cases or the CCAA Court to dismiss the CCAA Proceedings which does not contain a provision for termination of the total Commitment, and payment in full of all Obligations (other than contingent Obligations not due and owing) of the Loan Parties hereunder and under the other Loan Documents upon entry thereof or the application for, consent to, or acquiescence in the above relief by any Loan Party;

8.15 Appointment of Trustee or Examiner. An order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court appointing, or any Loan Party, or any subsidiary of a Loan Party, shall file an application for an order with respect to, (i) any Chapter 11 Case seeking the appointment of a trustee under Section 1104, (ii) any Chapter 11 Case seeking the appointment of an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code or (iii) the appointment of a trustee in bankruptcy or a receiver under the Bankruptcy and Insolvency Act;

8.16 Dissolution. (i) Unless otherwise permitted by the terms of this Agreement or as consented to by the Lenders pursuant to Section 14.1 hereof, any Loan Party shall have dissolved or liquidated or (ii) the suspension of the operation of all or substantially all of the business of the Loan Parties in the ordinary course for 2 consecutive Business Days;

8.17 Financing Orders. (a) Any Loan Party shall have failed to perform under the Final DIP Order or any other order of the Bankruptcy Court or the CCAA Court regarding the DIP Facilities, including, but not limited to, the Interim DIP Order, the Final DIP Order and the CCAA Initial Recognition Order, the CCAA Supplemental Recognition Order and a final recognition order of the CCAA Court (collectively, the "Financing Orders") or (b) the entry of an order staying, reversing or otherwise modifying the DIP Facilities or the Financing Orders in a manner adverse to Agent or the Lenders (other than immaterial modifications to correct grammatical, ministerial or typographical errors), in each case without the prior consent of Agent (acting at the direction of the Required Lenders) and Solus;

8.18 Sale or Liquidation. Other than the Sale Transaction, the sale, liquidation or other disposition of all, or substantially all, of the Collateral, whether pursuant to Section 363 of the Bankruptcy Code, any plan of reorganization or liquidation or otherwise, unless the obligations under the DIP Facilities have been satisfied in full and the commitments thereunder have been terminated (or will be paid and terminated on the consummation of such transaction (other than contingent obligations));

8.19 Relief from Stay. Entry of an order granting relief from the automatic stay or the stay under the Initial Recognition Order of the Supplemental Recognition Order to the holder or holders of security interests to permit foreclosures (or granting of a deed in lieu of foreclosure or similar relief) on any assets of the Loan Parties in an amount in excess of $1,000,000 without the prior consent of Agent (acting at the direction of the Required Lenders) and Solus;

8.20 Order with Respect to Chapter 11 Cases. An order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court without the express prior written consent of the Required Lenders (a) to revoke, reverse, stay, modify, supplement or amend any of the Final DIP Order or the Adequate Protection Orders in a manner adverse to Agent or the Lenders or (b) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to the Loan Parties equal or superior to the priority of Agent shall be entered by the Bankruptcy Court without the express prior written consent of the Required Lenders in respect of the Obligations (other than the Carve Out, the CCAA Priority Charges or the obligations pursuant to the Revolver Facility), (c) to grant or to permit the grant of other super-priority liens or administrative expense claims (excluding the CCAA Priority Charges) with priority over or pari passu with the liens granted in connection with the DIP Facilities (excluding, for the avoidance of doubt, the Carve-Out and except as contemplated in this Agreement or the Financing Orders), (d) to permit recovery from any portion of the Collateral (or from Agent or any Lender) of any costs or expenses of preserving or disposing of Collateral under Sections 506(c) or 552(b) of the Bankruptcy Code (or otherwise);

8.21 Conversion to Chapter 7; Order Against Canadian Loan Parties. An order (i) with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court converting such Chapter 11 Case to a Chapter 7 case or (ii) is granted against any Canadian Loan Party for the appointment of a trustee in bankruptcy, or, in each case, the application for, consent to, or acquiescence with respect to, such a conversion or such relief by any Loan Party;

8.22 Application for Order by Third Party. An application for any of the orders described in Section 8.20 above shall be made by any Loan Party or a Person other than the Loan Parties and the relief requested is not withdrawn, dismissed or denied within 5 days after filing or any Person obtains a final order against Agent for recovery from the Collateral (or from Agent or any Lender) of any costs or expenses of preserving or disposing of Collateral under Section 506(c) or 552(b) of the Bankruptcy Code;

8.23 Liens. (i) Any Loan Party shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of Agent and/or the Lenders, claims or rights against such Person or, subject to the Financing Orders, to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) the Lien or security interest created by the Loan Documents or the Financing Orders with respect to the Collateral shall, for any reason (other than as a result of the action or inaction of Agent), cease to be valid or (iii) any action is commenced by the Loan Parties which contests the validity, perfection or enforceability of any of the Liens and security interests of Agent and/or the Lenders created by any of the Financing Orders, this Agreement, or any other Loan Document;

8.24 Administrative Expense Claims. (i) The payment of, or filing of a motion or other pleading (other than a Chapter 11 plan) by any Loan Party for authority to pay, any pre-Petition

Date claim or administrative expense arising under Section 503(b)(9) of the Bankruptcy Code except as may be provided for or permitted under the Financing Orders, the Initial Orders, this Agreement, the Revolver Facility Agreement or the DIP Budget or consented to by Agent (at the direction of the Required Lenders), or (ii) the entry of an order of the Bankruptcy Court granting any prepetition claim, including any carve out for administrative expenses, the status of an administrative expense claim or superpriority or pari passu administrative expense claim, senior to, or pari passu with, the claims in favor of the Lenders under the DIP Facilities, in each case, other than as permitted under the Loan Documents;

8.25 Additional Financing. Any Loan Party shall file a motion without the express written consent of Agent (acting at the direction of the Required Lenders) and Solus to (i) obtain additional financing from a party other than the Lenders hereunder or pursuant to the Revolver Facility, or (ii) to use cash collateral of a Lender under Section 363(c) of the Bankruptcy Code that does not provide for the payment of the Obligations in full and in cash upon the incurrence of such additional financing;

8.26 Prepetition Claims. Any Loan Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order (i) approving payment of any prepetition claim other than (x) as provided for in the First Day Orders and Second Day Orders or the CCAA Initial Order, the CCAA Supplemental Recognition Order or any subsequent order of the CCAA Court or, subject to the consent of Agent (acting at the direction of the Required Lenders) and Solus to the extent not presented to them prior to the date hereof, "second day" orders, (y) as contemplated by the DIP Budget, or (z) as otherwise consented to by Agent (acting at the direction of the Required Lenders) and Solus in writing or (ii) except as provided in the Financing Orders, approving any settlement or other stipulation not approved by the Required Lenders with any pre-Petition Date secured creditor of any Loan Party providing for payments as adequate protection or otherwise to such secured creditor;

8.27 Alternative Restructuring. The filing by the Loan Parties of a motion seeking approval of, or the confirmation of, a plan of reorganization or any sale or restructuring transaction other than the Sale Transaction or a plan satisfactory to the Required Lenders.

8.28 RSA. (i) Any breach by any Loan Party of its obligations under the RSA or (ii) the RSA shall have been terminated for any reason;

8.29 Action by Loan Parties or Subsidiaries. The commencement of any action by any Loan Party or any direct or indirect subsidiary of any Loan Party against any Lender under the 1.5 Lien Credit Agreement or the Second Lien Credit Agreement with respect to any of the obligations or liens under or with respect to the 1.5 Lien Credit Agreement or the Second Lien Credit Agreement, as applicable;

8.30 Right to File Chapter 11 Plan. Any order by the Bankruptcy Court shall be entered terminating or modifying the exclusivity right of any Loan Party to file a Chapter 11 plan pursuant to Section 1121 of the Bankruptcy Code, without the prior written consent of the Required Lenders;

8.31 Invalidation of Claims. Any Loan Party shall seek to, or shall support (in any such case by way of any motion or other pleading filed with the Bankruptcy Court or any other writing

to another party-in-interest executed by or on behalf of such Loan Party) any other Person's motion to, disallow in whole or in part the Lenders' claim in respect of the Obligations or contest any material provision of any Loan Document or any material provision of any Loan Document shall cease to be effective (other than in accordance with its terms or as a result of the action or inaction of Agent);

8.32 Credit Bidding. An order with respect to any of the Chapter 11 Cases shall be entered by the Bankruptcy Court that restricts Agent from "credit bidding"; or

8.33 OEM Contracts. The termination, modification, reduction, cancellation or other adverse change of terms or quantity of work under any agreement between any of the Debtors and any original equipment manufacturer customer, including, but not limited to General Motors Holdings, LLC, Ford Motor Company, and Toyota Motor Sales, U.S.A., Inc which may reasonably be expected to reduce consolidated revenues of the Loan Parties and their Subsidiaries on an annual basis by more than 10% compared to the most recent twelve-month operating period.

9. RIGHTS AND REMEDIES.

9.1 Rights and Remedies. Upon the occurrence and during the continuation of an Event of Default, Agent may, and, at the instruction of the Required Lenders, shall, in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable Law, do any one or more of the following:

(a) declare the principal of, and any and all accrued and unpaid interest and fees in respect of the Term Loans and, if any, all other premiums thereon, and all other Obligations, whether evidenced by this Agreement or by any of the other Loan Documents immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrower shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by Borrower; and

(b) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents or applicable Law.

Upon the Maturity Date and following the giving of 5 Business Days' notice to the Loan Parties and other applicable parties ("Remedies Notice Period"), subject in all respects to the Intercreditor Agreement, Agent shall have relief from the automatic stay in the Chapter 11 Cases and the CCAA Proceedings and may setoff against deposits and financial assets of the Loan Parties (other than customary excluded accounts), foreclose on all or any portion of the Collateral located in the United States or otherwise exercise remedies against the Collateral located in the United States permitted by applicable non-bankruptcy Law. During the Remedies Notice Period, the Loan Parties and any statutory committee shall be entitled to an emergency hearing before the Bankruptcy Court. Unless the Financing Orders otherwise during the Remedies Notice Period, the automatic stay, as to the Lenders and Agent, shall be automatically terminated at the end of such notice period and without further notice or order. For greater certainty, no remedies shall be exercised against any Canadian Loan Party with respect to the Collateral of the Canadian Loan Parties without leave of the CCAA Court.

9.2 Remedies Cumulative. The rights and remedies of the Lender Group under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. The Lender Group shall have all other rights and remedies not inconsistent herewith as provided under the Initial Orders, the Financing Orders, the Code, by law, or in equity. No exercise by the Lender Group of one right or remedy shall be deemed an election, and no waiver by the Lender Group of any Event of Default shall be deemed a continuing waiver. No delay by the Lender Group shall constitute a waiver, election, or acquiescence by it.

10. WAIVERS; INDEMNIFICATION.

10.1 Demand; Protest; etc. Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which Borrower may in any way be liable.

10.2 The Lender Group's Liability for Collateral. Borrower hereby agrees that: (a) the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrower.

10.3 Indemnification. Borrower shall pay, indemnify, defend, and hold Agent-Related Persons, the Lender-Related Persons and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all documented and reasonable fees and out-of-pocket disbursements of attorneys of outside counsel, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery, (provided that Borrower shall not be liable for costs and expenses (including attorney fees) of any Lender (other than Solus or any of its Affiliates) incurred in advising, structuring, drafting, reviewing or administering the Loan Documents), enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of Borrower's and its Subsidiaries' compliance with the terms of the Loan Documents (provided, however, that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Lenders that do not involve any acts or omissions of any Loan Party and do not relate to such Lenders' actions in their capacities as Lenders or in fulfilling the role of Lender under this Agreement, or (ii) disputes solely between or among the Lenders and their respective Affiliates that do not involve any acts or omissions of any Loan Party and do not relate to any Lender acting in its capacity as Lender or in fulfilling the role of Lender under this Agreement; it being understood and agreed that the indemnification in this clause (a) shall extend to Agent (but not the Lenders) relative to disputes between or among Agent on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand, or (iii) any Taxes (which shall be governed by Section 16) other than any Taxes that represent losses, claims, damages, etc. arising from any

non-Tax claim), (b) with respect to any actual or prospective investigation, litigation, or proceeding related to this Agreement, any other Loan Document, the making of any Term Loans hereunder, or the use of the proceeds of the Term Loans (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any Properties or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such Properties (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, Borrower shall not have any obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines (x) to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents. This provision shall survive the termination of this Agreement, the repayment in full of the Obligations and, as to an Agent that has resigned or been removed, the resignation or removal of such Agent. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrower was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrower with respect thereto. WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.

11. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to Borrower or Agent, as the case may be, they shall be sent to the respective address set forth below:

If to Borrower:
JACK COOPER HOLDINGS CORP.
1100 Walnut Street, Suite 2400
Kansas City, MO 64106
Attn: Chief Executive Officer and Chief Financial Officer
Email: mriggs@jackcooper.com
khaulotte@jackcooper.com

with copies to:
JACK COOPER HOLDINGS CORP.
Kennesaw Due West Road
Kennesaw, GA 30152
Attn: Legal Department
Email: tciupitu@jackcooper.com

KING & SPALDING LLP
1180 Peachtree St., NE

	Atlanta, GA 30309 Attn: J. Craig Lee Email: craiglee@kslaw.com
If to Agent or any Lender:	WILMINGTON TRUST, NATIONAL ASSOCIATION 50 South Sixth Street Minneapolis, MN 55402 Attention: Jessica Jankiewicz Email: jjankiewicz@wilmingtontrust.com
with copies to:	ALSTON & BIRD LLP 101 South Tryon Street, Suite 4000 Charlotte, NC 28280 Attn: Jason Solomon and David Wender Email: jason.solomon@alston.com david.wender@alston.com
	KIRKLAND & ELLIS LLP 555 California Street San Francisco, CA 94104 Attention: Samantha Good, P.C. Email: samantha.good@kirkland.com
	and
	KIRKLAND & ELLIS LLP 300 North LaSalle Chicago, IL 60654 Attention: Thomas James Dobleman Email: thomas.dobleman@kirkland.com

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have .been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

If any notice, disclosure or report is required to be delivered pursuant to the terms of this Agreement or any other Loan Document on a day that is not a Business Day, such notice,

disclosure or report shall be deemed to have been required to be delivered on the immediately following Business Day.

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE.

(a) EXCEPT TO THE EXTENT SUPERSEDED BY THE BANKRUPTCY COURT, THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

(b) ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT IN THE BANKRUPTCY COURT, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH LOAN PARTY HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE BANKRUPTCY COURT. EACH LOAN PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH HEREIN. THE LOAN PARTIES AGREE THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING HEREIN SHALL AFFECT THE RIGHT OF AGENT AND THE LENDERS TO SERVICE OF PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY IN ANY OTHER JURISDICTION. EACH PARTY HERETO HEREBY EXPRESSLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE JURISDICTION OR LAYING OF VENUE OF ANY SUCH LITIGATION BROUGHT IN SUCH COURT AND ANY CLAIM THAT ANY SUCH LITIGATION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. TO THE EXTENT THAT ANY LOAN PARTY HAS OR HEREAFTER MAY ACQUIRE ANY IMMUNITY FROM JURISDICTION OF ANY COURT OR FROM ANY LEGAL PROCESS (WHETHER THROUGH SERVICE OR NOTICE, ATTACHMENT PRIOR TO JUDGMENT, ATTACHMENT IN AID OF EXECUTION OR OTHERWISE) WITH RESPECT TO ITSELF OR ITS PROPERTY, EACH LOAN PARTY HEREBY IRREVOCABLY WAIVES SUCH IMMUNITY IN RESPECT OF ITS OBLIGATIONS UNDER THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND EACH MEMBER OF THE LENDER GROUP HEREBY WAIVE THEIR RESPECTIVE RIGHTS, IF ANY, TO A JURY TRIAL OF ANY CLAIM, CONTROVERSY, DISPUTE OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH A "CLAIM"). BORROWER AND EACH MEMBER OF THE LENDER GROUP REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST AGENT, ANY OTHER LENDER, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OR LOSSES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

13. ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.

13.1 Assignments and Participations.

(a) With the prior written consent of Agent, which consent of Agent shall not be unreasonably withheld, delayed or conditioned, and, in each case, consent shall not be required in connection with an assignment to a Person that is a Lender or an Affiliate (other than individuals) of a Lender, any Lender may assign and delegate to one or more assignees (each, an "Assignee" (provided, however, that no Loan Party or Affiliate of a Loan Party shall be permitted to become an Assignee except pursuant to Section 13.1(i)) all or any portion of the Obligations and the other rights and obligations of such Lender hereunder and under the other Loan Documents, in a minimum amount (unless waived by Agent) of $1,000,000 (except such minimum amount shall not apply to (x) an assignment or delegation by any Lender to any other Lender or an Affiliate of any Lender or (y) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least $1,000,000); provided, however, that Borrower and Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrower and Agent by such Lender and the Assignee, (ii) such Lender and its Assignee have delivered to

Borrower and Agent an Assignment and Acceptance and Agent has notified the assigning Lender of its receipt thereof in accordance with Section 13.1(b), and (iii) unless waived by Agent in its sole discretion, the assigning Lender or Assignee has paid to Agent for Agent's separate account a processing fee in the amount of $3,500.

(b) From and after the date that Agent notifies the assigning Lender (with a copy to Borrower) that it has received an executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, however, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

(c) By executing and delivering an Assignment and Acceptance, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of this Agreement or any other Loan Document furnished pursuant hereto, (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of Borrower or the performance or observance by Borrower of any of its obligations under this Agreement or any other Loan Document furnished pursuant hereto, (iii) such Assignee confirms that it has received a copy of this Agreement, together with such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into such Assignment and Acceptance, (iv) such Assignee will, independently and without reliance upon Agent, such assigning Lender or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement, (v) such Assignee appoints and authorizes Agent to take such actions and to exercise such powers under this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of Obligations owing to the Lenders arising therefrom.

(e) (i) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, however, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrower, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decreases the amount or postpones the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, (v) no participation shall be sold to a natural person, (vi) no participation shall be sold to a Loan Party or an Affiliate of a Loan Party, and (vii) all amounts payable by Borrower hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrower, the Collections of Borrower or its Subsidiaries, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(ii) Each Participant shall be entitled to additional payments from Borrower pursuant to Section 16.1 as if such Participant were a Lender (and subject to the requirements and limitations imposed on such Lender with respect to such additional payments, including the requirements under Section 16.2 (it being understood that the documentation required under Section 16.2 shall be delivered to the participating Lender)) if such Participant is treated as the beneficial owner for U.S. income Tax purposes (or other applicable Tax purposes) of the portion of the Term Loan with respect to which a participation is made. Each Originating Lender shall be entitled to continue receiving additional payments from Borrower pursuant to Section 16.1 with respect to any Term Loan notwithstanding the fact that such Originating Lender

has assigned a participation in such Term Loan to a Participant if such Originating Lender is treated as the beneficial owner for U.S. income Tax purposes (and other applicable Tax purposes) of the portion of the Term Loan with respect to which a participation is made.

(iii) Each Originating Lender shall maintain, as a non-fiduciary agent of Borrower, a register (the "Participant Register") as to the participations granted and transferred under Section 13.1(e)(i) containing the same information specified in Section 2.3(c) on the Register as if the each Participant were a Lender; provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any loans or its other obligations under any Loan Document) to any person except to the extent that such disclosure is necessary to establish that such loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. Notwithstanding anything in this Agreement to the contrary, any participation made pursuant to Section 13.1(e)(i) shall be effective only upon appropriate entries with respect thereto being made in the Participant Register. This Section 13.1(e)(iii) shall be construed so that the Term Loans are at all times maintained in "registered form" within the meanings of Sections 163(f), 871(h)(2) and 881(c)(2) of the IRC and any related regulations (and any successor provisions).

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to Borrower and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable Law.

13.2 Successors. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that Borrower may not assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1 and subject to such assignment being recorded in the Register, no consent or approval by Borrower is required in connection with any such assignment.

14. AMENDMENTS; WAIVERS.

14.1 Amendments and Waivers.

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than the Fee Letter), and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed (x) in the case of an amendment, consent or waiver to cure any ambiguity, omission, defect, obvious error, omission of a technical or administrative nature, or inconsistency or granting a new Lien for the benefit of Agent and the Lenders or extending an existing Lien over additional property, by Agent and Borrower, (y) in the case of any other waiver or consent, by the Required Lenders (or by Agent with the consent of the Required Lenders) and (z) in the case of any other amendment, by the Required Lenders (or by Agent with the consent of the Required Lenders) and the Loan Parties that are a party thereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly and adversely affected thereby (but no such waiver, amendment or consent doing the following shall require the consent of the Required Lenders) and all of the Loan Parties that are party thereto, do any of the following:

(i) [reserved],

(ii) postpone or delay any scheduled date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document; provided, that waivers of the default rate of interest, conditions precedent to any fundings hereunder, Defaults, Events of Default or any prepayments required under Section 2.4(d)(ii), in each case, shall not constitute a reduction for purposes of this clause (ii),

(iii) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document ; provided, that waivers of the default rate of interest, conditions precedent to any fundings hereunder, Defaults, Events of Default or any prepayments required under Section 2.4(d)(ii), in each case, shall not constitute a reduction for purposes of this clause (iii),

(iv) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,

(v) other than as permitted by Section 15.11, release Agent's Lien in and to all or substantially all of the Collateral,

(vi) amend, modify, or eliminate the definition of "Required Lenders" or "Pro Rata Share",

(vii) except as contemplated by this Agreement, the Intercreditor Agreement or any other Loan Document, contractually subordinate any of Agent's Liens,

(viii) other than in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release Borrower from any obligation for the payment of money or consent to the assignment or transfer by Borrower of any of its rights or duties under this Agreement or the other Loan Documents or release all or substantially all of the guarantees,

(ix) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i) or (ii) or this Section 14.1(a), or

(x) amend, modify, or eliminate any of the provisions of Section 13.1(a) to permit a Loan Party or an Affiliate of a Loan Party to be permitted to become an Assignee.

(b) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive (i) the definition of, or any of the terms and provisions of, the Fee Letter, without the written consent of Agent and Borrower (and shall not require the written consent of any of the Lenders) and (ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrower, and the Required Lenders.

(c) [Reserved].

(d) Notwithstanding anything to the contrary contained herein, other than with respect to waivers, amendments or other modifications pursuant to clause (ii) above, there shall be no "class" voting hereunder.

(e) [Reserved].

(f) Anything in this Section 14.1 to the contrary notwithstanding, any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of Borrower, shall not require consent by or the agreement of any Loan Party.

14.2 [Reserved].

14.3 No Waivers; Cumulative Remedies. No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrower of any provision of this Agreement. Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. AGENT; THE LENDER GROUP.

15.1 Appointment and Authorization of Agent. Each Lender hereby designates and appoints Wilmington Trust, National Association as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders on the conditions contained in this Section

15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right, but not the obligation, to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, the Collections of Borrower and its Subsidiaries, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) exclusively receive, apply, and distribute the Collections of Borrower and its Subsidiaries as provided in the Loan Documents, (d) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Borrower or its Subsidiaries, the Obligations, the Collateral, the Collections of Borrower and its Subsidiaries, or otherwise related to any of same as provided in the Loan Documents, and (e) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents. Notwithstanding anything to the contrary set forth herein, Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Agent to liability or that is contrary to, or not contemplated by, any Loan Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under the Bankruptcy Code. In addition to the foregoing, each Lender hereby irrevocably designates and appoints Agent as the agent and authorizes Agent to act as their agent for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to Agent to secure any of the Obligations and the Guaranteed Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, Agent, as "agent" and any co-agents, sub-agents and attorneys-in-fact appointed by Agent for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Agreements, or for exercising any rights and remedies thereunder at the direction of Agent), shall be entitled to the benefits of all provisions of this Section 15.1. The obligations of Agent hereunder are primarily administrative in nature, and nothing contained in this Agreement or any of the other Loan Documents shall be construed to constitute Agent as a trustee for any Lender or to create an agency or fiduciary relationship. Agent shall act as the contractual representative of the Lenders

hereunder, and notwithstanding the use of the term "Agent", it is understood and agreed that Agent shall not have any fiduciary duties or responsibilities to any of the Lenders by reason of this Agreement or any other Loan Document and is acting as an independent contractor, the duties and responsibilities of which are limited to those expressly set forth in this Agreement and the other Loan Documents. For the purposes of the grant of security under the laws of the Province of Québec which may now or in the future be required to be provided by any Loan Party, Agent is hereby irrevocably authorized and appointed to act as the hypothecary representative (within the meaning of Article 2692 of the *Civil Code of Québec*) for each of the Lenders, in order to hold any hypothec granted under the laws of the Province of Quebec as security for any of the Obligations and to exercise such rights and duties as are conferred upon a hypothecary representative under the relevant deed of hypothec and applicable laws (with the power to delegate any such rights or duties). Any person who becomes a Lender, shall be deemed to have consented to and ratified the foregoing appointment of Agent as hypothecary representative for all of the Lenders. For greater certainty, Agent, acting as hypothecary representative, shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favor of Agent in this Agreement, which shall apply mutatis mutandis. In the event of the resignation and appointment of a successor Agent, such successor Agent shall also become (without any further act or formality) the successor hypothecary representative for the purposes each such deed of hypothec.

15.2 Delegation of Duties. Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3 Liability of Agent. None of Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), (b) be responsible in any manner to any of the Lenders for any recital, statement, representation or warranty made by Borrower or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Borrower or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder or (c) be liable for any action taken in accordance with the instruction of the Required Lenders (or such other number or percentage of Lenders as may be contemplated by this Agreement). No Agent-Related Person shall be under any obligation to any Lenders to ascertain or to inquire as to the observance or performance of any of the agreements or covenants contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of Borrower or its Subsidiaries. Notwithstanding anything to the contrary set forth herein: (i) Agent shall not be deemed to have knowledge of any provision of any "Loan Document" (as such term is defined in each of the Prepetition ABL Facility, each of the Prepetition Term Loan Facilities and the Revolver Facility Agreement, as applicable) or any event thereof and (ii) Agent shall have no duty to prepare or review any Report contemplated by this Agreement.

15.4 Reliance by Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons (and Agent shall not have any duty to investigate the authenticity or accuracy thereof), and upon advice and statements of legal counsel (including counsel to Borrower or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its satisfaction by the Lender against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders.

15.5 Notice of Default or Event of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which a responsible officer of Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to receiving adequate indemnification as contemplated by Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, however, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6 Credit Decision. Each Lender acknowledges that none of Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of Borrower and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender. Each Lender represents to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of, and investigation into, the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower. Each Lender also represents that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and

other condition and creditworthiness of Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or any other Person party to a Loan Document that may come into the possession of any of Agent-Related Persons. Each Lender acknowledges that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (with any credit or other information with respect to Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement.

15.7 Costs and Expenses; Indemnification. Agent may, but shall not be obligated to, incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys' fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrower is obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from the Collections of Borrower and its Subsidiaries received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders. In the event Agent is not reimbursed for such costs and expenses by Borrower or its Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable share thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so to the extent required hereunder) from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct as finally determined by a court of competent jurisdiction. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8 [Reserved].

15.9 Successor Agent. Agent may resign as Agent upon 10 days prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Borrower (unless such notice is waived by Borrower). If Agent resigns under this Agreement, the Required Lenders shall

be entitled to appoint a successor Agent for the Lenders. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable Law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrower (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 10 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above. Borrower shall pay any such successor Agent any fees separately agreed to by Borrower and Agent.

15.10 Lender in Individual Capacity. Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide bank products to, acquire equity interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrower and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Borrower or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11 Collateral Matters.

(a) The Lenders hereby irrevocably authorize Agent to release any Lien on any Collateral (i) upon the payment and satisfaction in full by Borrower of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrower certifies to Agent that the sale or disposition is permitted under Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which Borrower or its Subsidiaries did not own any interest at the time Agent's Lien was granted nor at any time thereafter, (iv) constituting property leased or licensed to a Borrower or its Subsidiaries under a lease or license that has expired or is terminated in a transaction permitted under this Agreement, or (v) in connection with a credit bid or purchase authorized under this Section 15.11. The Loan Parties and the Lenders hereby irrevocably authorize Agent, based upon the instruction of the Required Lenders, to (a) consent to, credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including

Section 363 of the Bankruptcy Code, (b) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (c) credit bid or purchase (either directly or indirectly through one or more entities) all or any portion of the Collateral at any other sale or foreclosure conducted or consented to by Agent in accordance with applicable Law in any judicial action or proceeding or by the exercise of any legal or equitable remedy. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not impair or unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such contingent or unliquidated claims cannot be estimated without impairing or unduly delaying the ability of Agent to credit bid at such sale or other disposition, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the Collateral that is the subject of such credit bid or purchase) and the Lenders whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the Collateral that is the subject of such credit bid or purchase (or in the equity interests of any entities that are used to consummate such credit bid or purchase), (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by any entities used to consummate such credit bid or purchase and in connection therewith Agent may reduce the Obligations owed to the Lenders (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration and (iii) Agent may jointly credit bid with the holders of obligations under the Prepetition ABL Facility and the Prepetition Term Loan Facilities. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of the Required Lenders. Upon request by Agent or Borrower at any time, the Lenders will confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, however, that (1) anything to the contrary contained in any of the Loan Documents notwithstanding, Agent shall not be required to execute any document or take any action necessary to evidence such release on terms that, in Agent's opinion, could expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly released) upon (or obligations of Borrower in respect of) any and all interests retained by Borrower, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. Each Lender hereby further irrevocably authorized Agent to subordinate any Lien granted to or held by Agent under any Loan Document to the holder of any Permitted Lien on such property if such Permitted Lien secured Purchase Money Indebtedness permitted under this Agreement, the First Lien Credit Agreement or the Revolver Facility Agreement. In connection with any termination or release that is authorized pursuant to this Section 15.11, Agent shall promptly (i) execute and deliver to any Loan Party, at such Loan Party's expense, all documents that such Loan Party shall reasonably request to evidence such termination or release and (ii) deliver to the Loan Parties any portion of such Collateral so released that is in the possession of Agent.

(b) Agent shall have no obligation whatsoever to any of the Lenders (i) to verify or assure that the Collateral exists or is owned by Borrower or its Subsidiaries or is cared for,

protected, or insured or has been encumbered, (ii) to verify or assure that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, (iii) to verify or assure that any particular items of Collateral meet the eligibility criteria applicable in respect thereof, (iv) to impose, maintain, increase, reduce, implement, or eliminate any particular reserve hereunder or to determine whether the amount of any reserve is appropriate or not, or (v) to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender as to any of the foregoing, except as otherwise expressly provided herein.

(c) This Section 15.11 shall be subject in all respects to the provisions of the Intercreditor Agreement.

(d) Agent shall be under no obligation to effect or maintain insurance or to renew any policies of insurance or to inquire as to the sufficiency of any policies of insurance carried by Borrower or any other person or entity, or to report, or make or file claims or proof of loss for, any loss or damage insured against or that may occur, or to keep itself informed or advised as to the payment of any taxes or assessments, or to require any such payment to be made.

(e) Agent shall not be liable or responsible for any loss or diminution in the value of any of the Collateral, by reason of the act or omission of any person, except for its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction.

15.12 Restrictions on Actions by Lenders; Sharing of Payments.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to Borrower or its Subsidiaries or any deposit accounts of Borrower or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase,

without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, however, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13 Agency for Perfection. Agent hereby appoints each other Lender as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14 Payments by Agent to the Lenders. All payments to be made by Agent to the Lenders shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15 Concerning the Collateral and Related Loan Documents. Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders.

15.16 Audits and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report respecting Borrower or its Subsidiaries (each, a "Report") prepared pursuant to this Agreement and provided to Agent and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that any party performing any audit or examination will inspect only specific information regarding Borrower and its Subsidiaries and will rely significantly upon Borrower's and its Subsidiaries' books and records, as well as on representations of Borrower's personnel, and

(d) agrees to keep all Reports and other material, non-public information regarding Borrower and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9.

In addition to the foregoing: (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by Borrower or any Subsidiary of Borrower to Agent that has not been contemporaneously provided by Borrower or its Subsidiaries to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, and (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Borrower or its Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's written notice to Agent, whereupon Agent promptly shall request of Borrower the additional reports or information specified by such Lender, and, upon receipt thereof from Borrower or its Subsidiaries, Agent promptly shall provide a copy of same to such Lender.

15.17 Several Obligations; No Liability. Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to Borrower or any other Person for any failure by any other Lender to fulfill its obligations to make credit available hereunder, nor to advance for such Lender or on its behalf, nor to take any other action on behalf of such Lender hereunder or in connection with the financing contemplated herein.

15.18 Environmental Liability

(a) Agent shall not be responsible or liable for the environmental condition or any contamination of any property secured by any mortgage or deed of trust or for any diminution in value of any such property as a result of any contamination of the property by any hazardous substance, hazardous material, pollutant or contaminant. Agent shall not be liable for any claims by or on behalf of Borrower, the Lenders or any other person or entity arising from contamination of the property by any hazardous substance, hazardous material, pollutant or contaminant, and shall have no duty or obligation to assess the environmental condition of any such property or with respect to compliance of any such property under state or federal laws pertaining to the transport, storage, treatment or disposal of, hazardous substances, hazardous materials, pollutants, or contaminants or regulations, permits or licenses issued under such laws.

(b) Agent shall not be obligated to acquire possession of or take any action with respect to any property secured by a mortgage or deed of trust, if as a result of such action, Agent would be considered to hold title to, to be a "mortgagee in possession of", or to be an "owner" or "operator" of such property within the meaning of the Comprehensive Environmental Responsibility Cleanup and Liability Act of 1980, as amended from time to time, or any other similar legislation in a relevant jurisdiction, unless Agent has previously determined, based upon a report prepared by a person who regularly conducts environmental audits, that (i) the such property is in compliance with applicable environmental laws or, if not, that it would be in the best interest of the to take such actions as are necessary for such property to comply therewith and (ii) there are not circumstances present at such property relating to the use, management or disposal of any hazardous wastes for which investigation, testing, monitoring, containment, clean-up or remediation could be required under any federal, state or local Law or regulation or that if any such materials are present for which such action could be required, that it would be in the best economic interest of the Lenders to take such actions with respect to such property. Notwithstanding the foregoing, before taking any such action, Agent may require that a satisfactory indemnity bond or environmental impairment insurance be furnished to it for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, fees, penalties or expenses which may result from such action.

15.19 Agent Not Required to Risk its Own Funds. No provision of this Agreement or any other Loan Document shall required Agent to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties thereunder or in the exercise of any of its rights or powers if it shall have reasonable grounds to believe that repayment of such funds or adequate indemnity against such risk or liability is not assured to it.

15.20 Force Majeure. Agent shall not be responsible or liable for delays or failures in performance resulting from acts beyond its control. Such acts shall include acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters. Agent shall have no liability for losses arising from (i) any cause beyond its control, (ii) any delay, error, omission or default of any mail, telegraph, cable or wireless agency or operator or (iii) the acts or edicts of any government or governmental agency or other group or entity exercising governmental powers. Agent shall not be responsible for any special, exemplary, punitive or consequential damages.

16. WITHHOLDING TAXES.

16.1 Generally. Except as otherwise provided in this Section 16.1, all payments made by Borrower hereunder or any other Loan Document will be made free and clear of, and without deduction or withholding for, any Taxes, except as required by applicable Law. In the event any deduction or withholding of Taxes is required by applicable Law (as determined in the good faith discretion of the applicable withholding agent), (a) the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable Law and, if such Taxes are Indemnified Taxes, the sum payable to Lenders shall be increased as may be necessary so that after making all required deductions or withholding (including such deductions and

withholdings applicable to additional sums payable under this Section), Lenders receive an amount equal to the sum they would have received had no such deductions or withholding been made and (b) Borrower will furnish to Agent as soon as practicable after the date the payment of any such Indemnified Tax is due to a Governmental Authority pursuant to applicable Law, certified copies of tax receipts evidencing such payment by Borrower. Borrower agrees to pay any present or future stamp, court or documentary, intangible, recording, filing, value added or documentary Taxes or any other excise or property Taxes that arise from any payment made hereunder or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Loan Document. The Borrower shall indemnify Agent and each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes payable or paid by such person or required to be withheld or deducted from a payment to such person and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section, the Borrower shall deliver to Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to Agent. For the purposes of this Section 16, the term "Lender" shall include a Participant.

16.2 Exemptions.

(a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower and Agent, at the time or times reasonably requested by Borrower or Agent, such properly completed and executed documentation reasonably requested by Borrower or Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by Borrower or Agent as will enable Borrower or Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(b) Without limiting the generality of the foregoing, if a Lender is entitled to claim an exemption or reduction from United States withholding Tax, such Lender agrees to deliver to Agent and Borrower one of the following before receiving its first payment under this Agreement:

(i) if such Lender is entitled to claim an exemption from United States withholding Tax pursuant to the portfolio interest exception, (A) a statement of the Lender, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrower within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN or IRS Form W-8BEN-E or Form W-8IMY (with proper attachments);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding Tax under a United States Tax treaty, a properly completed and executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding Tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender is entitled to claim that interest paid under this Agreement is exempt from United States withholding Tax because such Lender serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (with proper attachments);

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other Laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding Tax; or

(vi) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to Borrower and Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Borrower or Agent as may be necessary for Borrower and Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 16.2(b)(vi), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(c) Without limiting the generality of the foregoing, if a Lender claims an exemption from withholding Tax in a jurisdiction other than the United States, such Lender agrees with and in favor of Agent, to deliver to Agent any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding Tax before receiving its first payment under this Agreement.

(d) Notwithstanding anything to the contrary in Section 16.2(a) or Section 16.2(c), the completion, execution and submission of documentation required by Section 16.2(a) and Section 16.2(c) shall only be required if the applicable Lender is legally able to deliver such forms and would not, in the Lender's reasonable judgment, subject such Lender to any material unreimbursed cost or expense or materially prejudice the legal or commercial position of such Lender; provided, however, that nothing in Section 16.2(a) or this Section 16.2(c) shall require a Lender to disclose any information that it deems to be confidential (including without limitation, its Tax returns).

(e) Each Lender shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and shall promptly notify Agent and Borrower of any change in circumstances which would modify or render invalid any claimed exemption or reduction

(f) If a Lender claims exemption from, or reduction of, withholding Tax and such Lender sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrower to such Lender, such Lender agrees to notify Agent and Borrower of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrower to such Lender. To the extent of such percentage amount, Agent will treat such Lender's documentation provided pursuant to Section 16.2(a), Section 16.2(b), or Section 16.2(c) as no longer valid. With respect to such percentage amount, such Participant or Assignee shall provide documentation, pursuant to Section 16.2(a), Section 16.2(b), or Section 16.2(c), if applicable. Borrower agrees that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

16.3 Reductions.

(a) If a Lender or a Participant is subject to an applicable withholding Tax, Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any payment to such Lender or such Participant an amount of Taxes as required by applicable Law. If the forms or other documentation required by Section 16.2 are not delivered to Borrower or Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any payment to such Lender or such Participant not providing such forms or other documentation an amount of Taxes as required by applicable Law.

(b) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold Tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding Tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as Tax or otherwise, including penalties and interest, and including any Taxes imposed by any jurisdiction on the amounts payable to Borrower or Agent, as applicable (or, in the case of a Participant, to the Lender granting the participation only), under this Section 16, together with all costs and expenses (including attorneys' fees and expenses). The obligation of the Borrower, Lenders and the Participants under this Section 16 shall survive the payment of all Obligations and the resignation or replacement of Agent.

16.4 Refunds. If Agent or a Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Indemnified Taxes (including by the payment of

additional amounts pursuant to Section 16.1), so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to Borrower (but only to the extent of payments made, or additional amounts paid, by Borrower under this Section 16 with respect to Indemnified Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that Borrower, upon the request of Agent or such Lender, agree to repay the amount paid over to Borrower (plus any penalties, interest or other charges, imposed by the relevant Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent hereunder) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 16.4), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 16.4 the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any Lender to make available its Tax returns (or any other information which it deems confidential) to Borrower or any other Person.

17. GENERAL PROVISIONS.

17.1 Effectiveness. This Agreement shall be binding and deemed effective when executed by Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof, following entry of the Interim DIP Order.

17.2 Section Headings. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3 Interpretation. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5 [Reserved].

17.6 Debtor-Creditor Relationship. The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members

of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7 Counterparts; Electronic Execution. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document mutatis mutandis.

17.8 Revival and Reinstatement of Obligations. If any member of the Lender Group repays, refunds, restores, or returns in whole or in part, any payment or property (including any proceeds of Collateral) previously paid or transferred to such member of the Lender Group in full or partial satisfaction of any Obligation or on account of any other obligation of any Loan Party under any Loan Document, because the payment, transfer, or the incurrence of the obligation so satisfied is asserted or declared to be void, voidable, or otherwise recoverable under any law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent transfers, preferences, or other voidable or recoverable obligations or transfers (each, a "Voidable Transfer"), or because such member of the Lender Group elects to do so on the reasonable advice of its counsel in connection with a claim that the payment, transfer, or incurrence is or may be a Voidable Transfer, then, as to any such Voidable Transfer, or the amount thereof that such member of the Lender Group elects to repay, restore, or return (including pursuant to a settlement of any claim in respect thereof), and as to all reasonable costs, expenses, and attorneys' fees of such member of the Lender Group related thereto, (i) the liability of the Loan Parties with respect to the amount or property paid, refunded, restored, or returned will automatically and immediately be revived, reinstated, and restored and will exist and (ii) Agent's Liens securing such liability shall be effective, revived, and remain in full force and effect, in each case, as fully as if such Voidable Transfer had never been made. If, prior to any of the foregoing, (A) Agent's Liens shall have been released or terminated or (B) any provision of this Agreement shall have been terminated or cancelled, Agent's Liens, or such provision of this Agreement, shall be reinstated in full force and effect and such prior release, termination, cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligation of any Loan Party in respect of such liability or any Collateral securing such liability.

17.9 Confidentiality.

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding Borrower and its Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this

clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis (provided that the applicable member of the Lender Group shall be responsible for the breach of any of its Lender Group Representatives), (ii) to Subsidiaries and Affiliates of any member of the Lender Group; provided that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrower pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrower, (vi) in connection with the Chapter 11 Cases or as otherwise requested or required by any Governmental Authority pursuant to any subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement; provided that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information either subject to the terms of this Section 17.9 or pursuant to confidentiality requirements substantially similar to those contained in this Section 17.9 (and such Person may disclose such Confidential Information to Persons employed or engaged by them as described in clause (i) above), (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that, prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrower with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Agent may disclose information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services or in its marketing or promotional materials with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos and other insignia of Borrower and the Loan Parties and the total Term Loans provided hereunder in any "tombstone" or other advertisement, on its website or in other marketing materials of Agent.

17.10 Lender Group Expenses. Borrower agrees to pay any and all Lender Group Expenses on the date on which demand therefor is made by Agent including documentation reasonably supporting such request.

17.11 Survival. All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any loan or any fee or any other amount payable under this Agreement is outstanding and unpaid.

17.12 Patriot Act. Each Lender that is subject to the requirements of the Patriot Act hereby notifies Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender to identify Borrower in accordance with the Patriot Act. In addition, if Agent is required by law or regulation or internal policies to do so, it shall have the right to periodically conduct (a) Patriot Act searches, OFAC/PEP searches, and customary individual background checks for the Loan Parties and (b) OFAC/PEP searches and customary individual background checks for the Loan Parties' senior management and key principals, and Borrower agrees to cooperate in respect of the conduct of such searches and further agrees that the reasonable costs and charges for such searches shall constitute Lender Group Expenses hereunder and be for the account of Borrower.

17.13 Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the Effective Date.

17.14 [Reserved].

17.15 [Reserved].

17.16 Intercreditor Agreement. Agent and each Lender hereunder, by its acceptance of the benefits provided hereunder, (a) consents to the subordination of Liens provided for in the Intercreditor Agreement, (b) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Intercreditor Agreement and (c) authorizes and instructs Agent to enter into the Intercreditor Agreement (and/or any joinder or supplement thereof) on behalf of each Lender. Agent and each Lender hereby agree that the terms, conditions and provisions contained in this Agreement are subject to the Intercreditor Agreement and, in the event of a conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.

18. SECURITY AND PRIORITY.

18.1 Priority and Liens Applicable to Loan Parties. Borrower's obligations under this Agreement and the Guarantees by the Guarantors hereunder shall be secured by super priority claim status pursuant to Sections 364(c)(1), 503, and 507 of the Bankruptcy Code and (b) will be secured by a fully perfected security interest pursuant to Sections 364(c)(2), 364(c)(3), and

364(d)(1) of the Bankruptcy Code and the personal property security acts or similar legislation in all relevant provincial jurisdictions in all of the Collateral (and, in each case, subject to the priority of payments and Lien priorities as set forth in the Financing Orders).

18.2 Grant of Security. Pursuant to, and otherwise subject to the terms of, the Financing Orders and in accordance with the terms thereof, as security for the full and timely payment and performance of all of the Obligations, each Loan Party hereby unconditionally grants, collaterally assigns and pledges to Agent, for the benefit of each member of the Lender Group, to secure the Obligations, a continuing security interest (hereinafter referred to as the "Security Interest") in all of such Loan Party's right, title and interest in and to the following, whether now owned or hereinafter acquired or arising and wherever located (the "Collateral"):

(a) all of such Loan Party's Accounts;

(b) all of such Loan Party's Books;

(c) all of such Loan Party's Chattel Paper;

(d) all of such Loan Party's Deposit Accounts;

(e) all of such Loan Party's Equipment, Fixtures and vehicles;

(f) all of such Loan Party's General Intangibles;

(g) all of such Loan Party's Inventory;

(h) all of such Loan Party's Investment Related Property;

(i) all of such Loan Party's Negotiable Collateral;

(j) all of such Loan Party's Supporting Obligations;

(k) all of such Loan Party's Commercial Tort Claims;

(l) all of such Loan Party's money, Cash Equivalents, or other assets of such Loan Party that now or hereafter come into the possession, custody or control of Agent (or its agent or designee) or any other member of the Lender Group;

(m) the proceeds of any commercial actions and any avoidance actions brought under Chapter 5 of the Bankruptcy Code or applicable state Law equivalents and all of such Loan Party's rights under Section 506(c) of the Bankruptcy Code;

(n) all of such Loan Party's Real Property;

(o) all of such Loan Party's Goods and all other personal property assets not described above; and

(p) all of the proceeds (as such term is defined in the Code) and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance or

Commercial Tort Claims covering or relating to any or all of the foregoing, and any and all Accounts, Books, Chattel Paper, Deposit Accounts, Equipment, Fixtures, General Intangibles, Inventory, Investment Related Property, Negotiable Collateral, Supporting Obligations, money, or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, the proceeds of any award in condemnation with respect to any of the foregoing, any rebates or refunds, whether for taxes or otherwise, and all proceeds of any such proceeds, or any portion thereof or interest therein, and the proceeds thereof, and all proceeds of any loss of, damage to, or destruction of the above, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty, or guaranty payable by reason of loss or damage to, or otherwise with respect to any of the foregoing (the "Proceeds"). Without limiting the generality of the foregoing, the term "Proceeds" includes whatever is receivable or received when Investment Related Property or proceeds are sold, exchanged, collected, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes proceeds of any indemnity or guaranty payable to any Loan Party or Agent from time to time with respect to any of the Investment Related Property.

18.3 Grants; Rights and Remedies. The Liens and security interests and the administrative priority and Lien priority specified above may be independently granted by the other Loan Documents entered into on the date hereof or hereafter. This Agreement, the Financing Orders and such other Loan Documents supplement each other, and the grants, priorities, rights and remedies of Agent and the Lenders hereunder and thereunder are cumulative; provided that to the extent of conflict, the Financing Orders control.

18.4 Guaranty.

(a) Each Guarantor hereby jointly and severally, unconditionally, absolutely, continually and irrevocably guarantees to the Lender Group the payment in full of the Guaranteed Liabilities (as defined below). For all purposes of this Agreement, "Guaranteed Liabilities" means Borrower's prompt payment in full, when due or declared due and at all such times, of all Obligations and all other amounts pursuant to the terms of the Credit Agreement and all other Loan Documents heretofore, now or at any time or times hereafter owing, arising, due or payable from Borrower to any one or more members of the Lender Group, including principal, interest, premiums and fees (including, but not limited to, the reasonable fees, expenses and disbursements of counsel in accordance with the definition of "Lender Group Expenses" (collectively, "Attorneys' Costs")). The Guarantors' obligations to the Lender Group under this Agreement are hereinafter collectively referred to as the "Guarantors' Obligations" and, with respect to each Guarantor individually, the "Guarantor's Obligations." Notwithstanding the foregoing, the liability of each Guarantor individually with respect to its Guarantor's Obligations shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under Section 548 of the Bankruptcy Code or any comparable provisions of any applicable state Law or provincial or federal law of Canada. Each Guarantor agrees that it is jointly and severally, directly and primarily liable (subject to the limitation in the immediately preceding sentence) for the Guaranteed Liabilities.

(b) If Borrower shall default in payment of any of the Guaranteed Liabilities, whether principal, interest, premium, fees (including, but not limited to, Attorneys' Costs), or otherwise, when and as the same shall become due, and after expiration of any applicable grace

period, whether according to the terms of the Credit Agreement, by acceleration, or otherwise, or upon the occurrence and during the continuance of any Event of Default under the Credit Agreement, then any or all of the Guarantors will, promptly upon demand thereof by Agent, fully pay to Agent, for the benefit of the Lender Group, subject to any restriction on each Guarantor's Obligations set forth in Section 18.4(a) hereof, an amount equal to all the Guaranteed Liabilities then due and owing. For purposes of this Section 18.4(b), the Guarantors acknowledge and agree that "Guaranteed Liabilities" shall be deemed to include any amount (whether principal, interest, premium, fees) which would have been accelerated in accordance with Section 9.1 but for the fact that such acceleration could be unenforceable or not allowed under any debtor relief law.

(c) This Section 18.4 is a guaranty of payment and not of collection. The Guarantors' Obligations under this Agreement shall be joint and several, absolute and unconditional irrespective of, and each Guarantor hereby expressly waives, to the extent permitted by law, any defense to its obligations under this Agreement by reason of (i) any lack of legality, validity or enforceability of the Credit Agreement or of any other agreement or instrument creating, providing security for, or otherwise relating to any of the Guarantors' Obligations, any of the Guaranteed Liabilities, or any other guaranty of any of the Guaranteed Liabilities (the Loan Documents and all such other agreements and instruments being collectively referred to as the "Related Agreements"), (ii) any action taken under any of the Related Agreements, any exercise of any right or power therein conferred, any failure or omission to enforce any right conferred thereby, or any waiver of any covenant or condition therein provided, (iii) any acceleration of the maturity of any of the Guaranteed Liabilities, of the Guarantor's Obligations of any other Guarantor, or of any other obligations or liabilities of any Person under any of the Related Agreements, (iv) any release, exchange, non-perfection, lapse in perfection, disposal, deterioration in value, or impairment of any security for any of the Guaranteed Liabilities, for any of the Guarantor's Obligations of any Guarantor, or for any other obligations or liabilities of any Person under any of the Related Agreements, (v) any dissolution of Borrower or any Guarantor or any other party to a Related Agreement, or the combination or consolidation of Borrower or any Guarantor or any other party to a Related Agreement into or with another entity or any transfer or disposition of any assets of Borrower or any Guarantor or any other party to a Related Agreement, (vi) any extension (including without limitation extensions of time for payment), renewal, amendment, restructuring or restatement of, any acceptance of late or partial payments under, or any change in the amount of any borrowings or any credit facilities available under, the Credit Agreement, any other Loan Document or any other Related Agreement, in whole or in part, (vii) the existence, addition, modification, termination, reduction or impairment of value, or release of any other guaranty (or security therefor) of the Guaranteed Liabilities (including without limitation the Guarantor's Obligations of any other Guarantor and obligations arising under any other guaranty now or hereafter in effect), (viii) any waiver of, forbearance or indulgence under, or other consent to any change in or departure from any term or provision contained in the Credit Agreement, any other Loan Document or any other Related Agreement, including without limitation any term pertaining to the payment of any of the Guaranteed Liabilities, any of the Guarantor's Obligations of any other Guarantor, or any of the obligations or liabilities of any party to any other Related Agreement or (ix) any other circumstance whatsoever (with or without notice to or knowledge of any Guarantor) which may or might in any manner or to any extent vary the risks of such Guarantor, or might otherwise constitute a legal or equitable defense (other than payment in full) available to, or discharge of, a surety or a guarantor, including without limitation any right to require or claim that resort be had to Borrower or any other Loan Party or to any

Collateral in respect of the Guaranteed Liabilities or Guarantors' Obligations. It is the express purpose and intent of the parties hereto that this Section 18.4 and the Guarantors' Obligations hereunder shall be absolute and unconditional under any and all circumstances and shall not be discharged except by payment in full as herein provided.

(d) All Guarantors' Obligations will be paid in lawful currency of the United States of America and in immediately available funds, regardless of any law, regulation or decree now or hereafter in effect that might in any manner affect the Guaranteed Liabilities, or the rights of any member of the Lender Group with respect thereto as against Borrower, or cause or permit to be invoked any alteration in the time, amount or manner of payment by Borrower of any or all of the Guaranteed Liabilities.

(e) Without limiting the provisions of Section 18.4(b) hereof, in the event that there shall occur and be continuing an Event of Default, then notwithstanding any collateral or other security or credit support for the Guaranteed Liabilities, at Agent's election and without notice thereof or demand therefor, the Guaranteed Liabilities shall immediately be and become due and payable, subject to the terms of the Intercreditor Agreement.

(f) Each Guarantor hereby unconditionally subordinates all present and future debts, liabilities or obligations now or hereafter owing to such Guarantor (a) of Borrower, to the payment in full of the Guaranteed Liabilities, (b) of every other Guarantor (an "Obligated Guarantor"), to the payment in full of the Guarantors' Obligations of such Obligated Guarantor, and (c) of each other Person now or hereafter constituting a Loan Party, to the payment in full of the obligations of such Loan Party owing to any member of the Lender Group and arising under the Loan Documents. All amounts due under such subordinated debts, liabilities, or obligations shall, upon the occurrence and during the continuance of an Event of Default, be collected and, upon request by Agent, paid over forthwith to Agent for the benefit of the Lender Group on account of the Guaranteed Liabilities, the Guarantors' Obligations, or such other Obligations, as applicable, and, after such request and pending such payment, shall be held by such Guarantor as agent and bailee of the Lenders separate and apart from all other funds, property and accounts of such Guarantor.

(g) Each Guarantor from time to time shall pay to Agent for the benefit of the Lender Group, on demand, at Agent's office or such other address as Agent shall give notice of to such Guarantor, the Guarantors' Obligations as they become or are declared due, and in the event such payment is not made forthwith, Agent may proceed to bring suits against any one or more or all of the Guarantors, subject to the terms of the Intercreditor Agreements. Subject to the terms of the Intercreditor Agreement, at Agent's election, one or more and successive or concurrent suits may be brought hereon by Agent against any one or more or all of the Guarantors, whether or not a suit has been commenced against Borrower, any other Guarantor, or any other Person and whether or not the Lender Group has taken or failed to take any other action to collect all or any portion of the Guaranteed Liabilities or have taken or failed to take any actions against any Collateral securing payment of all or any portion of the Guaranteed Liabilities, and irrespective of any event, occurrence, or condition described in Section 18.4(c) hereof.

(h) Each Guarantor waives any right to assert against any member of the Lender Group as a defense, counterclaim, set-off, recoupment or cross claim in respect of its Guarantor's

Obligations, any defense (legal or equitable) or other claim which such Guarantor may now or at any time hereafter have against Borrower or any or all of the members of the Lender Group without waiving any additional defenses, set-offs, counterclaims or other claims otherwise available to such Guarantor. Each Guarantor agrees that each member of the Lender Group shall have a lien for all the Guarantor's Obligations upon all deposits or deposit accounts, of any kind, or any interest in any deposits or deposit accounts, now or hereafter pledged, mortgaged, transferred or assigned to such Lender or otherwise in the possession or control of such member of the Lender Group for any purpose (other than solely for safekeeping) for the account or benefit of such Guarantor, including any balance of any deposit account or of any credit of such Guarantor with the member of the Lender Group, whether now existing or hereafter established, and hereby authorizes each Lender from and after the occurrence of an Event of Default at any time or times with or without prior notice to apply such balances or any part thereof to such of the Guarantor's Obligations to the members of the Lender Group then due and in such amounts as provided for in the Credit Agreement or otherwise as they may elect, subject to the terms of the Intercreditor Agreements. For the purposes of this Section 18.4(h), all remittances and property shall be deemed to be in the possession of a member of the Lender Group as soon as the same may be put in transit to it by mail or carrier or by other bailee.

18.5 Survival. The Liens, Lien priority, administrative priorities and other rights and remedies granted to Agent and the Lenders pursuant to this Agreement, the Financing Orders and the other Loan Documents (specifically including, but not limited to, the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by Borrower (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Chapter 11 Cases, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(a) no costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on parity with any claim of Agent and the Lenders against Borrower in respect of any Obligation; and

(b) the Liens in favor of Agent and the Lenders shall constitute valid and perfected Liens and security interests, and shall be prior to all other Liens and security interests, now existing or hereafter arising, in favor of any other creditor or any other Person whatsoever (subject to Permitted Liens and any action required under foreign law with respect of Collateral solely to the extent that such foreign law is applicable).

[Signature pages to follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

JACK COOPER VENTURES, INC.,
as Borrower

By:_____
Name:
Title:

[_____],
as a Guarantor

By:_____
Name:
Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Agent

By: _____
Name:
Title:

[_____],
as a Lender

By: _____
Name:
Title:

Schedule C-1

Lender	Commitment

Schedule 1.1

As used in this Agreement, 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 Term Loan Facility.

"1.5 Lien Claims" means any Claims on account of or arising under the 1.5 Lien Term Loan Facility.

"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 Subsidiaries of Parent, the 1.5 Lien Agent, and the banks, financial institutions, and other lenders party thereto.

"1.5 Lien Term Loan Facility" means the obligations outstanding under the 1.5 Lien Credit Agreement.

"9.25% Notes" means those 9.25% Senior Secured Notes due 2020 issued by JCHC pursuant to that certain Indenture, dated as of June 18, 2013, among JCHC, certain affiliates thereof, and U.S. Bank National Association, as trustee and collateral agent for the noteholders, in the aggregate principal amount of $1,099,000 as of the Effective Date.

"Acquisition" means in a transaction or a series of transactions, (a) the purchase or other acquisition by a Person or its Subsidiaries of all or substantially all of the assets of (or any division or business line of) any other Person, or (b) the purchase or other acquisition (whether by means of a merger, consolidation, or otherwise) by a Person or its Subsidiaries of all or substantially all of the Stock of any other Person.

"Additional Assets" has the meaning specified therefor in Section 2.4(d) of this Agreement.

"Additional Documents" has the meaning specified therefor in Section 5.12 of this Agreement.

"Additional Loans" has the meaning specified therefor in Section 2.1(a) of this Agreement.

"Adequate Protection Orders" means all orders entered by the Bankruptcy Court pertaining to adequate protection.

"Affiliate" means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, for purposes of Section 6.12 of this Agreement: (a) any Person which owns directly or indirectly 10% or more of the Stock having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person

shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person. In no event shall Solus or its Affiliates be deemed an Affiliate of Borrower or its Affiliates.

"Agent" has the meaning specified therefor in the preamble to this Agreement.

"Agent-Related Persons" means Agent, together with its Affiliates, and Agent's and Agent's Affiliates' officers, directors, employees, advisors, and agents.

"Agent's Account" has the meaning specified therefor in Section 2.7 of this Agreement.

"Agent's Liens" mean the Liens granted by Borrower or its Subsidiaries to Agent under the Loan Documents and securing the Obligations.

"Agreement" means the Credit Agreement to which this Schedule 1.1 is attached.

"Anti-Money Laundering and Anti-Terrorism Laws" means (a) the Money Laundering Control Act of 1986 (*i.e.*, 18 U.S.C. §§ 1956 and 1957), (b) the Bank Secrecy Act of 1970 (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959), and the implementing regulations promulgated thereunder, (c) the USA PATRIOT Act and the implementing regulations promulgated thereunder, (d) the laws, regulations and Executive Orders administered by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC"), (e) any law prohibiting or directed against terrorist activities or the financing or support of terrorist activities (*e.g.*, 18 U.S.C. §§ 2339A and 2339B), and (f) any similar laws enacted in the United States or any other jurisdictions in which the Loan Parties and their Subsidiaries operate, as any of the foregoing laws have been, or shall hereafter be, amended, renewed, extended, or replaced and all other future legal requirements of any Governmental Authority binding on any Loan Party or any of their Subsidiaries governing, addressing, relating to, or attempting to eliminate terrorist acts and acts of war and any regulations promulgated pursuant thereto.

"Application Event" means (a) the occurrence of a failure by Borrower to repay all of the Obligations in full on the Maturity Date, or (b) the occurrence and continuance of an Event of Default and the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 2.4(b)(ii) of this Agreement.

"Asset Sale" means

(a) any Permitted Disposition pursuant to clauses (a) or (p) of the definition thereof or any sale, transfer or other disposition of assets not constituting a Permitted Disposition, in each case, by Borrower or its Subsidiaries; or

(b) an Event of Loss.

"Assignee" has the meaning specified therefor in Section 13.1(a) of this Agreement.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1 to this Agreement.

"Attorneys' Costs" has the meaning specified therefor in Section 18.4 of this Agreement.

"Auction" means the auction, if any, held in connection with the Sale Transaction.

"Average Life" means, as of any date of determination, with respect to any Indebtedness, the quotient obtained by dividing (i) the sum of the products of (x) the number of years from the date of determination to the dates of each successive scheduled principal payment (including any sinking fund or mandatory redemption payment requirements) of such Indebtedness multiplied by (y) the amount of such principal payment by (ii) the sum of all such principal payments.

"Bank Lender" means any lender or holder of Indebtedness under any credit facility the obligors with respect to which are required to become Loan Parties hereunder to the extent such Indebtedness is permitted under the definition of "Permitted Indebtedness".

"Bank Product" means any services or facilities provided to Borrower or any Guarantor by any Bank Lender, or any of their respective Affiliates, including, without limitation, Hedging Obligations and any one or more of the following financial products or accommodations: (a) credit cards (including commercial cards (including so-called "purchase cards", "procurement cards" or "p-cards")), (b) credit card processing services, (c) debit cards, (d) stored value cards and (e) cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, e-payables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

"Bankruptcy Code" means title 11 of the United States Code, as in effect from time to time and any successor statute.

"Bankruptcy Court" has the meaning specified therefor in the recitals hereto.

"Benefit Plan" means a "defined benefit plan" (as defined in Section 3(35) of ERISA) (excluding any Multiemployer Plan) for which Borrower or any of its Subsidiaries or ERISA Affiliates is an "employer" (as defined in Section 3(5) of ERISA).

"Bid Procedures" means the bidding procedures approved by the Bankruptcy Court pursuant to the Bid Procedures Order.

"Bid Procedures Order" means an order entered by the Bankruptcy Court approving, among other things, the Bid Procedures and the stalking horse bidder.

"Blocked Person" means any Person:

(a) that (i) is identified on the list of "Specially Designated Nationals and Blocked Persons" published by OFAC; (ii) resides, is organized or chartered, or has a place of business in a country or territory that is the subject of an OFAC Sanctions Program; or (iii) a United States Person is prohibited from dealing or engaging in a transaction with under any of the Anti-Money Laundering and Anti-Terrorism Laws; and

(b) that is owned or controlled by, or that owns or controls, or that is acting for or on behalf of, any Person described in clause (a) above.

"Board of Directors" means, as to any Person, the board of directors (or comparable managers) of such Person or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"Borrower" has the meaning specified therefor in the preamble to this Agreement.

"Borrowing" means a borrowing consisting of Term Loans.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the state of New York.

"Canadian Loan Party" means each Subsidiary of Parent incorporated in any legal jurisdiction of Canada.

"Capital Expenditures" means, with respect to any Person for any period, the aggregate of all expenditures by such Person and its Subsidiaries during such period that are capital expenditures as determined in accordance with GAAP, whether such expenditures are paid in cash or financed, but excluding, without duplication (a) expenditures made during such period with the cash proceeds received from an Event of Loss that is used to replace the asset subject to such Event of Loss (or reasonably similar thereto) within 360 days after the initial receipt of such monies, (b) with respect to the purchase price of assets that are purchased substantially contemporaneously with the trade-in of existing assets during such period, the amount that the gross amount of such purchase price is reduced by the credit granted by the seller of such assets for the assets being traded in at such time, (c) expenditures made during such period to consummate one or more Permitted Investments, (d) expenditures made during such period to the extent made with the identifiable proceeds of an equity investment in Borrower or any of its Subsidiaries (or any equity investment in any direct or indirect parent of Borrower that is contributed to Borrower or any of its Subsidiaries) which expenditure is made within 60 days of the receipt of the proceeds of such equity investment (or contribution, as applicable), and (e) expenditures during such period that, pursuant to a written agreement, are reimbursed by a third Person (excluding Borrower or any of its Affiliates).

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

"Capital Lease Obligation" means any obligation under a Capital Lease; and the amount of Indebtedness represented by such obligation shall be the capitalized amount of such obligations determined in accordance with GAAP; and the Stated Maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. For purposes of Section 6.2, a Capital Lease Obligation shall be deemed secured by a Lien on the Property being leased.

"Carve Out" has the meaning set forth in the Interim DIP Order or the Final DIP Order, as applicable.

"Cash Equivalents" means any of the following Investments: (i) securities issued or directly and fully guaranteed or insured by the United States or any agency or instrumentality thereof (provided that the full faith and credit of the United States is pledged in support thereof) maturing not more than 1 year after the date of acquisition; (ii) time deposits in and certificates of deposit of any Eligible Bank; provided that such Investments have a maturity date not more than 2 years after date of acquisition and that the Average Life of all such Investments is 1 year or less from the respective dates of acquisition; (iii) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (i) above entered into with any Eligible Bank; (iv) direct obligations issued by any state of the United States or any political subdivision or public instrumentality thereof; provided that such Investments mature, or are subject to tender at the option of the holder thereof within 365 days after the date of acquisition and, at the time of acquisition, have a rating of at least A from Standard & Poor's or A-2 from Moody's (or an equivalent rating by any other nationally recognized rating agency); (v) commercial paper of any Person other than an Affiliate of Borrower; provided that such Investments have one of the two highest ratings obtainable from either Standard & Poor's or Moody's at the time of their acquisition and mature within 180 days after the date of acquisition; (vi) overnight and demand deposits in and bankers' acceptances of any Eligible Bank and demand deposits in any bank or trust company to the extent insured by the Federal Deposit Insurance Corporation against the Bank Insurance Fund; (vii) money market funds substantially all of the assets of which comprise Investments of the types described in clauses (i) through (vi) above; and (viii) instruments equivalent to those referred to in clauses (i) through (vi) above or funds equivalent to those referred to in clause (vii) above denominated in Euros or any other foreign currency comparable in credit quality and tender to those referred to in such clauses and customarily used by corporations for cash management purposes in jurisdictions outside the United States to the extent reasonably required in connection with any business conducted by any Subsidiary organized in such jurisdiction, all as determined in good faith by Borrower.

"CBA Milestone" has the meaning specified therefor in Section 5.2(h) of this Agreement.

"CCAA" has the meaning specified therefor in the recitals hereto.

"CCAA Court" has the meaning specified therefor in the recitals hereto.

"CCAA Initial Recognition Order" means the initial recognition order entered by the CCAA Court.

"CCAA Supplemental Recognition Order" means the supplemental recognition order entered by the CCAA Court.

"CCAA Priority Charges" has the meaning set forth in the CCAA Supplemental Recognition Order.

"CCAA Proceedings" has the meaning specified therefor in the recitals hereto.

"CCQ" means the Civil Code of Quebec, and, where applicable, the regulations promulgated thereunder.

"Cerberus" means Cerberus Business Finance Agency, LLC.

"Certificate" means, with respect to a Vehicle, the certificate of title or equivalent certificate or document, issued by the relevant Jurisdiction, evidencing ownership of such Vehicle.

"Change of Control" means that (a) any "person" or "group" (within the meaning of Sections 13.1(d) and 14(d) of the Exchange Act), other than one or more Permitted Holders, becomes the beneficial owner (as defined in Rules 13d-3 13d-5 under the Exchange Act, except that for purposes of this clause (a) such "person" or "group" or Permitted Holder shall be deemed to have "beneficial ownership" of all shares that any such person or group has the right to acquire by conversion or exercise of other securities, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 50%, or more, of the Stock of Borrower having the right to vote for the election of members of the Board of Directors (other than any such right arising out of the RSA or the transactions contemplated thereby), (b) Borrower fails to own and control, directly or indirectly, 100% of the Stock of each other Loan Party and of each other Subsidiary whose Stock is pledged by a Loan Party (other than pursuant to a transaction of a type permitted under Section 6.3 or Section 6.4 of this Agreement and other than any minority interest of any Foreign Subsidiary of Borrower as required by law), or (c) a "Change of Control" or comparable term as that term is defined in the Revolver Facility Agreement occurs (in each case, after giving effect to any applicable waiver, amendment, consent or modification thereunder).

"Chapter 11 Cases" has the meaning specified therefor in the recitals hereto.

"Code" means the New York Uniform Commercial Code, as in effect from time to time.

"Collateral" has the meaning specified therefor in Section 18.2 of this Agreement.

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, cash proceeds of asset sales, rental proceeds, and tax refunds) paid or payable to a Loan Party.

"Commitment" means, in the case of each Lender, the amount set forth opposite such Lender's name on Schedule C-1 as such Lender's "Commitment". The aggregate amount of the Commitments as of the Effective Date totals $15,000,000.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 to this Agreement duly executed by the chief financial officer of Borrower and delivered to Agent:

(a) stating that such chief financial officer has reviewed the provisions of this Agreement and the other Loan Documents and has made or caused to be made under his or her supervision a review of the condition and operations of Borrower and its Subsidiaries during the period covered by such financial statements with a view to determining whether Borrower and its Subsidiaries were in compliance with all of the provisions of this Agreement and such Loan Documents at the times such compliance is required hereby and thereby, and that such review has not disclosed, and such chief financial officer has no knowledge of, the occurrence and continuance during such period of an Event of Default or Default or, if an Event of Default or Default had occurred and continued or is continuing, describing the nature and period of existence thereof and the action which Borrower and its Subsidiaries propose to take or have taken with respect thereto, and

(b) in the case of the delivery of the financial statements of Borrower and its Subsidiaries required by clauses (c) and (e) of Schedule 5.1, including a discussion and analysis of the financial condition and results of operations of Borrower and its Subsidiaries for the portion of the fiscal year then elapsed.

"Confidential Information" has the meaning specified therefor in Section 17.9(a) of this Agreement.

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by Borrower or one of its Subsidiaries, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Covenant Liquidity" means, as of any time (i) cash and Cash Equivalents of the Loan Parties plus (ii) as of such time, the principal amount of loans available for borrowing under the Revolver Facility after giving effect to the borrowing base formula and all applicable reserves, holdbacks and minimum availability tests plus (iii) as of such time, the principal amount of Term Loans available for borrowing hereunder.

"Debtor" has the meaning specified therefor in the Initial Orders.

"Default" means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

"Deposit Account" means any deposit account (as that term is defined in the Code).

"DIP Budget" means a rolling thirteen (13)-week forecast of projected receipts, disbursements, net cash flow, liquidity, loans and availability for the immediately following consecutive 13 weeks after the date of delivery, which shall be in form and substance acceptable to the Required Lenders and Solus in each of their sole discretion.

"DIP Facilities" means, collectively, that certain (i) Revolver Facility and (ii) the term loan facility provided pursuant to this Agreement, as amended, restated, supplemented and otherwise modified from time to time.

"DIP Motion" means the motion filed by Borrower with the Bankruptcy Court seeking Bankruptcy Court approval of the DIP Facilities, which motion shall be in form and substance acceptable to Agent, the Lenders and Borrower.

"Dollars" or "$" means United States dollars.

"Effective Date" means the date on which the conditions precedent set forth in Section 3.1 either have been satisfied or have been waived by the Lenders.

"Eligible Bank" means a bank or trust company that (i) is organized and existing under the laws of the United States of America, or any state, territory or possession thereof, (ii) as of the time of the making or acquisition of an Investment in such bank or trust company, has combined

capital and surplus in excess of $500,000,000 and (iii) the senior Indebtedness of such bank or trust company is rated at least "A-2" by Moody's or at least "A" by Standard & Poor's.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of Borrower or any of its Subsidiaries or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by Borrower, any Subsidiary of Borrower, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on Borrower or its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

"Equipment" means equipment (as that term is defined in the Code).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

"ERISA Affiliate" means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of Borrower or any of its Subsidiaries under IRC Section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of Borrower or any of its Subsidiaries under IRC Section 414(c), (c) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which Borrower or any of its Subsidiaries is a member under IRC Section 414(m), or (d) solely for purposes of Section 302 of ERISA and Section 412 of the IRC, any Person subject to ERISA that is a party to an arrangement with Borrower or any of its Subsidiaries and whose employees are aggregated with the employees of Borrower or any of its Subsidiaries under IRC Section 414(o).

"Event of Default" has the meaning specified therefor in Section 8 of this Agreement.

"Event of Loss" means, with respect to any property or asset (tangible or intangible, real or personal), constituting Collateral, receipt by a Loan Party of any casualty insurance or condemnation proceeds (excluding, for the avoidance of doubt, any proceeds of business interruption and cyber insurance) in respect of any of the following:

(i) any loss, destruction or damage of such property or asset;

(ii) any institution of any proceeding for the condemnation or seizure of such property or asset or for the exercise of any right of eminent domain;

(iii) any actual condemnation, seizure or taking by exercise of the power of eminent domain or otherwise of such property or asset, or confiscation of such property or asset or the requisition of the use of such property or asset;

(iv) any settlement in lieu of clauses (ii) or (iii) above; or

(v) any loss as a result of a title event or claim against the title insurance company insuring such property.

"Exchange Act" means the Securities Exchange Act of 1934, as in effect from time to time.

"Excluded Real Property" means any Real Property owned in fee having a fair market value of $1,500,000 or less as of the Effective Date.

"Excluded Taxes" means (i) any Tax imposed on the net income or net profits (however denominated) of any Lender or any Participant (including any franchise Taxes or branch profits Taxes), in each case (a) imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender or Participant is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender's or such Participant's principal office is located or (b) as a result of a present or former connection between such Lender or Participant and the jurisdiction or taxing authority imposing the Tax (other than any such connection arising from such Lender or Participant having executed, become a party to, delivered or performed its obligations or received payment under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to any Loan Document, enforced its rights or remedies under this Agreement or any other Loan Document, or sold or assigned an interest in any Term Loan or Loan Document); (ii) Taxes resulting from a Lender's or a Participant's failure to comply with the requirements of Section 16.2, (iii) any United States federal withholding Taxes imposed on amounts payable to or for the account of a Lender based upon the applicable withholding rate in effect at the time such Lender becomes a "Lender" under this Agreement (or designates a new lending office), except that Indemnified Taxes shall include (A) any amount that such Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16.1 of this Agreement, if any, with respect to such withholding Tax at the time such Lender becomes a party to this Agreement (or designates a new lending office), and (B) additional United States federal withholding Taxes that may be imposed after the time such Lender becomes a party to this Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, order or other decision with respect to any of the foregoing by any Governmental Authority, and (iv) any United States federal withholding Taxes imposed under FATCA.

"Fair Market Value" means, with respect to the consideration received or paid in any transaction or series of transactions, the fair market value thereof, as determined in good faith by Borrower or, in the event of a transaction or a series of transactions with a Fair Market Value in excess of $3,000,000, as determined in good faith by the Board of Directors of Borrower.

"FATCA" means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any intergovernmental agreements related thereto, and any agreement entered into pursuant to Section 1471(b)(1) of the IRC.

"FCPA" has the meaning specified therefor in Section 2.18 of this Agreement.

"Fee Letter" means that certain fee letter dated the date hereof between the Borrower and Agent.

"Final DIP Order" means a final order of the Bankruptcy Court approving, among other things, the DIP Facilities, which order shall be consistent in all material respects with the RSA, this Agreement and the Revolver Facility Agreement and otherwise in form and substance acceptable to Agent and the Lenders.

"Final Loans" has the meaning specified therefor in Section 2.1(a) of this Agreement.

"Financial Statements" means (a) the audited consolidated balance sheet of JCHC and its Subsidiaries as of December 31, 2018 and 2017, and the related consolidated statements of comprehensive income, changes in members' equity and cash flows for the fiscal year then ended, and (b) the unaudited consolidated balance sheets of JCHC and its Subsidiaries as of June 30, 2019, and the related unaudited consolidated statements of income and cash flows for the 6 month period ended on that date.

"Financing Orders" has the meaning specified therefor in Section 8.17 of this Agreement.

"First Day Orders" means the orders entered by the Bankruptcy Court in respect of first day motions and applications.

"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 Subsidiaries of Parent, Cerberus, as agent, and the banks, financial institutions, and other lenders party thereto.

"First Lien Termination Date" shall mean the date on which all indebtedness and other obligations in respect of Loans (as defined in the First Lien Credit Agreement) are paid in full (other than contingent indemnification obligations and unasserted expense reimbursement obligations).

"First Lien Term Loan Facility" means the obligations outstanding under the First Lien Credit Agreement.

"Forecast Liquidity" means, as of any time (i) cash and Cash Equivalents of the Loan Parties plus (ii) as of such time, the principal amount of loans available for borrowing under the Revolver Facility after giving effect to the borrowing base formula and all applicable reserves, in each case, as set forth in the most recent Liquidity Forecast.

"Foreign Subsidiary" means any Subsidiary of Borrower not organized under the laws of the United States of America or any State thereof or the District of Columbia.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied; provided, however, that (i) all calculations relative to liabilities shall be made without giving effect to Statement of Financial Accounting Standards No. 159 and (ii) notwithstanding anything to the contrary herein, any lease existing as of the Effective Date that constitutes an operating lease in accordance with GAAP as in effect as of the Effective Date shall be deemed not to be a Capital Lease hereunder, and any future lease, if it were in effect on the Effective Date, that would be treated as an operating lease for purposes of GAAP as of the Effective Date shall be treated as an operating lease.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

"Governmental Authority" means any federal, state, provincial, local, or other governmental or administrative body, instrumentality, regulatory authority, board, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

"Guarantee" means, as applied to any Indebtedness of another Person, (i) a guarantee (other than by endorsement of negotiable instruments for collection in the normal course of business), direct or indirect, in any manner, of any part or all of such Indebtedness, (ii) any direct or indirect obligation, contingent or otherwise, of a Person guaranteeing or having the effect of guaranteeing the Indebtedness of any other Person in any manner and (iii) an agreement of a Person, direct or indirect, contingent or otherwise, the practical effect of which is to assure in any way the payment or performance (or payment of damages in the event of non-performance) of all or any part of such Indebtedness of another Person (and "Guaranteed" and "Guaranteeing" shall have meanings that correspond to the foregoing).

"Guaranteed Liabilities" has the meaning specified therefor in Section 18.4 of this Agreement.

"Guarantors" has the meaning set forth in the preamble to this Agreement, and shall include (a) each Subsidiary of Borrower (other than any Subsidiary that is not required to become a Guarantor pursuant to Section 5.11), (b) each Debtor and (c) each other Person that becomes a guarantor after the Effective Date pursuant to Section 5.11 of this Agreement, and "Guarantor" means any one of them. Notwithstanding anything to the contrary herein, (i) any co-borrower or guarantor under the Revolver Facility and (ii) all "Debtors" as defined in the Initial Orders or which otherwise becomes a Debtor in the Chapter 11 Cases shall be Guarantors under the Loan Documents.

"Guarantor's Obligations" and "Guarantors' Obligations" have the meanings specified therefor in Section 18.4 of this Agreement.

"Guaranty" means that certain general continuing guaranty provided for in Section 18.4 of this Agreement.

"Hazardous Materials" means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable Environmental Law as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or "toxicity", (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

"Hedge Agreement" means (1) any interest rate swap agreement, interest rate collar agreement or other similar agreement or arrangement, (2) agreements or arrangements to manage fluctuations in currency exchange rates or (3) any forward contract, commodity swap agreement, commodity option agreement or other similar agreement or arrangement.

"Hedging Obligation" means, with respect to any Person, the obligations of such Person pursuant to a Hedge Agreement.

"Indebtedness" as to any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices), (f) all obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) any Prohibited Preferred Stock of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness described in clause (d) above shall be the lower of the amount of the obligation and the fair market value of the assets of such Person securing such obligation; provided that, notwithstanding the foregoing, deferred compensation, to the extent in the ordinary course of business, and earn-outs or similar obligations, to the extent not then due and payable, shall not constitute Indebtedness for any purpose under the Loan Documents.

For purposes of calculating any leverage ratio under this Agreement, permitted earn-outs or similar obligations of any Loan Party shall not be included in any such calculation, and for purposes of the incurrence of Indebtedness hereunder, permitted earn-outs or similar obligations of any Loan Party shall only be included to the extent of overdue amounts at such time.

"Indemnified Liabilities" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Person" has the meaning specified therefor in Section 10.3 of this Agreement.

"Indemnified Taxes" means, any Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Borrower under any Loan Document.

"Initial DIP Budget" means the DIP Budget delivered for the period commencing on or about the Petition Date, in form and substance satisfactory to the Lenders, it being acknowledged and agreed that the DIP Budget attached to the DIP Motion is satisfactory to the Lenders and shall constitute the Initial DIP Budget hereunder.

"Initial Loan" has the meaning specified therefor in Section 2.1(a) of this Agreement.

"Initial Orders" means the First Day Orders, the Second Day Orders, the CCAA Initial Recognition Order and the CCAA Supplemental Recognition Order.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Intercompany Subordination Agreement" means an intercompany subordination agreement, dated as of the Effective Date, executed and delivered by Borrower, each of its Subsidiaries, and Agent, the form and substance of which is reasonably satisfactory to Agent.

"Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of the Effective Date, by and among Wells, Agent, Cerberus, in its capacity as "Senior Term Agent" and Wilmington Trust, National Association, in its capacity as "Junior Prepetition Term Agent", as amended, modified, supplemented, restated, refinanced, refunded or replaced in whole or in part from time to time in accordance with the terms therein.

"Interest Payment Date" has the meaning specified therefor in Section 2.6(a) of this Agreement.

"Interim DIP Order" means an interim order of the Bankruptcy Court approving, among other things, the DIP Facilities, which order shall be consistent in all material respects with the RSA, this Agreement and the Revolver Facility Agreement and otherwise in form and substance acceptable to Agent and the Lenders.

"Inventory" means inventory (as that term is defined in the Code).

"Investment" by any Person means any direct or indirect loan, advance (or other extension of credit, but excluding commission, travel and similar advances to directors, officers and employees made in the ordinary course of business) or capital contribution to (by means of any

transfer of cash or other property or assets to another Person or any other payments for property or services for the account or use of another Person) another Person, including, without limitation, the following: (a) the purchase or acquisition of any Stock or other evidence of beneficial ownership in another Person or any other Acquisition; and (b) the purchase, acquisition or Guarantee of the obligations of another Person or the issuance of a "keep-well" with respect thereto; but shall exclude: (i) accounts receivable and other extensions of trade credit on commercially reasonable terms in accordance with normal trade practices; (ii) the acquisition of property, assets and services from suppliers and other vendors in the normal course of business; and (ii) prepaid expenses and workers' compensation, utility, lease and similar deposits, in the normal course of business. Except as otherwise specified in this definition, the amount of any Investment (other than an Investment made in cash) shall be the Fair Market Value thereof on the date such Investment is made. If Borrower or any of its Subsidiaries sells or otherwise disposes of any Stock of any direct or indirect Subsidiary such that, after giving effect to any such sale or disposition, such Person is no longer a Subsidiary, Borrower shall be deemed to have made an Investment on the date of any such sale or other disposition equal to the Fair Market Value of the Stock and of all other Investments in such Subsidiary not sold or disposed of, which amount shall be determined in good faith by the Board of Directors of Borrower. For the avoidance of doubt, any payments pursuant to any Guarantee previously incurred in compliance with this Agreement shall not be deemed to be Investments by any of Borrower or its Subsidiaries.

"Investment Related Property" means (a) any and all investment property (as that term is defined in the Code), and (ii) any and all of the following (regardless of whether classified as investment property under the Code): all Pledged Interests, Pledged Operating Agreements, and Pledged Partnership Agreements.

"IRC" means the Internal Revenue Code of 1986, as in effect from time to time.

"IRS" means the United States Revenue Service.

"JCE" means Jack Cooper Enterprises, Inc., a Delaware corporation.

"JCHC" means Jack Cooper Holdings Corp., a Delaware corporation.

"Jurisdiction" means, with respect to a Vehicle, the state, commonwealth, or other governmental entity that is responsible for issuing the Certificate for such Vehicle.

"Laws" means, collectively, all international, foreign, federal, state, provincial and local statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

"Lender" has the meaning set forth in the preamble to this Agreement, and shall also include any other Person made a party to this Agreement pursuant to the provisions of Section 13.1 of this Agreement and "Lenders" means each of the Lenders or any one or more of them.

"Lender Group" means each of the Lenders and Agent, or any one or more of them.

"Lender Group Expenses" means all (a) costs or expenses (including taxes, vehicle registration fees and charges, and insurance premiums) required to be paid by the Loan Parties, Borrower or any of their respective Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group, (b) documented and itemized out-of-pocket fees or charges paid or incurred by Agent and Solus in connection with the Lender Group's transactions with the Loan Parties, Borrower or any of their respective Subsidiaries under any of the Loan Documents, including, the fees and charges of the Vehicle Collateral Agent, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, litigation, and UCC or PPSA searches and including searches with the patent and trademark office, the copyright office, or any department of motor vehicles), filing, recording, publication, appraisal, real estate surveys, real estate title policies and endorsements, lien registration, and environmental audits, (c) all reasonable fees and documented out-of-pocket expenses of Solus (including the fees, disbursements and other charges of counsel and other advisors and professionals engaged by Solus in consultation with Borrower) associated with collateral monitoring, collateral reviews and appraisals and environmental reviews, (d) Agent's customary fees and charges imposed or incurred in connection with any background checks or OFAC/PEP searches related to Borrower or its subsidiaries, (e) Agent's customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrower (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, (f) customary charges imposed or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (g) reasonable and documented and itemized and out-of-pocket costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (h) reasonable and documented out-of-pocket audit fees and expenses (including travel, meals, and lodging) of Agent and Solus related to any inspections or audits to the extent of the fees and charges (and up to the amount of any limitation) contained in this Agreement, (i) Agent's and Solus' reasonable costs and expenses (including reasonable documented and itemized attorneys' fees and out-of-pocket expenses of one (1) primary counsel designated by Agent (and appropriate local counsel in applicable material local jurisdictions, but limited to one (1) local counsel in each such jurisdiction, including, for the avoidance of doubt, Canadian counsel) and one (1) primary counsel designated by Solus (and appropriate local counsel in applicable material local jurisdictions, but limited to one (1) local counsel in each such jurisdiction, including, for the avoidance of doubt, Canadian counsel)) relative to claims or any other lawsuit or adverse proceeding paid or incurred by the Lender Group, whether in enforcing or defending the Loan Documents or otherwise in connection with the transactions contemplated by the Loan Documents, Agent's Liens in and to the Collateral, or the Lender Group's relationship with Borrower or any of its Subsidiaries, (j) Agent's reasonable and documented and itemized costs and expenses (including reasonable and documented attorneys' fees and due diligence expenses) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), or amending, waiving or modifying the Loan Documents, and (k) Agent's and each Lender's reasonable and documented and itemized costs and expenses (including reasonable and documented and itemized attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in exercising rights or

remedies under the Loan Documents) or defending the Loan Documents, irrespective of whether a lawsuit or other adverse proceeding is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral.

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of this Agreement.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, and such Lender's and such Lender's Affiliates' officers, directors, employees, advisors, and agents (which, for the avoidance of doubt, shall include Solus).

"Lien" means, with respect to any property or other asset, any mortgage, deed of trust, deed to secure debt, pledge, hypothecation, assignment, deposit arrangement, security interest, lien (statutory or otherwise), charge, easement, encumbrance or other security agreement on or with respect to such property or other asset (including, without limitation, any conditional sale or other title retention agreement having substantially the same economic effect as any of the foregoing).

"Liquidity Forecast" means a rolling 13-week forecast of projected liquidity for the consecutive 13-week period immediately following the date of delivery of such forecast as certified in a certificate delivered by Borrower.

"Loan Documents" means this Agreement, any Security Agreement, the Intercompany Subordination Agreement, the Control Agreements, Mortgages, the Intercreditor Agreement, any note or notes executed by Borrower in connection with this Agreement and payable to any member of the Lender Group, and any other agreement entered into, now or in the future, by Borrower or any of its Subsidiaries and any member of the Lender Group in connection with this Agreement.

"Loan Party" means Borrower or any Guarantor.

"Margin Stock" as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"Material Adverse Change" means any event, change or condition that, individually or in the aggregate, has had, or would reasonably be expected to have (a) a material adverse effect on the business, operations, results of operations, assets, liabilities or financial condition of Borrower and its Subsidiaries, taken as a whole, excluding in any event the events leading up to and resulting from the Chapter 11 Cases and the Chapter 11 Cases themselves, (b) a material adverse effect on the ability of the Loan Parties (taken as a whole) to perform their material obligations under the Loan Documents, (c) a material adverse effect on the material rights and remedies (taken as a whole) of Agent under the Loan Documents, taken as a whole, including the legality, validity, binding effect or enforceability of the Loan Documents or (d) a material impairment of the enforceability or priority of Agent's Liens with respect to the Collateral (taken as a whole).

"Material Contract" means, with respect to any Person, (i) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of $1,000,000 or more (other than purchase orders in the ordinary course of the business of such Person or such Subsidiary and other than contracts that by their terms may be terminated by such Person or Subsidiary in the ordinary course of its business

upon less than 91 days' notice without penalty or premium), and (ii) all other contracts or agreements, the loss or breach of which could reasonably be expected to result in a Material Adverse Change.

"Maturity Date" has the meaning specified therefor in Section 3.3 of this Agreement.

"Moody's" means Moody's Investors Service, Inc., or any successor thereto.

"Mortgages" means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by Borrower or its Subsidiaries in favor of Agent, in form and substance reasonably satisfactory to the Required Lenders, that encumber the Real Property Collateral.

"Multiemployer Plan" has the meaning given to such term in Section 3(37) or Section 4001(a)(3) of ERISA or Section 414(f) of the IRC.

"Net Cash Proceeds" means, with respect to (a) Asset Sales of any Person, cash and Cash Equivalents received, net of: (i) all reasonable out-of-pocket costs and expenses of such Person incurred in connection with such a sale, including, without limitation, all legal, accounting, title and recording tax expenses, commissions and other fees and expenses incurred and all federal, state, foreign and local taxes arising in connection with such an Asset Sale that are paid or required to be accrued as a liability under GAAP by such Person; (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations associated with such Asset Sale; (iii) all payments made by such Person on any Indebtedness that is secured by such properties or other assets in accordance with the terms of any Lien upon or with respect to such properties or other assets or that must, by the terms of such Lien or such Indebtedness, or in order to obtain a necessary consent to such transaction or by applicable Law, be repaid to any other Person (other than Borrower or its Subsidiaries) in connection with such Asset Sale (other than in the case of Collateral, any Lien which does not rank prior to the Liens in the Collateral granted to Agent pursuant to this Agreement and the Loan Documents); and (iv) all contractually required distributions and other payments made to noncontrolling interest holders in Subsidiaries of such Person as a result of such transaction; and (b) the issuance or incurrence of any Indebtedness, or the issuance of Stock, by any Person, the aggregate amount of cash and Cash Equivalents received, net of: (i) all reasonable out-of-pocket costs and expenses of such Person incurred in connection with such issuance or incurrence, including, without limitation, all legal, accounting, title and recording tax expenses, commissions and other fees and expenses incurred (including, without limitation, all investment banking and underwriting fees) and all federal, state, foreign and local taxes arising in connection therewith that are paid or required to be accrued as a liability under GAAP by such Person; (ii) amounts provided as a reserve, in accordance with GAAP, against any liabilities under any indemnification obligations associated therewith; and (iii) all contractually required distributions and other payments made to noncontrolling interest holders in Subsidiaries of such Person as a result of such transaction; provided, however, that: (x) in the event that any consideration for any of the foregoing in clause (a) or (b) above (which would otherwise constitute Net Cash Proceeds) is required by (I) contract to be held in escrow pending determination of whether a purchase price adjustment will be made or (II) GAAP to be reserved against other liabilities in connection therewith, such consideration (or any portion thereof) shall become Net Cash Proceeds only at such time as it is released to such Person from escrow or

otherwise; and (y) any non-cash consideration received in connection with any transaction, which is subsequently converted to cash, shall become Net Cash Proceeds only at such time as it is so converted.

"Obligated Guarantor" has the meaning specified therefor in Section 18.4(f) of this Agreement.

"Obligations" means all Term Loans, debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), reimbursement obligations (irrespective of whether contingent), premiums, liabilities, obligations (including indemnification obligations), fees, Lender Group Expenses, guaranties, covenants, and duties of any kind and description owing by any Loan Party pursuant to or evidenced by this Agreement, the Guaranty or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that Borrower is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents. Without limiting the generality of the foregoing, the Obligations of Borrower under the Loan Documents include the obligation to pay (i) the principal of the Term Loans, (ii) interest accrued on the Term Loans, (iii) Lender Group Expenses, (iv) fees payable under this Agreement or any of the other Loan Documents, and (v) indemnities and other amounts payable by any Loan Party under any Loan Document. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

"OFAC Sanctions Programs" means (a) the laws and Executive Orders administered by OFAC, including, without limitation, Executive Order No. 13224, and (b) the list of Specially Designated Nationals and Blocked Persons administered by OFAC, in each case, as renewed, extended, amended, or replaced.

"Originating Lender" has the meaning specified therefor in Section 13.1(e) of this Agreement.

"Parent" means Jack Cooper Investments, Inc., a Delaware corporation.

"Participant" has the meaning specified therefor in Section 13.1(e)(i) of this Agreement.

"Participant Register" has the meaning specified therefor in Section 13.1(e)(iii) of this Agreement.

"Patriot Act" has the meaning specified therefor in Section 4.18 of this Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation established under Title IV of ERISA or any other governmental agency, department, or instrumentality succeeding to the functions of said corporation.

"Pension Plan" means any employee pension benefit plan as defined in Section 3(2) of ERISA (excluding a Multiemployer Plan) to which Borrower or any ERISA Affiliate has any liability including by reason of being a substantial employer within the meaning of Section 4063 of ERISA or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"Perfection Certificate" means a Perfection Certificate executed by the Loan Parties on the Effective Date in form and substance satisfactory to the Required Lenders providing information with respect to the property and assets of Borrower and its Subsidiaries.

"Permitted Business" means any business similar in nature to any business conducted by Borrower and its Subsidiaries on the Effective Date and any business reasonably ancillary, incidental, complementary or related to the business conducted by Borrower and its Subsidiaries on the Effective Date or a reasonable extension, development or expansion thereof, in each case, as determined in good faith by the Board of Directors of Borrower.

"Permitted Disbursement Variances" means a positive variance of 10% between the actual disbursements for the applicable 2-week period and the disbursements as set forth in the DIP Budget for the applicable 2-week period; it being understood and agreed that any negative variance in any 2-week period will be carried forward to the DIP Budget for the immediately following 2-week period.

"Permitted Dispositions" means:

(a) sales, abandonment, or other dispositions of equipment (other than Vehicles) at fair market value that is substantially worn, damaged, or obsolete in the ordinary course of business;

(b) sales of Inventory to buyers in the ordinary course of business,

(c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the Bankruptcy Court, the CCAA Court, the terms of this Agreement or the terms of the other Loan Documents,

(d) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(e) the granting of Permitted Liens,

(f) [reserved],

(g) any involuntary loss, damage, or destruction of property,

(h) any involuntary condemnation, seizure, or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property,

(i) the leasing or subleasing of assets and the assignment of leases of Borrower or its Subsidiaries in the ordinary course of business,

(j) the sale or issuance of Stock of Borrower or any Subsidiary to the extent permitted by Section 6.14,

(k) the lapse of registered patents, trademarks and other intellectual property of Borrower and its Subsidiaries to the extent such intellectual property is not economically desirable in the conduct of their business and so long as such lapse is not materially adverse to the interests of the Lenders,

(l) the making of a Restricted Junior Payment that is expressly permitted to be made pursuant to this Agreement,

(m) the making of a Permitted Investment that is expressly permitted to be made pursuant to this Agreement,

(n) dispositions in the form of improvements made to leasehold properties in respect of leases that expire or are terminated so long as the fair market value of the assets so disposed of does not exceed $300,000 in the aggregate in any 12-month period,

(o) [reserved],

(p) dispositions of assets not otherwise permitted in clauses (a) through (o) above or clauses (q) through (u) below so long as (i) such disposition is made at fair market value, (ii) the aggregate fair market value of the disposition (including the proposed disposition) of all such assets since the Petition Date does not exceed $200,000, and (iii) at least 75% of the consideration for such disposition is in the form of cash and Cash Equivalents,

(q) dispositions of Vehicles not otherwise permitted hereunder so long as (i) such disposition is made at fair market value, (ii) the aggregate fair market value of the disposition (including the proposed disposition) of all such assets since the Petition Date does not exceed $200,000 and (iii) at least 75% of the consideration for such disposition is in the form of cash and Cash Equivalents,

(r) any surrender or waiver of contract rights or the settlement, release or surrender of contract, tort or other claims of any kind in the ordinary course of business,

(s) sales, transfers and other dispositions of Investments in joint ventures to the extent required by, or made pursuant to, customary buy/sell arrangements between the joint venture parties set forth in joint venture arrangements or similar binding agreements,

(t) transactions permitted under Section 6.3, and

(u) dispositions of property in exchange for credit against the purchase price for similar replacement property or the cash proceeds are used to purchase such replacement property.

"Permitted Holder" means (i) T. Michael Riggs and (ii) any Related Party of T. Michael Riggs.

"Permitted Indebtedness" means:

(a) Indebtedness incurred pursuant to the Revolver Facility; provided, that in no event shall Indebtedness under this clause (a) exceed $85,000,000 at any time outstanding;

(b) Indebtedness set forth on Schedule 4.19 of this Agreement;

(c) Indebtedness incurred pursuant to and subject to the terms of the Prepetition ABL Facility and the Prepetition Term Loan Facilities and, in each case, existing on the Petition Date;

(d) Indebtedness, or pension withdrawal liabilities reflected in the most recent consolidated balance sheet of Borrower as of the Petition Date that subsequently becomes Indebtedness of Borrower or any Subsidiary outstanding at the time of the date of this Agreement (other than clause (a) or (c) above);

(e) Indebtedness incurred pursuant to the 9.25% Notes existing on the Petition Date;

(f) Guarantees incurred by Borrower or its Subsidiaries of Indebtedness or other obligations of Borrower or its Subsidiaries for the Indebtedness described in clause (a) and (c) above;

(g) Indebtedness incurred in respect of workers' compensation claims, general liability or trucker's liability claims, unemployment or other insurance and self-insurance obligations, payment obligations in connection with health or other types of social security benefits, indemnity, bid, performance, warranty, release, judgment, appeal, advance payment, customs, surety and similar bonds, letters of credit for operating purposes and completion guarantees and warranties provided or incurred (including Guarantees thereof) by Borrower or its Subsidiaries in the ordinary course of business;

(h) Indebtedness under Hedging Obligations entered into to manage fluctuations in interest rates, commodity prices and currency exchange rates (and not for speculative purposes);

(i) Indebtedness of Borrower or its Subsidiaries pursuant to Capital Lease Obligations, Purchase Money Indebtedness and Capital Expenditures in an aggregate principal amount not to exceed $200,000 at any time outstanding (plus any additional amounts approved by the Required Lenders from time to time);

(j) [reserved];

(k) Indebtedness arising from (i) customary cash management, cash pooling or setting off arrangements, and automated clearing house transactions, (ii) any Bank Product (excluding Hedging Obligations entered into for speculative purposes) or (iii) the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business; provided, however, that any such Indebtedness incurred pursuant to clause (iii) is extinguished within 5 Business Days of the incurrence;

(l) Indebtedness of Borrower or its Subsidiaries not otherwise permitted pursuant to this definition (including, without limitation, additional Capital Lease Obligations), in an aggregate principal amount not to exceed $100,000 at any time outstanding less any amount utilized pursuant to clause (a)(i) of the definition of "Permitted Indebtedness";

(m) [reserved];

(n) [reserved];

(o) Indebtedness evidenced by this Agreement or the Loan Documents;

(p) [reserved];

(q) Indebtedness consisting of Permitted Investments,

(r) [reserved];

(s) Indebtedness in respect of customer deposits and advance payments received in the ordinary course of business from customers for goods or services purchased in the ordinary course of business; and

(t) Indebtedness of Borrower or any Subsidiary of Borrower consisting of (x) the financing of insurance premiums or (y) take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business.

"Permitted Intercompany Advances" means loans made by (a) a Loan Party to another Loan Party so long as the parties thereto are party to the Intercompany Subordination Agreement, (b) a Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party and (c) a Subsidiary that is not a Loan Party to a Loan Party, so long as the parties thereto are party to the Intercompany Subordination Agreement.

"Permitted Investments" means:

(a) Investments owned by any Loan Party or any of its Subsidiaries on the Petition Date and listed on Schedule P-1 to this Agreement;

(b) Investments in property and other assets (excluding an Acquisition) owned or used by Borrower or the Guarantors in the operation of a Permitted Business;

(c) Investments in cash and Cash Equivalents;

(d) [reserved];

(e) (i) Investments by any Loan Party in another Loan Party and (ii) guarantees permitted under the definition of Permitted Indebtedness and guarantees of other obligations of Borrower and its Subsidiaries not constituting Indebtedness to the extent permitted hereunder,

(f) [reserved];

(g) Hedging Obligations entered into to manage interest rates, commodity prices and currency exchange rates (and not for speculative purposes) and other Bank Products;

(h) Investments received in settlement of obligations owed to Borrower or its Subsidiaries, as a result of bankruptcy or insolvency proceedings, upon the foreclosure or enforcement of any Lien in favor of Borrower or its Subsidiaries, or settlement of litigation, arbitration or other disputes;

(i) [reserved],

(j) (i) loans and advances (including for travel and relocation) to officers, directors and employees, (ii) loans or advances against, and repurchases of, capital Stock and options of Borrower (or its direct or indirect parent) and its Subsidiaries held by directors, management and employees in connection with any stock option, deferred compensation or similar benefit plans approved by the Board of Directors (or similar governing body) to the extent permitted under Section 6.9(b) and otherwise issued in accordance with the terms of this Agreement and (iii) loans or advances to directors, management and employees to pay taxes in respect of capital Stock issued under stock option, deferred compensation or similar benefit plans, collectively in an amount not to exceed the amount outstanding on the Petition Date at any one time outstanding;

(k) any Investment in any Person to the extent such Investment represents the non-cash portion of the consideration received in connection with a disposition of assets consummated in compliance with Section 6.4;

(l) [reserved];

(m) pledges or deposits made in the ordinary course of business; and

(n) (i) Permitted Intercompany Advances and (ii) Investments (other than Permitted Intercompany Advances) made by (A) a Loan Party in another Loan

Party, (B) a Subsidiary that is not a Loan Party in another Subsidiary that is not a Loan Party and (C) a Subsidiary that is not a Loan Party in a Loan Party.

"Permitted Liens" means

(a) (i) Liens existing on the Petition Date on any property or assets of a Loan Party or its Subsidiaries securing the Prepetition Term Loan Facilities, the Prepetition ABL Facility or set forth on Schedule P-2; (ii) the Carve Out and CCAA Priority Charges; (iii) Liens pursuant to the Financing Orders, any orders entered by the CCAA or the Adequate Protection Orders and (iv) Liens on the Collateral to secure the Revolver Facility;

(b) any Lien for taxes or assessments or other governmental charges or levies not yet delinquent more than 30 days (or which, if so due and payable, are being contested in good faith and for which adequate reserves are being maintained, to the extent required by GAAP);

(c) any carrier's, warehousemen's, materialmen's, mechanic's, landlord's, lessor's or other similar Liens arising by law for sums not then due and payable more than 30 days after giving effect to any applicable grace period (or which, if so due and payable, are being contested in good faith and with respect to which adequate reserves are being maintained, to the extent required by GAAP);

(d) with respect to any Real Property, minor survey exceptions, minor imperfections of title, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of Real Property or Liens incidental, to the conduct of the business of such Person or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Person;

(e) pledges or deposits to obtain or secure obligations with respect to banker's acceptances, guarantees, bonds or other sureties or assurances given in connection with (i) workers' compensation, unemployment insurance and other types of social security, or to secure other types of statutory obligations or the requirements of any official body and (ii) the making or entering into of bids, tenders, leases, purchase, construction, sales or servicing contracts and other similar obligations incurred in the ordinary course of business and not in connection with the borrowing of money, in each case not incurred or made in connection with the borrowing of money, the obtaining of advances or credit or the payment of the deferred purchase price of property or services or imposed by ERISA or the IRC in connection with a Plan,

(f) a trust established by the Canadian Loan Parties for the payment of amounts due or that may become due to (i) independent operators in Canada or (ii) third party carriers, in an amount not exceeding C$500,000 and held in a segregated account;

(g) Liens securing Indebtedness of a Guarantor owed to and held by Borrower or Guarantors;

(h) other Liens (not securing Indebtedness) incidental to the conduct of the business of Borrower or its Subsidiaries, as the case may be, or the ownership of their assets which do not individually or in the aggregate materially adversely affect the value of such assets or materially impair the operation of the business of Borrower or its Subsidiaries;

(i) [reserved];

(j) Liens in favor of customs or revenue authorities arising as a matter of law to secure payment of custom duties in connection with the importation of goods incurred in the ordinary course of business;

(k) Liens to secure Capital Lease Obligations or Purchase Money Indebtedness permitted to be incurred pursuant to clauses (i) and (l) of the definition of "Permitted Indebtedness" covering only the assets financed by or acquired with such Indebtedness;

(l) Liens upon specific items of inventory or other goods and proceeds of any Person securing such Person's obligation in respect of banker's acceptances issued or created in the ordinary course of business for the account of such Person to facilitate the purchase, shipment, or storage of such inventory or other goods;

(m) [reserved];

(n) [reserved];

(o) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.3 so long as any appropriate legal proceedings that may have been duly initiated for the review of such judgment have not been finally terminated or the period within which such proceedings may be initiated has not expired;

(p) Liens securing Hedging Obligations that are otherwise permitted under this Agreement; provided that such Liens are subject to the provisions of the Intercreditor Agreement;

(q) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business or pursuant to a disposition otherwise permitted hereunder which do not materially interfere with the ordinary conduct of the business of Borrower or its Subsidiaries and do not secure any Indebtedness;

(r) Liens securing Indebtedness (including, without limitation, Capital Lease Obligations, Purchase Money Indebtedness and obligations under the Revolver Facility) or other obligations, as measured by principal amount, which, when taken together with the principal amount of all other Indebtedness secured by Liens

pursuant to this clause (r) at the time of determination, does not exceed $100,000 in the aggregate at any one time outstanding;

(s) Liens to secure a defeasance trust;

(t) [reserved];

(u) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(v) [reserved];

(w) [reserved];

(x) [reserved];

(y) the Adequate Protection Liens, Liens securing the Carve Out and Liens pursuant to the Financing Orders;

(z) Liens securing the CCAA Priority Charges; and

(aa) Liens securing the Obligations.

"Permitted Protest" means the right of Borrower or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment; provided that (a) a reserve with respect to such obligation is established on Borrower's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by Borrower or its Subsidiary, as applicable, in good faith, and (c) Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent's Liens.

"Permitted Receipt Variances" means a negative variance of 10% between the actual receipts for the applicable 2-week period and the receipts as set forth in the DIP Budget for the applicable 2-week period; it being understood and agreed that any positive variance in any 2-week period will be carried forward to the DIP Budget for the immediately following 2-week period.

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

"Petition Date" means August 5, 2019.

"Plan" has the meaning given to such term in Section 3(3) of ERISA.

"Pledged Interests" means all of each Loan Party's right, title and interest in and to all of the Stock now owned or hereafter acquired by such Loan Party (the Persons in which each such Loan Party owns such right, the "Pledged Companies"), regardless of class or designation, and all substitutions therefor and replacements thereof, all proceeds thereof and all rights relating thereto, also including any certificates representing the Stock, the right to receive any certificates representing any of the Stock, all warrants, options, share appreciation rights and other rights, contractual or otherwise, in respect thereof and the right to receive all dividends, distributions of income, profits, surplus, or other compensation by way of income or liquidating distributions, in cash or in kind, and all cash, instruments, and other property from time to time received, receivable, or otherwise distributed in respect of or in addition to, in substitution of, on account of, or in exchange for any or all of the foregoing.

"Pledged Operating Agreements" means all of each Loan Party's rights, powers, and remedies under the limited liability company operating agreements of each of the Pledged Companies that are limited liability companies.

"Pledged Partnership Agreements" means all of each Loan Party's rights, powers, and remedies under the partnership agreements of each of the Pledged Companies that are partnerships.

"PPSA" means the Personal Property Security Act (Ontario) and the regulations thereunder, as from time to time in effect; provided, however, if attachment, perfection or priority of Agent's Lien on any Collateral are governed by the personal property security laws of any jurisdiction in Canada other than the laws of the Province of Ontario, "PPSA" means those personal property security laws (including the CCQ) in such other jurisdiction in Canada for the purposes of the provisions hereof relating to such attachment, perfection or priority and for the definitions related to such provisions.

"Preferred Stock" means, as applied to the Stock of any Person, the Stock of any class or classes (however designated) that is preferred with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Stock of any other class of such Person.

"Prepetition ABL Facility" means that certain senior secured asset-based revolving credit facility pursuant to that certain Second Amended and Restated Credit Agreement, amended and restated as of February 15, 2018, by and among JCHC, the other borrowers party thereto from time to time, the guarantors party thereto from time to time.

"Prepetition Intercreditor Agreement" means that certain Intercreditor Agreement, dated as of June 28, 2018, by and among Wells, in its capacity as "ABL Agent", Cerberus, in its capacity as "Senior Term Agent", and Wilmington Trust, National Association, in its capacity as "Junior Term Agent".

"Prepetition Term Loan Facilities" means, collectively, each of the term loan facilities pursuant to the First Lien Credit Agreement, the 1.5 Lien Credit Agreement and the Second Lien Credit Agreement.

"Proceeds" has the meaning specified therefor in Section 18.2 of this Agreement.

"Prohibited Preferred Stock" means any Preferred Stock that by its terms is mandatorily redeemable (other than upon a change of control) or subject to any other payment obligation (including any obligation to pay dividends, other than dividends of shares of Preferred Stock of the same class and series payable in kind or dividends of shares of common stock) on or before a date that is less than 91 days after the Maturity Date, or, on or before the date that is less than 91 days after the Maturity Date, is redeemable at the option of the holder thereof for cash or assets or securities (other than distributions in kind of shares of Preferred Stock of the same class and series or of shares of common stock).

"Prohibited Transaction" means any transaction described in Section 406 of ERISA which is not exempt by reason of Section 408 of ERISA, and any transaction described in Section 4975(c) of the IRC which is not exempt by reason of Section 4975(c)(2) or Section 4975(d) of the IRC.

"Projections" means, with respect to any period, the financial projections of Borrower and its Subsidiaries delivered for such period pursuant to clause (g) of Schedule 5.1.

"Properties" means any properties or assets owned, leased, or primarily operated by Borrower or any of its Subsidiaries.

"Pro Rata Share" means, as of any date of determination:

(a) with respect to a Lender's right to receive payments of principal, interest, fees, costs, and expenses with respect thereto, the percentage obtained by dividing (y) the outstanding principal amount of such Lender's Term Loans by (z) the outstanding principal amount of all Term Loans, and

(b) with respect to all other matters as to a particular Lender (including the indemnification obligations arising under Section 15.7 of this Agreement), the percentage obtained by dividing (y) the outstanding principal amount of such Lender's Term Loans, by (z) the outstanding principal amount of all Term Loans; provided, however, that if all of the Term Loans have been repaid in full, Pro Rata Share under this clause shall be determined based upon the Term Loans outstanding as they existed immediately prior to their termination or reduction to zero.

"Purchase Money Indebtedness" means Indebtedness (i) incurred to finance the purchase, lease or construction (including additions, repairs and improvements thereto) of any assets (other than Stock) of such Person or its Subsidiaries; and (ii) that is secured by a Lien on such assets where the lender's sole security is to the assets so purchased or constructed (and assets or property affixed or appurtenant thereto and any proceeds thereof); and in either case, that does not exceed 100% of the cost and to the extent the purchase or construction prices for such assets are or should be included in "addition to property, plant or equipment" in accordance with GAAP.

"Qualified Capital Interests" in any Person means a class of Stock other than Redeemable Capital Interests.

"Qualified Cash" means, as of any date of determination, the aggregate amount of unrestricted cash and Cash Equivalents of Borrower and its Subsidiaries that is in Deposit Accounts or in Securities Accounts, or any combination thereof, and which such Deposit Account

or Securities Account is the subject of a Control Agreement and is maintained by a branch office of the bank or securities intermediary located within the United States.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by Borrower or its Subsidiaries and the improvements thereto.

"Real Property Collateral" means the Real Property identified on Schedule R-1 to this Agreement and any Real Property hereafter acquired by Borrower or its Subsidiaries.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Redeemable Capital Interests" in any Person means any equity security of such Person that by its terms (or by terms of any security into which it is convertible or for which it is exchangeable), or otherwise (including the passage of time or the happening of an event), is required to be redeemed, is redeemable at the option of the holder thereof in whole or in part (including by operation of a sinking fund), or is convertible or exchangeable for Indebtedness of such Person at the option of the holder thereof, in whole or in part, at any time prior to the Maturity Date; provided that only the portion of such equity security which is required to be redeemed, is so convertible or exchangeable or is so redeemable at the option of the holder thereof before such date will be deemed to be Redeemable Capital Interests. Notwithstanding the preceding sentence, any equity security that would constitute Redeemable Capital Interests solely because the holders of the equity security have the right to require any of Borrower or its Subsidiaries to repurchase such equity security upon the occurrence of a Change of Control or an Asset Sale will not constitute Redeemable Capital Interests if the terms of such equity security provide that Borrower or its Subsidiaries may not repurchase or redeem any such equity security pursuant to such provisions unless such repurchase or redemption complies with Section 6.9. The amount of Redeemable Capital Interests deemed to be outstanding at any time for purposes of this Agreement will be the maximum amount that Borrower and its Subsidiaries may become obligated to pay upon the maturity of, or pursuant to any mandatory redemption provisions of, such Redeemable Capital Interests or portion thereof, exclusive of accrued dividends.

"Register" has the meaning specified therefor in Section 2.3(b) of this Agreement.

"Related Agreements" has the meaning specified therefor in Section 18.4(c) of this Agreement.

"Related Fund" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

"Related Party" means: (i) any family member (in the case of an individual) of a Person described in clause (i) of the definition of Permitted Holder; or (ii) any trust, corporation, partnership, limited liability company or other entity, the beneficiaries, stockholders, partners, members, owners or Persons beneficially holding an 50% or more controlling or beneficial interest of which consist of any one or more Permitted Holder.

"Remedial Action" means all actions taken to comply with Environmental Law, including (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

"Remedies Notice Period" has the meaning specified therefor in Section 9.1 of this Agreement.

"Reorganization Plan" has the meaning specified therefor in Section 13.1(i)(iv) of this Agreement.

"Reorganized Equity Interests" has the meaning specified therefor in Section 2.1(b) of this Agreement.

"Report" has the meaning specified therefor in Section 15.16(a) of this Agreement.

"Reportable Event" has the meaning given to such term in Section 4043 of ERISA or the regulations thereunder, excluding any event for which the PBGC has by regulation waived the 30 day notice requirement, or a withdrawal from a plan described in Section 4063 of ERISA.

"Required Lender Consent Items" has the meaning specified therefor in Section 13.1(j) of this Agreement.

"Required Lenders" means, at any time, the holders of at least 50.1% of the aggregate unpaid principal amount of the Term Loans and commitments then outstanding.

"Restricted Junior Payment" means to: (a) declare or pay any dividend or make any other payment or distribution (i) on account of Stock issued by any Loan Party (including any payment in connection with any merger or consolidation involving any Loan Party) or (ii) on account of Stock issued by any Subsidiary of Borrower, in each case to the direct or indirect holders of such Stock in their capacity as such (other than dividends or distributions to Borrower or a Subsidiary); (b) purchase, redeem, make any sinking fund or similar payment, or otherwise acquire or retire for value (including in connection with any merger or consolidation involving any Loan Party) any Stock issued by any Loan Party; or (c) make any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Stock of any Loan Party now or hereafter outstanding; provided that the following shall not be a "Restricted Junior Payment": (1) dividends, distributions or payments, in each case, made solely in Qualified Capital Interests in Borrower; (2) dividends or distributions made by any Subsidiary of Borrower to a Loan Party and (3) dividends or distributions made by any Subsidiary of Borrower that is not a Loan Party to a Subsidiary of Borrower that is not a Loan Party.

"Revised DIP Budget" means a DIP Budget delivered for any period after the period covered by the Initial DIP Budget, which Revised DIP Budget shall be in form and substance acceptable to the Required Lenders and Solus in each of their sole discretion, it being understood

that no changes shall be made in any such DIP Budget with respect to any periods that were included in a previously delivered DIP Budget.

"Revolver Facility" means that certain first priority senior secured debtor-in-possession credit facility consisting of up to $85,000,000 in revolving credit commitments provided pursuant to the Revolver Facility Agreement.

"Revolver Facility Agreement" means that certain Senior Secured Superpriority Debtor-in-Possession Credit Agreement, dated as of the date hereof, by and among the borrowers party thereto and Wells Fargo Capital Finance, LLC, as amended, restated, supplemented and otherwise modified from time to time.

"RSA" means that certain Restructuring Support Agreement together with all exhibits, schedules, and annexes thereto, dated as of August 5, 2019, by and among the Company Parties, the Consenting Revolving Lenders, the Consenting First Lien Term Loan Lenders, the Consenting 1.5 Lien Term Loan Lenders and the Consenting Second Lien Term Loan Lenders (each as defined therein), as amended, restated, supplemented or otherwise modified from time to time with the consent of Solus.

"Sale Motion" means a motion filed with the Bankruptcy Court seeking approval of, among other things, the stalking horse bidder, the Bid Procedures, and the Sale Transaction.

"Sale Order" means a final non-appealable order, approving the sale of assets "free and clear" of all claims and interests in accordance with the terms set forth in the RSA.

"Sale Transaction" means the sale of all, or substantially all, of the Loan Parties' assets in accordance with the terms set forth in the RSA.

"SEC" means the United States Securities and Exchange Commission and any successor thereto.

"Second Day Orders" means the orders entered by the Bankruptcy Court in respect of second day motions and applications.

"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 Subsidiaries of Parent, Wilmington Trust, National Association, as administrative and collateral agent, and the banks, financial institutions, and other lenders party thereto.

"Securities Account" means a securities account (as that term is defined in the Code).

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Security Agreement" means a security agreement in form and substance reasonably satisfactory to Agent and the Required Lenders, executed and delivered by Borrower and Guarantors to Agent.

"Security Agreement Joinder" has the meaning specified therefor in Section 5.11 of this Agreement.

"Security Interest" has the meaning specified therefor in Section 18.2 of this Agreement.

"Solus" means Solus Alternative Asset Management LP.

"Stated Maturity" means, with respect to any Indebtedness or any installment of interest thereon, means the date specified in the instrument governing such Indebtedness as the fixed date on which the principal of such Indebtedness or such installment of interest is due and payable, including any date upon which a repurchase at the option of the holders of such Indebtedness is required to be consummated.

"Stock" means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other "equity security" (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

"Subordinated Indebtedness" means Indebtedness of any Loan Party the terms of which are reasonably satisfactory to the Required Lenders and which has been expressly subordinated in right of payment or in lien priority to all Indebtedness of such Loan Party under the Loan Documents (a) by the execution and delivery of a subordination agreement, in form and substance reasonably satisfactory to the Required Lenders, or (b) otherwise on terms and conditions reasonably satisfactory to the Required Lenders.

"Subsidiary" of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the shares of Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

"Supporting Obligations" means supporting obligations (as such term is defined in the Code), and includes letters of credit and guaranties issued in support of Accounts, Chattel Paper, documents, General Intangibles, instruments or Investment Related Property.

"Taxes" means any taxes, levies, imposts, duties, deductions, withholdings (including backup), fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein and all interest, penalties, additions to tax, or similar liabilities with respect thereto.

"Term Loan" means any load made by the Lenders to Borrower on any date of Borrowing, pursuant to Section 2.1 of this Agreement.

"TNATINC" has the meaning specified therefor in Section 5.2(b) of this Agreement.

"United States" means the United States of America.

"Vehicle" means all trucks, trailers, tractors, and other substantially similar mobile equipment and other substantially similar vehicles used in the transportation of automobiles, wherever located.

"Vehicle Collateral Agency Agreement" means that certain Fifth Amended and Restated Collateral Agent Agreement, dated as of September 14, 2018, among Wilmington Trust, National Agent, in its capacities as Second Lien Term Loan Agent and Additional Second Lien Term Loan Agent, Wells, in its capacity as ABL Agent, Cerberus, in its capacity as First Lien Term Loan Agent, and Corporation Service Company, in its capacity as Collateral Agent.

"Vehicle Collateral Agent" means Corporation Services Company, a Delaware corporation.

"Voidable Transfer" has the meaning specified therefor in Section 17.8 of this Agreement.

"Wells" means Wells Fargo Capital Finance, LLC.

Schedule 3.1

(a) Agent shall have received each of the following documents, in form and substance satisfactory to Agent and Lenders, duly executed by each of the parties thereto, and each such document shall be in full force and effect:

(i) this Agreement,

(ii) the Intercreditor Agreement; and

(iii) the Revolver Facility Agreement.

(b) Agent shall have received a certificate from the Secretary of each Loan Party (i) attesting to the resolutions of such Loan Party's Board of Directors or equivalent governing body authorizing its execution, delivery, and performance of this Agreement and the other Loan Documents to which such Loan Party is a party, (ii) authorizing specific officers of such Loan Party to execute the same, and (iii) attesting to the incumbency and signatures of such specific officers of such Loan Party;

(c) Agent shall have received copies of each Loan Party's Governing Documents, as amended, modified, or supplemented to the Effective Date, certified by the Secretary of such Loan Party;

(d) Agent shall have received a certificate of status with respect to each Loan Party, dated within 30 days of the Effective Date, such certificate to be issued by the appropriate officer of the jurisdiction of organization of such Loan Party, which certificate shall indicate that such Loan Party is in good standing in such jurisdiction;

(e) no later than the Petition Date, absent a consensual agreement and/or memoranda of understanding with Teamsters National Auto Transporters Industry Negotiating Committee and the International Association of Machinists and Aerospace Workers consistent with the RSA and the CBA Term Sheet (as defined in the RSA), the Debtors shall file a motion with the Bankruptcy Court seeking an interim order pursuant to section 1113(e) of the Bankruptcy Code to modify the contribution to Central States, Southeast and Southwest Areas Pension Fund due [August [19], 2019];

(f) Agent shall have received a "Borrowing Base Certificate" (as such term is defined under the Prepetition ABL Facility) as of the most recent date such certificate is required to be delivered under the Prepetition ABL Facility prior to the Effective Date.

(g) Agent shall have received, a certificate executed by a responsible officer on behalf of Borrower, dated the Effective Date and in the form of Exhibit 3.1(f) hereto, stating that the representations and warranties set forth in Article IV shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the Effective Date, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date, in which case, such representations and warranties shall be true and correct in all material respects on such earlier date (except that

such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof)); and (ii) that no Default or Event of Default shall have occurred and be continuing on the date of such extension of credit, nor shall either result from the making thereof;

(h) No action, suit or proceeding (including, without limitation, any inquiry or investigation) by any entity (private or governmental) shall be pending or, to the knowledge of Borrower, threatened against Borrower or any of its Subsidiaries or with respect to this Agreement, any other Loan Document or any documentation executed in connection herewith or the transactions contemplated hereby or which would reasonably be expected to have a Material Adverse Change, and no injunction or other restraining order shall remain effective or a hearing therefor remain pending or noticed with respect to this Agreement, any other Loan Document or any documentation executed in connection herewith or the transactions contemplated hereby, the effect of which would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Change;

(i) The Petition Date shall have occurred;

(j) (i) No later than 2 Business Days after the Petition Date, the Bankruptcy Court shall have entered the Interim DIP Order granting the super-priority claim status and the liens contemplated hereby and authorizing the Term Loans in an amount not less than the Interim DIP Order Commitment Amount, which order (a) shall be in full force and effect and shall not have been, in whole or in part, vacated, reversed, stayed, or set aside and (b) shall not have been modified or amended in a manner adverse to the Lenders without the consent of the Required Lenders and Solus and (ii) no later than 5 calendar days after the date the Interim DIP Order has been entered, the CCAA Court shall have granted the CCAA DIP Approval Order (as defined in the Revolver Facility Agreement) (which shall remain in full force and effect);

(k) The First Day Orders shall have been entered by the Bankruptcy Court, including the Interim DIP Order, and within the time specified in clause (j) above, the CCAA Initial Recognition Order and CCAA Supplemental Order shall have been entered by the CCAA Court, and to the extent affecting the rights or obligations of Agent, the Lenders, or the agent or the lenders under any Prepetition Term Loan Facilities or the Prepetition ABL Facility, or which may give rise to a post-petition claim, administrative in nature or otherwise, shall be in form and substance acceptable to Agent, the Lenders and Solus;

(l) All orders entered by the Bankruptcy Court pertaining to cash management and adequate protection and all other motions and documents filed or to be filed with, and submitted to, the Bankruptcy Court in connection therewith, shall be in form and substance satisfactory to the Required Lenders (and with respect to any provisions that affect the rights or duties of Agent, Agent);

(m) Agent shall have received proper form UCC-1 financing statements for filing under the Code necessary or, in the reasonable opinion of the Lenders, desirable to perfect the security interests purported to be created by the Interim DIP Order;

(n) No trustee, examiner or receiver shall have been appointed or designated with respect to the Loan Parties' business, properties or assets and no motion shall be pending seeking any such relief or seeking any other relief in the Bankruptcy Court to exercise control over any Collateral;

(o) Borrower shall have paid all Lender Group Expenses incurred in connection with the transactions evidenced by this Agreement for which invoices have been received prior to the Effective Date;

(p) All necessary governmental (domestic and foreign) and material third party approvals and/or consents in connection with the transactions contemplated by the Loan Documents shall have been obtained and remain in effect, other than those which the failure to obtain, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Change, and all applicable waiting periods shall have expired without any action being taken by any competent authority which restrains, prevents or imposes materially adverse conditions upon the consummation of all or any part of the transactions contemplated by the Loan Documents;

(q) Agent shall have received the Initial DIP Budget, which shall be in form and substance acceptable to the Lenders and Solus in their sole discretion;

(r) No Material Adverse Change shall have occurred since the Petition Date;

(s) There shall be no unstayed order or injunctions challenging the DIP Facilities;

(t) Agent shall have received, prior to the Effective Date, all documentation and other information with respect to Borrower and the Guarantors that is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the PATRIOT Act;

(u) Agent shall have received a request in writing no later than 12:00 noon (New York time) 3 Business Days (or such shorter time as agreed to by Agent) before the date of the proposed Borrowing specifying (i) the aggregate amount of the requested Borrowing, (ii) the date of such Borrowing, which shall be a Business Day and (iii) the location and number of the applicable account to which the proceeds of the Initial Loan are to be disbursed;

(v) The Loan Parties shall have satisfied the covenants set forth in Section 5.2 on the dates therein required, as applicable,

(w) The RSA shall continue to be in full force and effect without any amendment or modification thereto (except with Solus' consent in its sole discretion); and

(x) The initial extension of credit under the Revolver Facility shall have occurred.

Schedule 3.2

(a) Agent shall have received an update to the DIP Budget as of the most recent date required to be delivered pursuant to Schedule 5.1 in form and substance acceptable to the Required Lenders and Solus in their sole discretion (it being understood that no changes shall be made in any such DIP Budget with respect to any periods that were included in a previously delivered DIP Budget);

(b) The advance of such Additional Loan or Final Loan, as applicable, shall not result in the aggregate amount of Term Loans extended being in excess of the aggregate amount of the Lenders' Commitments;

(c) The RSA shall continue to be in full force and effect without any amendment or modification thereto (except with Solus' consent in its sole discretion);

(d) The disbursement of such Additional Loan or Final Loan, as applicable, shall have been provided for by the Initial DIP Budget and the most recent DIP Budget;

(e) The amount of the Additional Loan or Final Loan, as applicable, shall not exceed the minimum amount necessary such that Forecast Liquidity shall not be projected to be less than $7,500,000 for the immediately succeeding 2 week period after giving effect to such Borrowing (as certified in a certificate delivered by Borrower based on projections consistent with the then-existing Liquidity Forecast reflecting such calculations);

(f) The Loan Parties shall have satisfied the covenants set forth in Section 5.2 on the dates therein required, as applicable;

(g) If such Borrowing is after September 23, 2019, compliance with the CBA Milestone; and

(h) The Loan Parties shall be in compliance in all material respects with the Financing Orders.

Schedule 5.1

Deliver (which delivery may be made by electronic communication (including email)) to Agent and Solus, each of the financial statements, reports, or other items set forth below at the following times in form satisfactory to the Required Lenders and Solus:

on Friday of each week beginning with the first full calendar week after the Petition Date	(a) a weekly DIP variance report/reconciliation for the prior week and for the period from the commencement of the Initial DIP Budget to the end of the prior week in each case (i) showing actual results for the following items: (A) receipts, (B) disbursements, (C) net operating cash flow, (D) liquidity and excess availability (as determined under the Revolver Facility), (E) Term Loan balances and outstanding loans under the Revolver Facility and (F) professional fees and expenses, noting therein variances from values set forth for such periods in both the Initial DIP Budget and the most recent DIP Budget and (ii) an explanation for all material variances, certified by the chief financial officer of JCHC,
on the date that is four weeks after the Petition Date and every second week thereafter	(b) (i) a Revised DIP Budget and (ii) a Liquidity Forecast, which shall include any performance and timing changes with respect to any periods that were included in a previously delivered Liquidity Forecast and which shall be in form and substance acceptable to the Required Lenders and Solus each in their sole discretion,
as soon as available, but in any event (i) within 30 days after the end of any non-December month during each of Borrower's fiscal years, and (ii) within 45 days after the end of each December month,	(c) an unaudited consolidated balance sheet, income statement, statement of cash flow, and statement of shareholder's equity covering Borrower's and its Subsidiaries' operations as at the end of such fiscal month, and for the period commencing at the end of the immediately preceding fiscal year and ending with the end of such fiscal month, setting forth in each case in comparative form the figures for the corresponding date or period set forth in the financial statements for the immediately preceding fiscal year, together with a corresponding discussion and analysis of results from management solely for the months ended March, June and September, all in reasonable detail and certified by the chief financial officer of Borrower as fairly presenting, in all material respects, the financial position of Borrower and its Subsidiaries as at the end of such fiscal month and the results of operations, retained earnings and cash flows of Borrower and its Subsidiaries for such fiscal month and for such year-to-date period, in accordance with GAAP, in all material respects, applied in a manner consistent with that of the most recent audited financial statements furnished to Agent and the

	Lenders, subject to the absence of footnotes and normal year-end adjustments,
simultaneously with the delivery of the financial statements in clause (c) above for the months ended March, June and September,	(d) a Compliance Certificate,
as soon as available, but in any event within 120 days after the end of each of Borrower's fiscal years,	(e) consolidated audited financial statements of Borrower and its Subsidiaries for each such fiscal year such audited financial statements to include a balance sheet, income statement, statement of cash flow, and statement of shareholder's equity, and such audit opinion), setting forth in each case in comparative form the figures for the corresponding date or period set forth in the financial statements for the immediately preceding fiscal year, all in reasonable detail and prepared in accordance with GAAP, in all material respects, and accompanied by a report and an opinion, prepared in accordance with generally accepted auditing standards, of independent certified public accountants of recognized standing selected by Borrower and reasonably satisfactory to the Required Lenders,
	(f) a Compliance Certificate,

as soon as available, but in any event within 30 days after the start of each of Borrower's fiscal years,	(g) copies of Borrower's projections, all in reasonable detail and in form and substance (including as to scope and underlying assumptions) reasonably satisfactory to the Required Lenders, for the forthcoming fiscal year, month by month, certified by the chief financial officer of Borrower as being such officer's good faith estimate of the financial performance of Borrower for the period covered thereby based upon assumptions, methods and tests that such officer believed to be reasonable at the time made (it being recognized that such projections are not to be viewed as facts and that actual results during the period or periods covered thereby may differ significantly from the projected results and such differences may be material and that no assurance can be given that the projected results will be realized),
promptly, to the extent reasonably feasible,	(h) copies of all material pleadings, motions, applications or financial information filed by any Loan Party with the Bankruptcy Court or the CCAA Court; provided that any such documents that are publicly available shall be deemed to have been delivered,
promptly,	(i) copies of all amendments, restatements, supplements or other modifications to the Revolver Facility,
promptly,	(j) copies of all "Borrowing Base Certificates" (as such term is defined in the Revolver Facility Agreement) delivered pursuant to the Revolver Facility,
promptly, but in any event within 5 Business Days after Borrower has knowledge of any event or condition that constitutes a Default (provided that the delivery of a notice of any such event of default at any time will cure any Event of Default arising from the failure to timely deliver such notice of such event of default),	(k) notice of such event or condition and a statement of the curative action that Borrower proposes to take with respect thereto,
promptly, but in any event within 5 Business Days after Borrower has knowledge of (i) the termination of any Material Contract or labor contract, (ii) the initiation of any labor negotiations with respect to any	(l) notice and summary of such event or condition which reasonably could be expected to result in a Material Adverse Change,

labor contract, or (iii) the occurrence of any labor strike affecting Borrower or any Guarantors,	
promptly, but in any event within 5 Business Days after Borrower's or any Loan Party's receipt,	(m) copies of any written notice of default or Event of Default under the Revolver Facility,
upon the reasonable request of Agent,	(n) any other information reasonably requested relating to the financial condition of Borrower or its Subsidiaries, and
upon notice of Agent,	(o) access to the advisors to the Loan Parties at all times during the Chapter 11 Cases.

Schedule 5.17

1. To the extent any requested security documentation is not provided on the Effective Date after use by Borrower of commercially reasonable efforts to do so, then the provision and/or perfection, as applicable, of any such Collateral shall be provided within 45 days after the Effective Date, subject to such extensions as are reasonably agreed by Agent (acting at the direction of the Required Lenders).

2. To the extent not already in place on the Effective Date, on or before the date that is 60 days after the Effective Date (or such longer period as agreed to by Agent in writing in its discretion), each Loan Party will enter into a Control Agreement, in form reasonably satisfactory to Agent and the Required Lenders, for each account so required to have a Control Agreement pursuant to Section 6.11(b).

3. To the extent not already in place on the Effective Date, each Loan Party will enter into a Security Agreement, in form reasonably satisfactory to Agent and the Required Lenders, prior to the entry of the Final DIP Order.

4. On or before August 23, 2019, the Loan Parties shall deliver to Agent the insurance endorsements required by Section 5.6.