

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

EPIC COMPANIES, LLC,

Debtors.¹

§

§ **Chapter 11**

§

§ **Case No. 19-34752**

§

§ **(Jointly Administered)**

§

**FINAL ORDER (I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION
SECURED FINANCING PURSUANT TO SECTION 364 OF BANKRUPTCY
CODE AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS AND
SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) GRANTING
ADEQUATE PROTECTION, (IV) MODIFYING AUTOMATIC
STAY, AND (V) GRANTING RELATED RELIEF**

Upon the motion (the “**DIP Motion**”), dated August 26, 2019, of Epic Companies, LLC (“**Epic Companies**”) and its debtor subsidiaries, as debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (the “**Cases**”), pursuant to sections 105, 361, 362, 363, 364, and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 4001-1, 4002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas and paragraph I of the Procedures for Complex Chapter 11 Cases in the Southern District of Texas seeking, among other things:

- i. authorization for the Borrowers (as defined herein) to obtain a first priority priming senior secured delayed-draw term loan debtor in possession credit facility (the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Epic Companies, LLC (1473), Epic Diving & Marine Services, LLC (2501), Epic Applied Technologies, LLC (5844), EPIC Specialty Services, LLC (8547), Epic Alabama Steel, LLC (6835), Epic San Francisco Shipyard, LLC (5763) and Zuma Rock Energy Services, LLC (1022). The address of the Debtors’ headquarters is: 1080 Eldridge Parkway, Suite 1300, Houston, Texas 77077.

“DIP Facility”) consisting of up to \$9,500,000 in commitments (the commitments thereunder the **“DIP Commitments”** and the loans thereunder the **“DIP Loans”**), provided by White Oak Global Advisors, LLC (**“White Oak”**) and the lenders thereunder (collectively including White Oak, the **“DIP Lenders”**);

ii. authorization for the Debtors to enter into the DIP Facility, and approving the terms and conditions thereof, as set forth in this Final Order and the Senior Secured Super-Priority Priming Debtor-In-Possession Loan And Security Agreement entered into, by and among, Epic Companies, Epic Applied and Epic Diving & Marine Services, LLC (together with Epic Companies and Epic Applied, each a **“Borrower”** and collectively, jointly and severally, the **“Borrowers”**), Epic Specialty Services, LLC, Epic San Francisco Shipyard, LLC, Zuma Rock Energy Services, LLC and Epic Alabama Steel, LLC as guarantors (collectively, jointly and severally, the **“Guarantors”**), the DIP Lenders, and White Oak Global Advisors, LLC, as administrative agent (in such capacity, the **“DIP Agent”**), substantially in the form attached hereto as **Exhibit 1** (such agreement, including as hereafter amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the **“DIP Agreement,”** and, together with all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, collectively, the **“DIP Documents”**);

iii. authorization for the Debtors to execute and deliver the DIP Agreement and the other DIP Documents and to perform such other and further acts as may be necessary or appropriate in connection therewith;

iv. authorization for the DIP Agent to terminate the DIP Agreement in accordance with the terms thereof and this Final Order;

v. allowance of the DIP Superpriority Claim (as defined herein) in favor of the DIP Agent and the DIP Lenders;

vi. authorization, subject to the terms and provisions hereof, for the Debtors to use, among other things, Cash Collateral (as defined herein), within the meaning of section 363(a) of the Bankruptcy Code and in accordance with the Budget (as defined herein) and the terms of this order (this “**Final Order**”);

vii. the granting of adequate protection to the lenders under the Prepetition Credit Agreement (as defined herein);

viii. effective upon the entry of this Final Order, (a) the waiver by the Debtors and their estates of any right to surcharge against the DIP Collateral (as defined herein), including pursuant to section 506(c) of the Bankruptcy Code or otherwise, (b) providing that the Prepetition Secured Parties (as defined herein) are not subject to the “equities of the case” exception contained in section 552(b) of the Bankruptcy Code, and (c) providing that the Prepetition Secured Parties (as defined herein) are not subject to the equitable doctrine of “marshaling,” or any other similar doctrine with respect to the DIP Collateral; and

ix. granting related relief.

The Court having held an interim hearing pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) on August 27, 2019 (the “**Interim Hearing**”), and the Court having entered the interim order on August 28, 2019 (the “**Interim Order**”) [Docket No. 29] granting the relief requested in the DIP Motion on an interim basis; and the Court having held the hearing on October 3, 2019 to

consider entry of this Final Order (the “**Final Hearing**”); and upon the record of the Interim Hearing, the Final Hearing and upon the Court’s consideration of the DIP Motion and all exhibits thereto; and upon the First Day Declaration and the Varsalone Declaration; and upon due deliberation and consideration and sufficient cause appearing therefor;

THE COURT HEREBY FINDS AND CONCLUDES THAT:²

A. Petition Date. On August 26, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Court. The Debtors have continued to manage and operate their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases. On September 6, 2019, an official committee of unsecured creditors (the “**Committee**”) was appointed as provided for under section 1102 of the Bankruptcy Code.

B. Jurisdiction. This Court has core jurisdiction over these Cases, this DIP Motion, and the parties and property affected hereby under 28 U.S.C. §1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Consideration of the DIP Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). This Court may enter a final order consistent with Article III of the United States Constitution.

C. Notice. The notice given by the Debtors of the DIP Motion, entry of the Interim Order, the Interim Hearing and the Final Hearing was proper, timely, and adequate and sufficient notice under the circumstances and complies with Bankruptcy Rules 4001(b) and (c).

² The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

D. Debtors' Stipulations. Without prejudice to the rights of their estates, the Committee or any other party in interest (but subject to the limitations thereon contained in paragraph 29 below), the Debtors admit, stipulate and agree that:

(a) Prepetition Senior Credit Agreement and Prepetition Junior Credit Agreement.

(i) Epic Companies, Epic Diving & Marine Services, LLC, Epic Applied, Epic Specialty Services, LLC, Epic San Francisco Shipyard, LLC, King Aire, Inc., Zuma Rock Energy Services, LLC, Epic Alabama Steel, LLC, TSB Holding Company, LLC, TSB Offshore Inc., ERP Environmental Fund, Inc. (the "**Prepetition Senior Credit Parties**"), White Oak, as administrative agent (in such capacity, the "**Prepetition Senior Agent**"), and the lenders from time to time party thereto (the "**Prepetition Senior Lenders**" and, together with the Prepetition Senior Agent, the "**Prepetition Senior Secured Parties**"), are party to that certain Amended and Restated Loan and Security Agreement, dated as of July 22, 2019 (as the same has been amended, restated, amended and restated, refinanced, replaced, supplemented, or otherwise modified prior to the Petition Date, the "**Prepetition Senior Credit Agreement**") and, together with all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof (collectively, the "**Prepetition Senior Credit Documents**").

(ii) As of the Petition Date, the outstanding aggregate principal amount under the Prepetition Senior Credit Agreement was not less than \$50,295,463.69 (together with all other outstanding Obligations, as defined in the Prepetition Senior Credit Agreement,

including interest, fees and expenses, the “**Prepetition Senior Credit Agreement Indebtedness**”).

(iii) To secure the Prepetition Senior Credit Agreement Indebtedness, the Prepetition Senior Credit Parties granted to the Prepetition Senior Agent, for the benefit of the Prepetition Senior Secured Parties, valid, binding, perfected, first priority security interests in and continuing liens (the “**Prepetition Senior Credit Agreement Liens**”) on substantially all of their assets and property including the Collateral (as defined in the Prepetition Senior Credit Agreement), which includes, without limitation, the Vessels (as defined in the Prepetition Senior Credit Agreement) (and any asset related thereto or located thereon), certain pledges of equity interests pursuant to the Sanare Pledge Agreement (as defined in the Prepetition Senior Credit Agreement), Real Property Collateral (as defined in the Prepetition Senior Credit Agreement; but, for the avoidance of doubt, excluding the Debtors’ interests in certain real property located in Louisiana (the “**Louisiana Real Property**”)),³ all other collateral as described or defined in any other Collateral Document (as defined in the Prepetition Senior Credit Agreement) and Cash Collateral (as defined herein) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising (collectively, the “**Prepetition Senior Credit Agreement Collateral**”).

(iv) Epic Companies, Epic Diving & Marine Services, LLC, Epic Applied, Epic Specialty Services, LLC, Epic San Francisco Shipyard, LLC, King Aire, Inc., Zuma Rock Energy Services, LLC, Epic Alabama Steel, LLC, TSB Holding Company, LLC, TSB

³ The Louisiana Real Property includes the following: 168 Menard Road, Houma, Louisiana, 70363, 306 Menard Road, Houma, Louisiana, 70363, 403 Menard Road, Houma, Louisiana, 70363, and 600 Thompson Road, Houma, Louisiana, 70363.

Offshore Inc. and ERP Environmental Fund, Inc. (collectively, the “**Prepetition Junior Credit Parties**” together with the Prepetition Senior Credit Parties, the “**Prepetition Credit Parties**”), Acqua Liana Capital Partners, LLC, as administrative agent (in such capacity, the “**Prepetition Junior Agent**” together with the Prepetition Senior Agent, the “**Prepetition Agents**”), and the lenders from time to time party thereto (the “**Prepetition Junior Lenders**” together with the Prepetition Subordinated Agent, the “**Prepetition Junior Secured Parties**” and together with the Prepetition Senior Secured Parties, the “**Prepetition Secured Parties**”), are party to that certain Third Amended and Restated Loan and Security Agreement, dated as of July 22, 2019 (as the same has been amended, restated, amended and restated, refinanced, replaced, supplemented, or otherwise modified prior to the Petition Date, the “**Prepetition Junior Credit Agreement**” together with the Prepetition Senior Credit Agreement, the “**Prepetition Credit Agreements**”) and, together with all agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as hereafter amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof (collectively, the “**Prepetition Junior Credit Documents**” together with the Prepetition Senior Documents, the “**Prepetition Credit Documents**”).

(v) As of the Petition Date, the outstanding aggregate principal amount under the Prepetition Junior Credit Agreement was not less than \$65,340,299.28 (together with all other outstanding Obligations, as defined in the Prepetition Junior Credit Agreement, including interest, fees and expenses, the “**Prepetition Junior Credit Agreement Indebtedness**” together with the Prepetition Senior Credit Agreement Indebtedness, the “**Prepetition Credit Agreement Indebtedness**”).

(vi) To secure the Prepetition Junior Credit Agreement Indebtedness, the Prepetition Junior Credit Parties granted to the Prepetition Junior Agent, for the benefit of the Prepetition Junior Secured Parties, valid, binding, perfected, second priority security interests in and continuing liens (the “**Prepetition Junior Credit Agreement Liens**” together with the Prepetition Senior Credit Agreement Liens, the “**Prepetition Credit Agreement Liens**”) on the Prepetition Senior Credit Agreement Collateral, subject in all respects to the first priority liens of the Prepetition Senior Agent on such collateral (the “**Prepetition Junior Credit Agreement Collateral**” together with the Prepetition Senior Credit Agreement Collateral, the “**Prepetition Credit Agreement Collateral**,” which, for the avoidance of doubt, does not include the Louisiana Real Property).

(vii) The Prepetition Senior Agent and the Prepetition Junior Agent entered into that certain Intercreditor and Subordination Agreement dated as of July 22, 2019 (the “**Prepetition Intercreditor Agreement**”) to govern the respective rights, interests, obligations, priority, and positions of the Prepetition Secured Parties with respect to the assets and properties of the Prepetition Credit Parties. Each of the Prepetition Credit Parties under the Prepetition Credit Documents acknowledged and agreed to the Prepetition Intercreditor Agreement.

(b) The Prepetition Senior Credit Agreement Indebtedness constitutes the legal, valid, and binding obligations of the Prepetition Senior Credit Parties, enforceable against them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Prepetition Senior Credit Agreement Indebtedness is subject to avoidance, recharacterization, recovery, or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law.

(c) The Debtors acknowledge and agree that as of the Petition Date: (i) the Prepetition Senior Credit Agreement Liens and the Prepetition Senior Credit Agreement Indebtedness were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Senior Lenders; (ii) the Prepetition Senior Credit Agreement Liens were senior in priority over any and all other liens in the Prepetition Senior Credit Agreement Collateral other than, with respect to the Hedron, a Vessel flagged under the laws of Vanuatu, any maritime lien for “necessaries” within the meaning of the Commercial Instruments and Maritime Liens Act, 46 U.S.C. §§ 31301 *et seq.* that have attached to such Vessel and which have not been bonded in accordance with applicable law; (iii) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Senior Credit Agreement Liens or Prepetition Senior Credit Agreement Indebtedness exist, and no portion of the Prepetition Senior Credit Agreement Liens, Prepetition Senior Credit Agreement Indebtedness or any amounts paid to the Prepetition Senior Secured Parties or applied to the obligations owing under the Prepetition Senior Documents prior to the Petition Date is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, subordination (equitable or otherwise), recovery, attack, offset, contest, objection, reclassification, reduction or counterclaim of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (iv) the Debtors and their estates have no claims, objections, challenges, defenses, setoff rights, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Senior Lenders or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Senior Credit Agreement; and (v) the Prepetition Senior Credit

Agreement Indebtedness constitutes an allowed, secured claim within the meaning of sections 502 and 506 of the Bankruptcy Code.

(d) The Prepetition Junior Credit Agreement Indebtedness constitutes the legal, valid and binding obligations of the Prepetition Junior Credit Parties, enforceable against them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Prepetition Junior Credit Agreement Indebtedness is subject to avoidance, recharacterization, recovery, or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law.

(e) The Debtors acknowledge and agree that as of the Petition Date: (i) the Prepetition Junior Credit Agreement Liens and the Prepetition Junior Credit Agreement Indebtedness were valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Lenders; (ii) the Prepetition Junior Credit Agreement Liens were senior in priority over any and all other liens in the Prepetition Junior Credit Agreement Collateral, other than (A) the Prepetition Senior Credit Agreement Liens, and (B) with respect to the Hedron, a Vessel flagged under the laws of Vanuatu, any maritime lien for “necessaries” within the meaning of the Commercial Instruments and Maritime Liens Act, 46 U.S.C. §§ 31301 *et seq.* that have attached to such Vessel and which have not been bonded in accordance with applicable law; (iii) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Junior Credit Agreement Liens or Prepetition Junior Credit Agreement Indebtedness exist, and no portion of the Prepetition Junior Credit Agreement Liens, Prepetition Junior Credit Agreement Indebtedness or any amounts paid to the Prepetition Junior Secured Parties or applied to the obligations owing under the Prepetition Junior Documents prior to the Petition Date is subject to any challenge or defense

including avoidance, disallowance, disgorgement, recharacterization, subordination (equitable or otherwise), recovery, attack, offset, contest, objection, reclassification, reduction or counterclaim of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law; and (iv) the Debtors and their estates have no claims, objections, challenges, defenses, setoff rights, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Junior Lenders or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, and employees arising out of, based upon or related to the Prepetition Junior Credit Agreement; and (v) the Prepetition Junior Credit Agreement Indebtedness constitutes an allowed, secured claim within the meaning of sections 502 and 506 of the Bankruptcy Code.

(f) Each of the Debtors and the Debtors' estates, on its own behalf and on behalf of its past, present and future predecessors, successors, heirs, subsidiaries, and assigns hereby unconditionally, irrevocably and fully, forever waives, discharges, and releases (i) any right to challenge any of the Prepetition Credit Agreement Indebtedness, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the liens securing the Prepetition Credit Agreement Indebtedness and (ii) each of the Prepetition Agents and the other Prepetition Secured Parties, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accounts, attorneys, affiliates, and predecessors in interest of any and all Claims (as defined in section 101(5) of the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights that exist on the date hereof relating to any of the Prepetition Credit Documents or the transactions contemplated under such documents, whether known,

unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending or threatened, arising at law or in equity, including, without limitation, any so-called “lender liability,” recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of state or federal law and any and all claims and causes of action regarding the validity, priority, perfection or avoidability of the liens or the claims of the Prepetition Secured Parties and Prepetition Agents.

(g) Prepetition Intercreditor Agreement. Pursuant to section 510 of the Bankruptcy Code, the Prepetition Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Credit Documents, (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties (including the relative priorities, rights and remedies of such parties with respect to the replacement liens, administrative expense claims and superpriority administrative expense claims granted, or amounts payable, by the Debtors under this Final Order or otherwise and the modification of the automatic stay), and (iii) shall not be deemed to be amended, altered, or modified by the terms of this Final Order or the DIP Documents, unless expressly set forth herein or therein.

(h) Subject to the Challenge Deadline (defined below in paragraph 29), the Debtors’ acknowledgements, stipulations and releases (as set forth in this paragraph D) shall be binding on the Debtors and their respective representatives, successors and assigns, and on each of the Debtors’ estates, all creditors thereof and each of their respective representatives, successors and assigns, including, without limitation, any trustee or other representative appointed in the Cases, whether such trustee or representative is appointed in chapter 7 or chapter 11.

E. Findings Regarding DIP Facility and Use of Cash Collateral.

(a) Good cause has been shown for the entry of this Final Order.

(b) The Debtors have an immediate and critical need to obtain the DIP Facility and to use Cash Collateral as well as other collateral to continue the operation of their businesses. Without such funds, the Debtors will not be able to meet their payroll obligations or to pay operating and other expenses during this critical period. The ability of the Debtors to finance their operations through the incurrence of new indebtedness is vital to the preservation and maintenance of the going concern value of the Debtors' estates and necessary to avoid immediate and irreparable harm to the estates.

(c) The Debtors have been unable to obtain sufficient financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and have been unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors have also been unable to obtain secured credit allowable solely under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code.

(d) The DIP Agent and the DIP Lenders are willing to provide the DIP Facility, and the Prepetition Secured Parties are willing to consent to the use of their Cash Collateral and other collateral, subject to the terms and conditions set forth in the DIP Documents and the provisions of this Final Order, as applicable, and provided that the DIP Liens, the DIP Superpriority Claim and other protections granted by this Final Order and the DIP Documents will not be affected by any subsequent reversal or modification of this Final Order or any other order, as provided in section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility and the Cash Collateral use approved by this Final Order. The DIP Agent and the DIP Lenders have acted in good faith in agreeing to provide the DIP Facility approved by this Final Order and

to be further evidenced by the DIP Documents, and the Prepetition Secured Parties have acted in good faith in consenting to the Debtors' use of their Cash Collateral and other collateral pursuant to the terms of this Final Order, and their reliance on the assurances referred to above is in good faith.

(e) Among other things, entry of this Final Order will minimize disruption of the Debtors' businesses and operations by enabling them to meet payroll and other critical expenses, including vendor and professional fees. The DIP Facility and the use of Cash Collateral as set forth herein are vital to avoid immediate and irreparable loss or harm to the Debtors' estates, which will otherwise occur if continued access to the DIP Facility and to the use of Cash Collateral is not granted by this Final Order. Consummation of the DIP Facility and the use of Cash Collateral pursuant to the terms of this Final Order therefore are in the best interests of the Debtors' estates.

(f) The DIP Documents and the use of Cash Collateral, each as authorized hereunder, have been negotiated in good faith and at arm's length among the Debtors, the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties, respectively, among others, and the terms of the DIP Facility and the use of Cash Collateral, respectively, are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration. All of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the DIP Facility and the DIP Documents including without limitation, all loans, made to, guarantees issued by, the Debtors pursuant to the DIP Documents, and any other obligations under the DIP Documents (collectively, the "**DIP Obligations**"), shall be deemed to have been extended by the DIP Agent and the DIP Lenders and their affiliates in good faith, as that term is used in section

364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal.

(g) The Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2). The permission granted herein to use Cash Collateral and to enter into the DIP Documents and to borrow an amount up to the Commitment Amount is necessary to avoid immediate and irreparable harm to the Debtors and their estates. This Court concludes that entry of this Final Order is in the best interests of the Debtors and their estates and creditors as its implementation will, among other things, allow the Debtors to facilitate their chapter 11 goals and maximize the value of their assets.

(h) To the extent necessary, the Prepetition Secured Parties have either consented to the DIP Facility and the Debtors' use of the Prepetition Credit Agreement Collateral, including Cash Collateral, or their respective interests therein are being adequately protected by, among other things, the adequate protection described by this Final Order. This Court concludes that the adequate protection provided to the Prepetition Secured Parties hereunder for, among other things, the Debtors' incurrence of the DIP Obligations on a priming basis, as described herein, and the Debtors' use of the Prepetition Credit Agreement Collateral, including Cash Collateral, is consistent with and authorized by sections 361, 362, 363, and 364 of the Bankruptcy Code.

F. Based on the foregoing findings, acknowledgements, and conclusions, and upon the record made before the Court at the Interim Hearing and at the Final Hearing, and good and sufficient cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Approval of DIP Motion. The DIP Motion is granted on a final basis on the terms and conditions set forth in this Final Order and the DIP Documents; *provided, however*, that if there are any inconsistencies between the terms of this Final Order and the DIP Documents, the terms of this Final Order shall govern. Any objections or responses to the relief requested in the DIP Motion that have not been previously resolved or withdrawn, waived or settled are hereby overruled on the merits and denied with prejudice. This Final Order shall become effective immediately upon its entry.

2. Authorization of DIP Facility and DIP Documents.

(a) The Debtors are hereby authorized to execute, issue, deliver, enter into and adopt, as the case may be, the DIP Agreement and all DIP Documents to be delivered pursuant hereto or thereto or in connection herewith or therewith, including, without limitation, the Budget. The Borrowers are hereby authorized to borrow money under the DIP Facility in the aggregate up to the Commitment Amount. The DIP Facility is hereby approved on a final basis pursuant to the terms of this Final Order. The Debtors that are Guarantors are hereby authorized to guaranty such borrowings and the other DIP Obligations, all in accordance with the terms of this Final Order, the DIP Agreement, and all other DIP Documents.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and, without further application to the Court, to pay all fees referred to in this Final Order, the DIP Agreement and the DIP Documents including, without limitation, the reasonable and documented fees and out-of-pocket expenses of the professionals of

the (i) DIP Agent and the DIP Lenders, including Paul Hastings LLP and McGlinchey Stafford PLLC and (ii) the Prepetition Senior Secured Parties (subject to the same procedures, including with respect to the ability to object, provided for in paragraph 18(d) regarding payment of the fees and expenses of the Prepetition Senior Secured Parties).

(c) Subject to the provisions contained in paragraph 35 hereof, material amendments to the DIP Documents or modifications of the Budget (as defined herein) shall be filed with the Court and served upon counsel to the Committee, the Prepetition Agent, those persons who have formally appeared and requested service in the Cases pursuant to Bankruptcy Rule 2002, and the Office of the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”).

3. **Binding Effect.** Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with their terms and this Final Order. No obligation, payment, transfer or grant of a security or other interest under the DIP Documents, the Interim Order or this Final Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, set-off, recoupment or counterclaim.

4. **DIP Loans.**

All loans made or monies advanced under the DIP Facility to or for the benefit of the Borrowers on or after the Petition Date including, without limitation, loans made or monies advanced or deemed advanced under or in connection with the DIP Facility and all obligations of the Debtors arising thereunder: shall (a) be evidenced by the books and records of the DIP Agent; (b) bear interest payable at the rates set forth in the DIP Agreement; (c) be secured in the manner

and in favor of the DIP Agent and the DIP lenders as set forth in this Final Order and in the DIP Documents; (d) be payable and subject to the claim priorities in accordance with the terms of this Final Order and the DIP Documents; and (e) otherwise be governed by the terms set forth in this Final Order and in the DIP Documents.

5. Use of DIP Loans. Subject to the terms and conditions of this Final Order and the DIP Agreement (including, without limitation, satisfaction of the conditions precedent to borrowing set forth therein), an amount of the DIP Loans not to exceed the Commitment Amount shall be available on or after the Closing Date and shall be used by the Borrowers, in each case in accordance with the Budget (as defined herein) to (a) fund general corporate needs, including, without limitation, working capital needs, (b) pay administrative expenses of the Cases, including reasonable fees and expenses of professionals, (c) pay any prepetition obligations authorized to be paid pursuant to any “First Day Order” entered by the Court, and (d) fund the wind-down of the Debtors’ affairs consistent with paragraph 8(b), below, and the amounts set forth in the Budget.

6. Payment of DIP Fees and Expenses. Immediately upon entry of this Final Order, the Debtors are authorized to pay or otherwise incur all fees, expenses, and other amounts payable under the terms of the DIP Agreement and any other DIP Documents including, without limitation, the fees set forth in section 2.04 of the DIP Agreement (collectively, the “**DIP Fees**”) as well as all reasonable and documented out-of-pocket costs and expenses of the DIP Agent and the DIP Lenders in accordance with the terms of the DIP Agreement (collectively, the “**Expenses**”). The DIP Fees and Expenses approved pursuant to this paragraph shall include, without limitation, the reasonable and documented prepetition and postpetition fees and expenses of counsel and financial advisors (if any) retained by the DIP Agent or the DIP Lenders associated with the arrangement, preparation, execution, delivery and administration of the DIP Documents (and any amendment or

waiver with respect thereto) and the Cases. Subject to the same procedures provided in paragraph 18(d) regarding payment of the fees and expenses of the Prepetition Senior Secured Parties, none of the DIP Fees and Expenses shall be subject to Court approval or the U.S. Trustee guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with this Court with respect to such fees and expenses. In addition, the Debtors are hereby authorized to indemnify the DIP Agent, the DIP Lenders, and their respective affiliates, solely with respect to the Interim Order, this Final Order, the DIP Agreement and the DIP Documents, as provided in the DIP Agreement. All fees and expenses approved pursuant to this paragraph shall constitute DIP Obligations and the repayment thereof shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Final Order and the DIP Documents. The Debtors are hereby authorized to pay all DIP Fees and Expenses in accordance with the DIP Documents and this Final Order.

7. DIP Superpriority Claim. Pursuant to section 364(c)(1) of the Bankruptcy Code, the DIP Obligations shall constitute allowed claims against the Debtors with priority over any and all administrative expenses, diminution claims (including all Adequate Protection Provisions (as defined herein)), and all other claims, if any, against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 or 1114 or any other provision of the Bankruptcy Code (the “**DIP Superpriority Claim**”), which allowed claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof, which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative; provided, however, that the DIP Superpriority Claim shall not have recourse to (i) proceeds or

property recovered on account of the Debtors' or the estates' claims and causes of action against any persons or entities arising under sections 544, 545, 547, 548, and 550 of the Bankruptcy Code ("**Avoidance Actions**"); or (ii) claims or causes of action against the Prepetition Credit Parties, DIP Lenders, DIP Agent, director and officer claims, or corporate malfeasance claims or proceeds thereof (together with the Avoidance Actions, the "**Excluded Assets**"); provided, further, that the DIP Superpriority Claim shall be subject to the Carve Out.

8. Carve Out.

(a) For purposes hereof, the "**Carve Out**" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below), (ii) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below), (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, unpaid fees and expenses (the "**Allowed Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to sections 327 or 328 of the Bankruptcy Code (the "**Debtor Professionals**") and the Committee, pursuant to sections 328 or 1103 of the Bankruptcy Code and, with respect to Committee professionals (the "**Committee Professionals**") and the Debtor Professionals (together with the Committee Professionals, the "**Estate Professionals**") at any time before or on the first business day following delivery by the DIP Agent of a Carve Out Trigger Notice (as defined herein), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice, and (iv) Allowed Professional Fees of Estate Professionals, pro rata, in an aggregate amount not to exceed \$300,000 incurred after the first business day following delivery by the DIP Agent of the Carve Out Trigger Notice, 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**”). For purposes of the foregoing, “**Carve Out Trigger Notice**” shall mean a written notice delivered by e-mail (or other electronic means) by the DIP Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined herein) and acceleration of the DIP Obligations under the DIP Facility stating that the Post-Carve Out Trigger Notice Cap has been invoked. For the avoidance of doubt and notwithstanding anything to the contrary herein or in the DIP Agreement, the Carve Out shall be senior to all liens and claims securing the DIP Facility, the DIP Liens, the DIP Superpriority Claim, and the Adequate Protection Liens, and any and all other forms of adequate protection, liens, or claims securing the DIP Obligations or the Prepetition Credit Agreement Indebtedness.

(b) **Wind-down.** Notwithstanding the occurrence of an Event of Default under Section 8.01(r)(vi) arising from a sale, liquidation or other disposition of all, or substantially all, of the Collateral, the DIP Agent and DIP Lenders shall be required to fund (i) the wind-down amounts set forth in the Budget, and (ii) all accrued and unpaid expenses in the Budget as of the consummation date of such sale, liquidation or other disposition of all, or substantially all, of the Collateral.

(c) **No Direct Obligation To Pay Allowed Professional Fees; No Waiver of Right to Object to Fees.** The DIP Agent and the DIP Lenders shall not be responsible for the payment or reimbursement of any fees or disbursements of any Estate Professional incurred in connection with the Cases or any Successor Case (as defined herein) under any chapter of the Bankruptcy Code. Nothing in this Final Order or otherwise shall (a) be construed to obligate the

DIP Agent or the DIP Lenders, in any way, to pay compensation to, or to reimburse expenses of, any Estate Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement or (b) require any DIP Lender to make DIP Loans in excess of its DIP Commitment. Notwithstanding any provision in this paragraph 8 to the contrary, no portion of the Carve Out, any Cash Collateral, any DIP Collateral, any proceeds of the DIP Facility or any unencumbered assets (or the proceeds thereof) that are subject to the DIP Superpriority Claim (including any disbursements set forth in the Budget or obligations benefitting from the Carve Out) shall be utilized for the payment of professional fees and disbursements to the extent restricted under paragraph 30 hereof. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, the Committee, any other official or unofficial committee in these Cases or any Successor Case (as defined herein) or of any other person or entity, or shall affect the right of the DIP Agent or the DIP Lenders to object to the allowance and payment of any such fees and expenses.

(d) Payment of Allowed Professional Fees Prior to Carve Out Notice Trigger Date. Any payment or reimbursement made prior to the occurrence of the Carve Out Notice Trigger Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

(e) Payment of Carve Out On or After Carve Out Notice Trigger Date. Any payment or reimbursement made on or after the occurrence of the Carve Out Notice Trigger Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP

Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under this Final Order, the DIP Documents, the Bankruptcy Code, and applicable law.

9. DIP Liens. As security for the DIP Obligations, effective and perfected automatically upon the date of the Interim Order and without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the DIP Agent of any DIP Collateral (as defined herein), the following security interests and liens (all such liens and security interests granted to the DIP Agent, for its respective benefit and for the benefit of the DIP Lenders, pursuant to this Final Order and the DIP Documents, (the “**DIP Liens**”) are hereby granted to the DIP Agent, for its respective benefit and the benefit of the DIP Lenders:

(a) pursuant to section 364(d) of the Bankruptcy Code, perfected senior priming liens on all assets securing the Prepetition Credit Agreement Indebtedness, regardless of whether any lien or any security interest securing or purporting to secure the Prepetition Credit Agreement Indebtedness is valid or invalid, perfected or unperfected, or avoidable or non-avoidable, subject to all perfected non-avoidable senior pre-existing liens as of the Petition Date including with respect to the Hedron, a Vessel flagged under the laws of Vanuatu, any maritime lien for “necessaries” within the meaning of the Commercial Instruments and Maritime Liens Act, 46 U.S.C. §§ 31301 *et seq.* (the “**Maritime Lien Act**”) that have attached to such Vessel and which have not been bonded in accordance with applicable law. For clarity, whether any particular lien is a perfected non-avoidable senior pre-existing maritime lien for “necessaries” within the meaning of the Maritime Lien Act is not determined by this Final Order and the parties reserve all rights with respect thereto;

(b) pursuant to section 364(c)(2) of the Bankruptcy Code, perfected senior liens on all assets of the Debtors not subject to a valid, perfected, and non-avoidable lien in existence as of the Petition Date (or as such lien may be perfected after the Petition Date to the extent permitted by section 546 of the Bankruptcy Code); but not including the Excluded Assets; and

(c) pursuant to section 364(c)(3) of the Bankruptcy Code, perfected junior security interests on other assets of the Debtors subject to permitted liens (but excluding the Prepetition Credit Agreement Liens) on the Petition Date; and excluding the Excluded Assets (the assets referenced in clauses (a)-(c) of this paragraph 9 and paragraph 10 collectively, the “**DIP Collateral**”).

10. The DIP Collateral includes (except for the Excluded Assets) all tangible and intangible prepetition and postpetition property and interests in property of the Debtors, whether existing on or as of the Petition Date or thereafter acquired, including, without limitation: (i) all accounts, chattel paper, deposit accounts, documents, equipment, general intangibles, intellectual property, instruments, insurance, inventory, investment property, letter-of-credit rights, money and any supporting obligations related thereto; (ii) all commercial tort claims; (iii) all books and records pertaining to the DIP Collateral; (iv) all property of any Prepetition Credit Party held by the DIP Agent, the DIP Lenders or any Prepetition Secured Party, including all property of every description, in the custody of or in transit to the DIP Agent, the DIP Lenders or any Prepetition Secured Party for any purpose, including safekeeping, collection or pledge, for the account of such party or as to which such party may have any right or power, including, but not limited to cash; (v) all other goods (including, but not limited to, fixtures) and personal property, whether tangible or intangible and wherever located; (vi) all owned real property interests, and to the extent subject to a prepetition mortgage in favor of the Prepetition Agent, leased real property (including, for the

avoidance of doubt, any ground leases) and all proceeds of all other leased property; (vii) actions brought under section 549 of the Bankruptcy Code to recover any post-petition transfer of DIP Collateral; and (ix) all proceeds of the foregoing, plus all Prepetition Credit Agreement Collateral.

11. Notwithstanding anything herein to the contrary, the DIP Liens shall be subordinate to the Carve Out. Nothing in this Order shall impair, prejudice or otherwise affect any setoff and recoupment rights held by any creditor or party in interest or any defense of the Debtors or other parties in interest to any assertion of any setoff or recoupment rights, and the extent, validity and priority of any such rights and defenses shall be unaffected by this Order.

12. Remedies. (a) Upon the occurrence and during the continuation of an Event of Default, any automatic stay otherwise applicable to the DIP Agent and the DIP Lenders is hereby modified, without requiring prior notice to or authorization of this Court, to the extent necessary to permit the DIP Agent and the DIP Lenders to (i) declare all DIP Obligations to be due and payable, (ii) declare the termination, reduction, or restriction of any further commitment to extend credit to the Debtors, to the extent any such commitment remains, and/or (iii) terminate the applicable DIP Documents as to any future liability or obligation of the DIP Agent and the DIP Lenders, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations.

(b) In addition to the rights and remedies described above, upon the occurrence and during the continuation of an Event of Default, the DIP Agent may file an emergency motion for relief from the automatic stay to foreclose on, or otherwise enforce and realize on, the DIP Liens on all or any portion of the DIP Collateral, including by collecting accounts receivable and applying the proceeds thereof to the DIP Obligations, and by occupying the Debtors' premises to sell or otherwise dispose of the DIP Collateral, and in support of that motion the DIP Agent shall

be required to establish only that an Event of Default has occurred and is continuing. Any hearing on such emergency motion shall be held 2 business days after the filing thereof (or on such other date as the DIP Agent, the Debtors and the Committee may agree or the Court directs), and the rights of parties in interest to be heard in opposition to any such emergency motion are reserved.

13. Budget. For purposes of this Final Order, the term “Budget,” means the 13-week cash flow forecast attached hereto as Exhibit 2, detailing cash receipts, cash disbursements, inventory levels and accrued and unpaid professional fees on a weekly basis for such 13-week period and prepared on a consolidated basis, in each case consistent with the manner in which such information is presented in the Budget filed with the Court on the Petition Date, and in form and substance acceptable to the DIP Agent, acting at the direction of the DIP Lenders, in each case, in their sole and absolute discretion. The “Budget” shall initially refer to the Budget delivered by Borrowers on the Closing Date and thereafter shall refer to the Budget most recently delivered by Borrowers pursuant to Section 6.02(j) of the DIP Agreement. On each Friday on or before 5:00 p.m., New York City time, delivery of the following will be made to the DIP Agent, the DIP Lenders and the Committee Professionals: (a) the DIP Loan Parties’ rolling 13-week cash flow projections (together with a reporting package which shall include a weekly and cumulative budget variance (as compared to the Budget in effect on the Petition Date and the Budget in effect immediately prior to such updated projections) discussion and such other information related to any budget variances as the DIP Agent may reasonably request) (which may be updated at the reasonable request of the DIP Lenders); and (b) certification that no proceeds of the DIP Loans have been used for purposes other than as set forth in the Budget.

14. Budget Covenants.

(a) Except as otherwise provided in the DIP Agreement or approved by the DIP Agent and the Committee, the Borrowers shall not, directly or indirectly (i) use any cash or the proceeds of any DIP Loans in a manner or for a purpose other than those consistent with the DIP Agreement, this Final Order, and the Budget (and any variances permitted thereunder), (ii) permit a disbursement causing any variance other than any variances permitted thereunder without the prior written consent of the DIP Agent or (iii) make any payment (as adequate protection or otherwise), or application for authority to pay, on account of any claim or Indebtedness arising prior to the Petition Date other than payments set forth in the Budget and authorized by the Court.

(b) Prior to the occurrence of an Event of Default, Borrower shall be permitted to pay compensation and reimbursement of fees and expenses of Estate Professionals solely to the extent that such fees and expenses are in accordance with the Budget and authorized to be paid under sections 330 and 331 of the Bankruptcy Code pursuant to an order of the Court, as the same may be due and payable. Upon the occurrence of an Event of Default and delivery of a Carve Out Trigger Notice, the right of Borrowers to pay professional fees of Estate Professionals outside the Carve Out shall terminate, and Borrowers shall provide immediate notice to all Estate Professionals informing them that Borrowers' ability to pay such Estate Professionals is subject to and limited by the Carve Out.

(c) For any week, commencing with the third week following the Petition Date, (I) Adjusted Operating Cash Flow (as defined in the Budget) on a cumulative basis shall not be less than the corresponding amounts set forth in the Budget for such period(s), subject to a variance of not greater than 10% of such amount set forth in the Budget for such period(s); (II) Total Adjusted Cash Receipts (as defined in the Budget) less intercompany receipts on a cumulative

basis shall not be less than the corresponding amounts set forth in the Budget for such period(s), subject to a variance of not greater than 10%, in each case as compared to such amount set forth in the Budget for such period(s); (III) Total Adjusted Cash Disbursements (as defined in the Budget) less intercompany disbursements on a cumulative basis shall not be greater than the corresponding amounts set forth in the Budget for such period(s), subject to a variance of not greater than 10%, in each case as compared to such amount set forth in the Budget for such period(s); and (IV) for any month commencing with the month ending August 31, 2019, the fees and expenses of the Debtor Professionals and Committee Professionals, respectively, incurred during any month to be greater than the corresponding amounts for each such professional set forth in the Budget for such period(s), subject to a variance of not greater than 10% as compared to such amount for each such professional set forth in the Budget for such period(s).

15. Limitation on Charging Expenses Against DIP Collateral. No expenses of administration of the Cases or any future proceeding that may result therefrom, including a case under chapter 7 of the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of the DIP Agent, and no consent shall be implied from any action, inaction or acquiescence by the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties. In no event shall the DIP Agent, the DIP Lenders, or the Prepetition Secured Parties be subject to (a) the “equities of the case” exception contained in section 552(b) of the Bankruptcy Code or (b) the equitable doctrine of “marshaling,” or any other similar doctrine with respect to the DIP Collateral.

16. Cash Collateral. All cash and cash equivalents of the Debtors, whenever and wherever acquired, and the proceeds of all DIP Loans and DIP Collateral constitute cash collateral as defined by section 363 of the Bankruptcy Code including, without limitation, cash of Epic Companies, LLC whenever acquired (the “Cash Collateral”). Without making any determination as to the extent, validity, or priority of any liens, and subject to the terms of this Final Order and the Budget, the Debtors are hereby authorized to use all Cash Collateral in which the Prepetition Agents or any other Prepetition Secured Party has, and in which the DIP Agent and DIP Lenders have, a perfected security interest as of the Petition Date or at any time thereafter, including any cash on deposit in any deposit account or other account over which any the Prepetition Agent or DIP Agent have control.

17. Use of Cash Collateral. Cash Collateral may be used only: (a) to pay the Adequate Protection Provisions; (b) to pay the DIP Obligations, including, without limitation, to pay principal, interest, fees, costs and expenses under the DIP Facility; (c) for working capital and other general corporate purposes of the Debtors in accordance with the Budget and the DIP Documents; (d) to pay the allowed administrative costs and expenses of the Cases; (e) to pay prepetition obligations authorized pursuant to “First Day Orders;” and with respect to (c), (d), and (e) above, solely in accordance with the Budget, the DIP Documents, and this Final Order, or as otherwise ordered by the Court after notice and a hearing.

18. Prepetition Secured Parties’ Adequate Protection. The Prepetition Secured Parties are entitled, until the indefeasible repayment in full in cash of the Prepetition Credit Agreement Indebtedness, pursuant to sections 361, 363(e) and 364(d)(1) of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Credit Agreement Collateral, including Cash Collateral, for any diminution in the value of their respective interests in the Prepetition

Credit Agreement Collateral, including, without limitation, any such diminution that may be determined to result from the sale, lease or use by the Debtors of Cash Collateral and any other Prepetition Credit Agreement Collateral, the priming liens on the Prepetition Credit Agreement Collateral granted to the DIP Agent and the DIP Lenders pursuant to the DIP Documents, the Interim Order and this Final Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, and in each case to the extent required by the Bankruptcy Code and solely to the extent of any actual diminution as may be subsequently determined by the Court (each, a “Diminution Claim”). As adequate protection for and only to secure payment of an amount equal to such Diminution Claims, if any, the Prepetition Secured Parties are granted, *nunc pro tunc* to the Petition Date, the following adequate protection (collectively, the “Adequate Protection Provisions”), as applicable:

(a) Adequate Protection Liens.

(i) As adequate protection of the interests of the Prepetition Senior Agent and the Prepetition Senior Lenders in the Prepetition Senior Credit Agreement Collateral for a Diminution Claim, the Prepetition Senior Agent, for itself and for the benefit of the Prepetition Senior Lenders, is hereby granted valid and perfected security interests in and liens on the DIP Collateral (the “**Senior Adequate Protection Liens**”), subordinate only to (1) the DIP Facility, (2) the Carve Out and (3) all perfected non-avoidable senior pre-existing liens as of the Petition Date.

(ii) As adequate protection of the interests of the Prepetition Junior Agent in the Prepetition Junior Credit Agreement Collateral for a Diminution Claim, the Prepetition Junior Agent is hereby granted valid, binding, continuing, enforceable and fully perfected security interests in and liens on the DIP Collateral (the “**Junior**”).

Adequate Protection Liens”), subordinate only to (1) the DIP Facility, (2) the Carve Out, (3) all perfected non-avoidable senior pre-existing liens as of the Petition Date, (4) Senior Adequate Protection Liens and (5) the Prepetition Senior Credit Facility.

(b) **Section 507(b) Claim.**

As adequate protection for, and only to secure payment of an amount equal to, a Diminution Claim, if any, the Prepetition Senior Secured Parties are hereby granted as and to the extent provided by Bankruptcy Code Section 507(b) allowed superpriority administrative expense claims against the Debtors with priority over any and all administrative expenses, diminution claims and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code (the “**Adequate Protection Superpriority Claim**”), which allowed claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and their estates and all proceeds thereof (excluding Excluded Assets), but subject to the payment of the Carve Out, the DIP Superpriority Claim and the DIP Obligations. For the avoidance of doubt, any such Adequate Protection Superpriority Claim is subject to (i) the filing of an appropriate motion seeking allowance of a Diminution Claim, with notice to and subject to an objection from the Debtors, the Committee, and the U.S. Trustee, and (ii) entry of an order by the Court approving the claim.

(c) **Interest, Fees, and Expenses.** Without further application to this Court, the Debtors are authorized to pay forthwith in cash (i) all accrued and unpaid interest through

the Petition Date owed under the Prepetition Senior Credit Agreement (including, without limitation, payment of all outstanding default interest); and (ii) cash payments in an amount equal to the regularly scheduled interest at the default interest rate payable under the Prepetition Senior Credit Agreement, on the date and in the manner provided in the Prepetition Senior Credit Agreement.

(d) Payment of Prepetition Senior Secured Parties' Professional Fees and Expenses. The Debtors shall pay the Prepetition Senior Secured Parties' reasonable professional fees and expenses, whether incurred before or after the Petition Date, within ten (10) business' days (if no written objection is received within such ten (10) business day period) after such professional has delivered an invoice substantially in the form provided to the Debtors to date describing such fees and expenses; *provided, however*, that any such invoice may be redacted to protect privileged, confidential or proprietary information, with a copy of such invoice to the DIP Agent, the U.S. Trustee, and the Committee. Written objections to payment of such fees and expenses, which may only be asserted by the Debtors, the DIP Agent, the U.S. Trustee and the Committee, must contain a specific basis for the objection and quantification of the undisputed amount of the fees and expenses invoiced; failure to object with specificity or to quantify the undisputed amount of the invoice subject to such objection will constitute a waiver of any objection to such invoice. None of the fees and expenses shall be subject to Court approval or required to be maintained in accordance with the U.S. Trustee Guidelines and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Court; *provided, however*, if an objection to a professional's invoice is timely received, the Debtors shall only be required to pay the undisputed amount of the

invoice and the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute.

(e) Adequate Protection Payments. Prior to the Petition Date, the Prepetition Senior Agent received proceeds in the amount of \$649,634.38 (the “**Designated Cash Collateral**”) from the exercise of secured creditor remedies with respect to Epic’s deposit accounts in accordance with the terms of the control agreements which were executed with respect to such deposit accounts, and which had not been applied by the Prepetition Senior Agent to satisfy the Prepetition Senior Credit Agreement Indebtedness as of the Petition Date. As additional adequate protection, the Prepetition Senior Agent shall be authorized and entitled to use and/or apply the Designated Cash Collateral to satisfy (i) prepetition accrued and unpaid fees and disbursements of the Prepetition Senior Secured Parties, including professional fees and expenses incurred by the Prepetition Senior Secured Parties, and/or (ii) other Prepetition Senior Credit Agreement Indebtedness; provided, that this paragraph 18(e) shall be subject to the Challenge Deadline (as defined below in paragraph 29).

19. Credit Bid. The DIP Agent and the Prepetition Secured Parties, respectively, shall have the right to credit bid under section 363(k) of the Bankruptcy Code some or all of their respective claims for their respective collateral (subject to the provisions of paragraph 29) in connection with a sale of the Debtors’ assets under section 363 of the Bankruptcy Code or under a chapter 11 plan or otherwise, unless the Court orders otherwise. In all such instances, each of the DIP Agent and Prepetition Secured Parties, respectively, shall be considered a “Qualified Bidder” with respect to its right to acquire all or any of the assets by credit bid. For the avoidance of doubt, any credit bid by the DIP Agent and/or the Prepetition Secured Parties shall first credit

bid the DIP Obligations up to the value of such credit bid or if the credit bid exceeds such DIP Obligations until all DIP Obligations have been applied in connection with such credit bid. For the further avoidance of doubt, to the extent any purchaser pays cash for DIP Collateral in connection with consummating a Court approved sale, such cash shall be applied first to DIP Obligations until all such obligations have been paid in full, in cash.

20. Pleadings to be Filed in Cases. Promptly, and at least one (1) business day prior to filing, the Debtors shall provide to the DIP Agent and the Prepetition Secured Parties copies of all drafts of material pleadings (including, without limitation, any proposed orders, motions, applications, and exhibits) to be filed or entered in the Cases and/or any related proceedings, except pleadings seeking emergency relief, which pleadings shall be in form and substance acceptable to the DIP Agent and Prepetition Secured Parties; *provided that* nothing in this paragraph 20 shall prevent the Debtors from filing any pleading in an exercise of their fiduciary duties.

21. Reservation of Rights of Prepetition Secured Parties. Notwithstanding any other provision hereof, the grant of adequate protection to the Prepetition Secured Parties pursuant hereto is without prejudice to the right of any of the Prepetition Secured Parties to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection.

22. Perfection of DIP Liens and Adequate Protection Liens. The DIP Agent, the DIP Lenders, and the Prepetition Agent are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, take possession or control over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agent, the DIP Lenders, or the Prepetition Agent choose to file such financing statements,

intellectual property filings, mortgages, notices of lien or similar instruments, take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination immediately upon entry of the Interim Order, but subject in all respects to the provisions of this Final Order.

23. Optional Recordation. A certified copy of the Interim Order and/or this Final Order may, in the discretion of the DIP Agent or the Prepetition Agent be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of the Interim Order and/or this Final Order for filing and recording.

24. Delivery of Instruments and Documents. The Debtors shall execute and deliver to the DIP Agent or the Prepetition Agent, as the case may be, all such agreements, financing statements, instruments and other documents as the DIP Agent or the Prepetition Agent may reasonably request to evidence, confirm, validate or perfect the DIP Liens or the Adequate Protection Liens.

25. Preservation of Rights Granted Under the Final Order. Except with respect to the Carve Out, any replacement financing that indefeasibly repays in full in cash the DIP Obligations and a Diminution Claim prior to or simultaneously with the allowance of any claims or expenses in connection with such financing, or as expressly provided herein or in the DIP Agreement, no claim or lien having a priority senior to or *pari passu* with those granted by the Interim Order or this Final Order shall be granted or allowed on any DIP Collateral while any portion of the DIP Obligations or any allowed Diminution Claim, as the case may be, remains outstanding, and the DIP Liens and the Adequate Protection Liens shall not be subject to or junior to any lien or security

interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or subordinate to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise, in each case, whether in these Cases or any Successor Case (as defined herein), without the express written consent of the DIP Agent given in accordance with the DIP Documents (which consent may be withheld in each DIP Agent's sole discretion).

26. Certain Limits on Rights of Debtors. Unless all DIP Obligations that are not otherwise credit bid and any allowed Diminution Claim shall have been indefeasibly paid in full in cash, the Debtors shall not seek, and it shall constitute an Event of Default under the DIP Agreement and a Cash Collateral Termination Event hereunder if any of the Debtors seek, or if there is entered (a) any stay, vacatur, rescission, or modification of this Final Order without the prior written consent of the DIP Agent and the Prepetition Secured Parties that is not reversed or vacated within five (5) days, and no such consent shall be implied by any action, inaction or acquiescence by the DIP Agent or the Prepetition Secured Parties; or (b) an order converting the Cases to cases under chapter 7 of the Bankruptcy Code or dismissing any of the Cases that is not reversed or vacated within five (5) days. If an order dismissing any of the Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that (x) the DIP Superpriority Claim and other administrative claims granted under this Final Order, the DIP Liens and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations and any allowed Diminution Claim shall have been paid and satisfied in full (and that such DIP Superpriority Claim, the other administrative claims granted under this Final Order, the DIP Liens and the Adequate Protection Liens shall,

notwithstanding such dismissal, remain binding on all parties in interest) and (y) this Court shall retain jurisdiction notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

27. Effect of Reversal, Etc. If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, (i) that action shall not affect the validity and/or enforceability of any DIP Obligations, the Adequate Protection Provisions, DIP Liens, or Adequate Protection Liens, and (ii) the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges, benefits and protections granted herein, including those afforded pursuant to section 364(e) of the Bankruptcy Code.

28. Survival of Rights. Except as expressly provided in this Final Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Provisions, and all other rights and remedies of the DIP Agent, the DIP Lenders or the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents and any actions taken pursuant hereto shall survive, and shall not be modified, impaired, or discharged by (a) the entry of an order converting any of the Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Cases, or by any other act or omission, (b) the entry of an order confirming a plan of reorganization in any of the Cases or (c) consummation of any chapter 11 plan(s). The terms and provisions of the Interim Order or this Final Order and the DIP Documents shall continue in the Cases, in any successor cases if the Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code (each, a “Successor Case”), and the DIP Liens, the Adequate Protection Liens, the DIP Obligations, the DIP Superpriority Claim, and all other administrative claims granted pursuant to the Interim Order or this Final Order and all other rights and remedies of the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties granted

by the provisions of the Interim Order, this Final Order and the DIP Documents shall continue in full force and effect until all DIP Obligations, any allowed Diminution Claim, and all allowed claims payable in cash arising from the Adequate Protection Provisions are indefeasibly paid in full in cash.

29. Effect of Stipulations on Third Parties. (a) The stipulations and admissions contained in paragraph D of this Final Order shall be binding on the Debtors and all parties in interest, including, without limitation, the Committee, unless, and solely to the extent that an adversary proceeding or other contested matter (including a motion seeking authority to bring claims on behalf of the estates) (any such adversary or contested matter, a “**Challenge**”) has been filed by the Committee or other party in interest (other than the Debtors), against the Prepetition Secured Parties in connection with any matter related to the Prepetition Credit Agreement, no later than November 8, 2019 (the “**Challenge Deadline**”). All parties agree that the plaintiff/movant may seek to have a Challenge based on a contested matter heard on an emergency basis. Any hearing on such emergency motion shall be held two (2) business days after the filing thereof (or on such other date as the DIP Agent, the Debtors and the Committee may agree or the Court directs), and the rights of parties in interest to be heard in opposition to any such emergency motion are reserved. The Challenge Deadline may be extended in writing from time to time in the sole discretion of the Prepetition Agent or by this Court for good cause shown pursuant to an application filed by a party in interest prior to the expiration of the Challenge Deadline. If no such adversary proceeding or contested matter is timely and properly filed by the Challenge Deadline or the Court does not rule in favor of the plaintiff/movant in any such proceeding (which ruling on standing, if appealed, shall not stay or delay the Cases or confirmation of a chapter 11 plan), then the (a) stipulations, admissions and releases contained in paragraph D of this Final Order shall become

binding on all parties in interest, including, for the avoidance of doubt, the Committee; (b) Prepetition Credit Agreement Indebtedness shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance, for all purposes in the Cases and any subsequent chapter 7 case; (c) Prepetition Credit Agreement Liens on the Prepetition Credit Agreement Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraph D, not subject to defense, counterclaim, recharacterization, subordination or avoidance; and (d) Prepetition Credit Agreement Indebtedness and the Prepetition Credit Agreement Liens shall not be subject to any other or further challenge by the Debtors, the Committee, or any other party in interest, each of whom shall be enjoined from seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any estate representative or a chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors with respect thereto). If any such adversary proceeding or contested matter is timely and properly filed, the stipulations, admissions and releases contained in paragraph D of this Final Order shall nonetheless remain binding and preclusive on the Debtors, the Committee, and any other person or entity, except as to any such stipulations and admissions that were expressly and successfully challenged in such timely and properly filed adversary proceeding or contested matter. Nothing in the Interim Order or this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, claims and defenses with respect to the Prepetition Credit Agreement Indebtedness or the Prepetition Credit Agreement Liens. In consideration of the Challenge Deadline granted herein, the Prepetition Secured Parties and the Prepetition Agents

(as applicable) shall cooperate with the Committee in providing documents and information reasonably requested to evaluate claims and defenses subject to this Paragraph 29.

(b) Notwithstanding Paragraph 29(a) or any other provision of this Final Order, pursuant to section 510 of the Bankruptcy Code, the Prepetition Intercreditor Agreement and any other applicable intercreditor or subordination provisions contained in any of the Prepetition Credit Documents, shall, as between the Prepetition Senior Secured Parties and the Prepetition Junior Secured Parties (i) remain in full force and effect, (ii) continue to govern the relative priorities, rights, and remedies of the Prepetition Secured Parties (including the relative priorities, rights and remedies of such parties with respect to the replacement liens, administrative expense claims and superpriority administrative expense claims granted, or amounts payable, by the Debtors under this Final Order or otherwise and the modification of the automatic stay), and (iii) not be deemed to be amended, altered, or modified by the terms of this Final Order or the DIP Documents, unless expressly set forth herein or therein.

30. Limitation on Use of DIP Facility Proceeds, DIP Collateral, and Cash Collateral. Notwithstanding anything herein or in any other order by this Court to the contrary, without the prior written consent of the DIP Agent or the Prepetition Agent, none of the DIP Obligations, the Cash Collateral, DIP Collateral, or the Carve Out may be used for the following purposes: (a) to object to or contest the validity or enforceability of the Interim Order or this Final Order or any obligations outstanding under the DIP Documents or the Prepetition Credit Agreement; *provided, however,* that the Committee, if any, may expend up to \$125,000 (the “Investigation Budget”) for the fees and expenses incurred in connection with the investigation of, but not litigation, objection or any challenge to, the stipulations and admissions contained in paragraph D; (b) to assert or prosecute any claim or cause of action against the DIP Agent, any DIP Lender, or any Prepetition

Secured Party; (c) to seek to modify any of the rights granted under the Interim Order or this Final Order to the DIP Agent, any DIP Lender or any Prepetition Secured Party; (d) to make any payment in settlement or satisfaction of any prepetition or administrative claim, unless in compliance with the covenants related to the Budget (as set forth herein or in the DIP Agreement) and, with respect to the payment of any prepetition claim or non-ordinary course administrative claim, separately approved by this Court; (e) to object to, contest, delay, prevent or interfere in any way with the exercise of rights and remedies by the DIP Agent or the DIP Lenders under the DIP Documents or with respect to the DIP Collateral once an Event of Default has occurred and any applicable notice period has expired (except that, prior to the expiration of such notice period, the rights of the Debtors and other parties in interest with respect to any such exercise of remedies are preserved); and (f) except as expressly provided or permitted under the DIP Agreement and the Budget, to make any payment or distribution to any non-Debtor affiliate, equity holder, or insider of any Debtor outside of the ordinary course of business.

31. Events of Default. Except as otherwise provided in this Final Order, unless waived by the DIP Agent in writing and in accordance with the terms of the DIP Agreement, each of the following shall constitute an event of default (collectively, “Events of Default”) (a) failure of the Debtors to perform or comply with any of the terms, provision, conditions, covenants, or obligations under this Final Order or (b) the occurrence of an Event of Default as defined in the DIP Agreement; *provided that* sections 8.01(s)(v), (viii), (ix) and (x) of the DIP Agreement are hereby modified as follows:

(v) on or before October 4, 2019, the Final Order shall have been entered by the Bankruptcy Court and shall apply to all of the Loan Parties (including Epic);

(viii) on or before October 4, 2019, the Loan Parties shall have obtained an order of the Bankruptcy Court, in form and substance satisfactory to the Administrative Agent and Required

Lenders, approving bid protections, sale procedures and auction procedures in connection with the 363 Sale and of the bid of the Stalking Horse Bidder;

(ix) on or before November 18, 2019, the Loan Parties shall have obtained an order of the Bankruptcy Court, in form and substance satisfactory to the Administrative Agent, granting the Sale Motion in form and substance satisfactory to the Administrative Agent and Required Lenders; and

(x) on or before December 2, 2019, the Loan Parties shall have consummated the 363 Sale.

The definition of “Maturity Date” in the DIP Agreement is also hereby modified to mean “the earlier of (i) the date of the consummation of the 363 Sale and (ii) December 2, 2019.”

32. Termination of Cash Collateral Use. In the absence of a further order of this Court, and notwithstanding anything herein or in the DIP Documents to the contrary, and after delivery (including delivery by electronic mail or facsimile) of notice of the occurrence of a Cash Collateral Termination Event by the DIP Agent, as applicable, to the Debtors, the Committee, and the U.S. Trustee, the Debtors shall no longer be authorized pursuant to this Final Order to use Cash Collateral other than with respect to the Carve Out and such Cash Collateral use shall automatically terminate the date upon which any of the following events occurs (such date being referred to herein as the “**Cash Collateral Termination Date**,” and each of the following events, a “**Cash Collateral Termination Event**”):

- (a) the appointment of a trustee or the appointment of an examiner with enlarged powers in any of the Cases unless such appointment is approved by the Prepetition Agent;
- (b) the delivery of a valid Carve Out Trigger Notice;
- (c) the Debtors’ breach of any material affirmative or negative covenant contained in the DIP Agreement (subject to any applicable grace period therein);

(d) the Debtors' failure to comply with any of the terms or provisions of this Final Order in any material respect, unless waived or otherwise modified with the prior written consent of the DIP Agent or the Prepetition Agent, as applicable;

(e) entry of an order by this Court or any other Court having jurisdiction over these Cases granting other superpriority liens with priority over or *pari passu* with the DIP Liens;

(f) the filing by the Debtors of a motion to approve postpetition financing without the prior written consent of the DIP Agent;

(g) the filing by the Debtors of a motion to approve any material sale of assets of the Debtors under section 363 of the Bankruptcy Code, pursuant to a chapter 11 plan, or otherwise, in each case without the prior written consent of the DIP Agent; provided, that nothing in this paragraph 32(g) shall (i) prevent the Debtors from filing any pleading in an exercise of their fiduciary duties, and (ii) prevent the DIP Agent from asserting that such filing constitutes a Cash Collateral Termination Event;

(h) entry of an order granting relief from the automatic stay to the holder or holders of security interests to permit foreclosures (or granting similar relief) on any property of the Debtors having a value in excess of \$250,000 except as permitted by the DIP Agreement;

(i) after entry of this Final Order, the filing of a motion by any Debtor (or any party in interest) that is not dismissed or denied within thirty (30) days after the date of filing such motion seeking, or the entry of any order permitting, recovery from any portion of the Prepetition Credit Agreement Collateral (or from any Prepetition Secured Party directly) any costs or expenses of preserving or disposing of the Prepetition Credit Agreement Collateral under section 506(c) or section 552(b) of the Bankruptcy Code (or otherwise);

(j) the termination of the commitments under the DIP Documents or acceleration of the DIP Obligations; or

(k) any of the liens securing the Prepetition Credit Agreement Indebtedness or the Adequate Protection Liens granted to the Prepetition Secured Parties shall cease to be valid, binding, and perfected liens with the priority and to the extent provided in this Final Order.

33. Rights of Prepetition Agent. Notwithstanding the occurrence of the Cash Collateral Termination Date, all of the rights, remedies, benefits and protections provided to the Prepetition Agent under this Final Order as of such Cash Collateral Termination Date shall survive the Cash Collateral Termination Date.

34. Access to the Debtors. In accordance with the terms of the DIP Documents and the Prepetition Credit Agreement, the DIP Agent and the Prepetition Agent, respectively, and their respective professionals shall be afforded continued reporting as to DIP Collateral amounts and reasonable access to the DIP Collateral and the Debtors' business premises, during normal business hours and upon reasonable advance notice, for purposes of verifying the Debtors' compliance with the terms of this Final Order.

35. Modifications of DIP Documents. The Debtors, the DIP Agent, and the DIP Lenders are hereby authorized to implement, in accordance with the terms of the respective DIP Documents, any non-material modifications of the respective DIP Documents without further order of this Court; *provided, however*, that notice of any material modification or amendment to the respective DIP Documents shall be provided to counsel to the Committee, the Prepetition Agent, and the U.S. Trustee, each of whom shall have five (5) business days from the date of such notice within which to object in writing to such modification or amendment. If the Committee, the Prepetition Agent, or the U.S. Trustee timely objects to any material modification or

amendment to the DIP Documents, such modification or amendment shall only be permitted pursuant to an order of this Court.

36. Continuing Effect of Control Agreements. All of the rights and benefits afforded to the Prepetition Senior Agent pursuant to Section 6.12 of the Prepetition Senior Credit Agreement shall be deemed transferred to the DIP Agent upon entry of the Interim Order including with respect to receiving all cash receipts and collections in certain existing deposit accounts set forth on Exhibit 3 attached hereto. All of the agreements set forth on Exhibit 3 shall be enforceable by and against the DIP Agent and by and against the parties to such agreements (other than the Prepetition Senior Agent). The Debtors have provided notice of the DIP Motion, the Interim Hearing and the Final Hearing to each of the parties to the agreements set forth on Exhibit 3.

37. Binding Effect; Successors and Assigns. The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these Cases, including, without limitation, the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, the Committee and any other committee appointed in these Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors; provided, however, for the avoidance of doubt, that the Debtors' acknowledgements, stipulations, and releases set forth in paragraph D, are subject to paragraph 29 hereof) and shall inure to the benefit of the DIP Agent, the DIP Lenders, the Prepetition Secured Parties, and the Debtors and their respective successors and assigns; *provided, however*, that the DIP Agent and the DIP Lenders shall have no obligation to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan under the DIP Agreement or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Documents, the DIP Agent

and the DIP Lenders shall not be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended, or any similar federal or state statute); provided, however, nothing within this paragraph 37 shall prejudice or impair any rights or claims subject to the Challenge Deadline.

38. Master Proof of Claim. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Cases or any Successor Case to the contrary, none of the Prepetition Secured Parties will be required to file (i) proofs of claim for claims arising under the Prepetition Credit Documents or (ii) requests for payment of administrative expenses in any of the Cases or any Successor Case with respect to any Adequate Protection Obligations or Adequate Protection Payments, other than with respect to any Diminution Claim, and the Debtors’ stipulations, admissions, and acknowledgements and the provisions of this Final Order shall be deemed to constitute a timely filed proof of claim for the Prepetition Secured Parties with regard to all claims arising under the Prepetition Credit Documents. Notwithstanding the foregoing, the Prepetition Agent, for the benefit of itself and its respective Prepetition Secured Parties, is authorized and entitled, in its sole discretion, but is not required, to file (and amend and/or supplement, as it sees fit), for any claim or administrative expense claim described herein (i) a master proof of claim, (ii) proofs of claim and/or (iii) requests for payment of administrative expenses, in each of the Cases or any Successor Case. The failure to file any such proof of claim or request for payment of an administrative expense shall not affect the validity or enforceability of any of the Prepetition Credit Agreement Indebtedness or this Final Order. The DIP Agent and the DIP Lenders shall similarly not be required to file proofs of claim to maintain their respective

claims for payment of the DIP Obligations, and the evidence presented with the DIP Motion and the record established at the Interim Hearing and the Final Hearing are deemed sufficient to, and do, constitute proofs of claim with respect to such obligations and secured status.

39. Effectiveness. This Final Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof, and there shall be no stay of execution of effectiveness of this Final Order.

40. Retention of Jurisdiction. This Court has and will retain jurisdiction to enforce this Final Order.

Dated: _____, 2019

THE HONORABLE DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

DIP Agreement

**SENIOR SECURED SUPER-PRIORITY PRIMING
DEBTOR-IN-POSSESSION
LOAN AND SECURITY AGREEMENT**

dated as of August 28, 2019

among

**EPIC COMPANIES, LLC, EPIC DIVING & MARINE SERVICES, LLC, and EPIC APPLIED
TECHNOLOGIES, LLC**

AND SUCH ADDITIONAL BORROWERS FROM TIME TO TIME PARTY HERETO

as Borrowers,

**EPIC SPECIALTY SERVICES, LLC, EPIC SAN FRANCISCO SHIPYARD, LLC, ZUMA ROCK
ENERGY SERVICES, LLC and EPIC ALABAMA STEEL, LLC**

AND SUCH ADDITIONAL PARTIES
FROM TIME TO TIME PARTY HERETO

as Guarantors,

THE SEVERAL ENTITIES FROM TIME TO TIME PARTY HERETO

as Lenders,

and

WHITE OAK GLOBAL ADVISORS, LLC,

as Administrative Agent

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**SENIOR SECURED SUPER-PRIORITY PRIMING DEBTOR-IN-POSSESSION
LOAN AND SECURITY AGREEMENT**

This **SENIOR SECURED SUPER-PRIORITY PRIMING DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT**, dated as of August 28, 2019, is entered into among **EPIC COMPANIES, LLC**, a Delaware limited liability company ("**Epic**"), **EPIC DIVING & MARINE SERVICES, LLC**, a Delaware limited liability company ("**Epic Diving**"), **EPIC APPLIED TECHNOLOGIES, LLC**, a Delaware limited liability company ("**Epic Applied**"); together with Epic, Epic Diving, and any other Persons that become a "Borrower" hereunder, each a "**Borrower**", and collectively, jointly and severally, the "**Borrowers**"), **EPIC SPECIALTY SERVICES, LLC**, a Delaware limited liability company ("**Epic Specialty**"), **EPIC SAN FRANCISCO SHIPYARD, LLC**, a Virginia limited liability company ("**Epic SF**"), **ZUMA ROCK ENERGY SERVICES, LLC**, a Texas limited liability company ("**Zuma Rock**") and **EPIC ALABAMA STEEL, LLC**, a Delaware limited liability company ("**Epic Alabama Steel**", together with Epic Specialty, Epic SF, Zuma Rock and any other Persons that become a "Guarantor" hereunder, each a "**Guarantor**", and collectively, jointly and severally, the "**Guarantors**"), the several entities from time to time party hereto as Lenders, and White Oak Global Advisors, LLC, a Delaware limited liability company ("**White Oak**"), as administrative agent for the Lending Parties (as defined herein) under each of the Loan Documents (as defined herein) (White Oak, or any successor appointed in accordance with **Section 9.06** hereof in such capacity, the "**Administrative Agent**").

RECITALS

WHEREAS the Borrowers, the Guarantors, certain of Epic's other Affiliates, the Administrative Agent and Lenders, *inter alios*, have previously entered into that certain Amended and Restated Loan and Security Agreement dated as of July 22, 2019 (as amended from time to time and currently in effect immediately prior to the effectiveness of this Agreement, the "**Pre-Petition Loan Agreement**").

WHEREAS on August 2, 2019, an involuntary petition was filed against Epic in the United States Bankruptcy Court for the Eastern District of Louisiana under chapter 7 of the Bankruptcy Code, and assigned case number 19-12086 (the "**Involuntary Case**").

WHEREAS on August 26, 2019 (the "**Petition Date**"), Epic, Epic Diving, Epic Applied, Epic Specialty, Epic SF, Zuma Rock and Epic Alabama Steel (collectively, the "**Debtors**") each filed a voluntary petition commencing a Case (collectively, the "**Cases**") under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Court**"). The Debtors are continuing in the possession of their assets and continuing to operate their respective businesses and manage their respective properties as debtors and debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

WHEREAS, the Debtors have requested that the Lenders make available to Borrowers, from and after the Interim Order Date (as defined herein), a senior secured super-priority priming debtor-in-possession term loan facility.

WHEREAS, to provide security for the repayment of all obligations of the Loan Parties hereunder and under the other Loan Documents, and in addition to all other property of any Loan Party that is subject to the Liens granted on the "Collateral" (as defined in each of the Pre-Petition Loan Agreement) in favor of Administrative Agent securing the Existing Liabilities (as defined herein) (such Liens, the "**Existing Liens**"), each of the Debtors will provide to the Administrative Agent (for the benefit of the Lending Parties) the DIP Liens (as defined in the Orders).

NOW THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

AGREEMENT

ARTICLE I. CERTAIN DEFINED TERMS; CERTAIN RULES OF CONSTRUCTION

Section 1.01. CERTAIN DEFINED TERMS.

As used herein:

“**363 Sale**” means the sale of substantially all of the assets of the Debtors to the Stalking Horse Bidder, or such other purchaser as the Bankruptcy Court may approve pursuant to the Sale Motion, pursuant to, inter alia, Section 363 of the Bankruptcy Code.

“**Account Debtor**” means any Person who is or may become obligated with respect to, or on account of, an Account, Chattel Paper or General Intangible (including a payment intangible (as that term is defined in the Uniform Commercial Code)).

“**Account(s)**” means, as to any Person, all accounts (as that term is defined in the Uniform Commercial Code) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), including: (a) all “accounts” (as that term is defined in the Uniform Commercial Code), “payment intangibles” (as that term is defined in the Uniform Commercial Code), other receivables, book debts, all other rights to payment and/or reimbursement of every kind and description, including under governmental entitlement programs, and all other forms of obligations (other than forms of obligations evidenced by Chattel Paper or Instruments) (including any such obligations that may be characterized as an account or contract right under the Uniform Commercial Code); (b) all of such Person’s rights in, to and under all purchase orders or receipts for goods or services; (c) all of such Person’s rights to any goods represented by any of the foregoing (including unpaid sellers’ rights or rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods); (d) all rights to payment due to such Person for goods or other property sold, leased, licensed, assigned or otherwise disposed of, for a policy of insurance issued or to be issued, for a secondary obligation incurred or to be incurred, for energy provided or to be provided, for the use or hire of a vessel under a charter or other contract, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by such Person or in connection with any other transaction (whether or not yet earned by performance on the part of such Person); and (e) all collateral security of any kind given by any Account Debtor or any other Person with respect to any of the foregoing.

“**Acqua Liana**” means Acqua Liana Capital Partners, LLC.

“**Adequate Protection Lien**” has the meaning specified in the Orders.

“**Adjusted Operating Cash Flow**” means, for any period, the Total Adjusted Cash Receipts less Total Adjusted Cash Disbursements, in each case, for such period.

“**Administrative Agent**” means, at any time, administrative agent for the Lending Parties under each of the Loan Documents (which, initially, shall be White Oak and, thereafter, shall include any successor appointed in accordance with **Section 9.01**).

“**Administrative Agent’s Office**” means Administrative Agent’s address and, as appropriate, account as set forth on **Schedule 10.02**, or such other address or account as Administrative Agent may from time to time notify Administrative Loan Party and each other Lending Party.

“**Administrative Detail Form**” means an administrative detail form in a form supplied by, or otherwise acceptable to, Administrative Agent.

“**Administrative Loan Party**” has the meaning ascribed thereto in **Section 2.14**.

“**Affiliate**” means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“**Agreement**” means this Senior Secured Super-Priority Priming Debtor-In Possession Loan and Security Agreement as amended, restated, modified or supplemented from time to time.

“**Allowed Professional Fees**” means all unpaid fees and expenses, to the extent allowed at any time by the Bankruptcy Court, whether by interim Court Order, procedural Court Order or otherwise, incurred by the Debtor Professionals and the Committee Professionals.

“**AMC**” means Ana M. Clarke, an individual.

“**Anti-Terrorism Law**” means, collectively: (a) the Patriot Act; (b) the Executive Order; (c) the Trading With the Enemy Act (50 U.S.C. § 1 *et seq.*); and (d) any similar Law enacted in the United States following the date of this Agreement.

“**Approved Bank**” has the meaning ascribed thereto in the definition of “**Cash Equivalents**” contained herein.

“**Approved Fund**” means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities, which Person is administered or managed by (a) a Lending Party, (b) an Affiliate of a Lending Party or (c) an entity or an Affiliate of an entity that administers or manages a Lending Party; *provided* that an “**Approved Fund**” shall not include any Loan Party or any of their Affiliates.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lending Party and an Eligible Assignee (with the consent of any party whose consent is required by **Section 10.06(b)**), and accepted by Administrative Agent, substantially in the form attached hereto as **Exhibit A**, or in such other form as agreed to by Administrative Agent, in its sole discretion.

“**Attributable Debt**” means, on any date of determination: (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP; and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

“**Avoidance Action**” means any causes of action under chapter 5 of the Bankruptcy Code.

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

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

“**Bankruptcy Code**” means the federal Bankruptcy Reform Act of 1978 (11 U.S.C. Sections 101 *et seq.*).

“**Bankruptcy Court**” has the meaning set forth in the recitals thereto.

“**Bankruptcy Laws**” means, collectively: (a) the Bankruptcy Code; and (b) all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor-relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

“Books and Records” means, as to any Person, all of such Person’s books and records including ledgers, Tax Returns, records regarding such Person’s assets or liabilities, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

“Borrower” or **“Borrowers”** has the meaning ascribed thereto in the preamble hereof and shall include, jointly and severally, any additional borrower that joins this Agreement and the other Loan Documents as a “Borrower” following the date hereof. Borrower is defined collectively to include all Persons constituting Borrower; provided, however, that any references herein to “any Borrower”, “each Borrower”, “a Borrower” or similar references, shall be construed as a reference to each individual Person comprising Borrower. In addition, each Person comprising Borrower hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon each Person comprising Borrower.

“Budget” means a 13-week cash flow forecast detailing cash receipts, cash disbursements, inventory levels and accrued and paid professional fees on a weekly basis for such 13-week period and prepared on a consolidated basis, in each case consistent with the manner in which such information is presented in the Budget filed with the Bankruptcy Court on the Petition Date, and in form and substance acceptable to the Administrative Agent and the Required Lenders in their sole and absolute discretion. The “Budget” shall initially refer to the Budget delivered by Borrowers on the Effective Date and thereafter shall refer to the Budget most recently delivered by Borrowers pursuant to **Section 6.02(j)**.

“Business Day” means any day other than (i) a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, San Francisco, California or the city and state where Administrative Agent’s Office is located, (ii) any day that any of the Federal Reserve Bank of New York or the New York Stock Exchange is closed and (iii) any other day included in the recommended holiday schedule of the Loan Syndications and Trading Association for calculating delayed compensation.

“Capital Expenditures” means, with respect to any Person, all expenditures (whether paid in cash or other consideration or accrued as a liability and including that portion of capital leases that is capitalized on the balance sheet of such Person including in connection with a sale-leaseback transaction) by such Person for the acquisition or leasing of fixed or capital assets or additions to equipment (including replacements, capitalized repairs and improvements during such period) that are required to be capitalized under GAAP on a balance sheet of such Person. For purposes of this definition: (a) the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment owned by such Person thereof or with insurance proceeds shall be included in Capital Expenditures only to the extent of the gross amount of such purchase price *minus* the credit granted by the seller of such equipment for such equipment being traded in at such time, or the amount of such proceeds, as the case may be; and (b) an acquisition to the extent made with the proceeds of a Disposition in accordance with **Section 7.05(c)** shall not constitute a **“Capital Expenditure.”**

“Carve-Out” means the sum of: (a) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in clause (iii) below); (b) all reasonable fees and expenses up to \$50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in clause (c) below); (c) to the extent allowed at any time, whether by interim Court Order, procedural Court Order, or otherwise, all unpaid fees and expenses incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code and the Committee pursuant to section 328 or 1103 of the Bankruptcy Code at any time before and on the first business day following delivery by the Administrative Agent of a Carve-Out Trigger Notice, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice; and (d) Allowed Professional Fees of Professional Persons up to the amount of the Post-Carve-Out Trigger Notice Cap incurred after the first Business Day following delivery by the Administrative Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim Court Order, procedural Court Order, or otherwise.

“Carve-Out Trigger Notice” means a written notice delivered by the Administrative Agent to the Debtors and their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, which notice may be delivered following the occurrence and during the continuance of an Event of Default and acceleration of the Obligations

under this Agreement stating that the Post-Carve-Out Trigger Notice Cap (as defined in the Orders) has been invoked.

“**Case Professionals**” has the meaning specified therefor for the term “Professional Person” in the Orders.

“**Cases**” has the meaning set forth in the recitals hereto.

“**Cash Equivalents**” means, as to any Person: (a) securities issued or directly and fully and unconditionally guaranteed or insured by the United States or any agency or instrumentality thereof (but only so long as the full faith and credit of the United States is pledged in support thereof) having maturities of not more than twelve months from the date of acquisition; (b) securities issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than ninety (90) days from the date of acquisition and having one of the two highest ratings from either S&P or Moody’s; (c) certificates of deposit, denominated solely in Dollars, maturing within two years after the date of acquisition, issued by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia or that is a U.S. Subsidiary of a foreign commercial bank; in each of the foregoing cases, solely to the extent that: (i) such commercial bank’s short-term commercial paper is rated at least A-1 or the equivalent by S&P or at least P-1 or the equivalent thereof by Moody’s (any such commercial bank, an “**Approved Bank**”); or (ii) the par amount of all certificates of deposit acquired from such commercial bank are fully insured by the Federal Deposit Insurance Corporation; or (d) commercial paper issued by any Approved Bank (or by the parent company thereof), in each case maturing not more than two hundred seventy (270) days after the date of acquisition.

“**Change in Law**” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any Law; (b) any change in any Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; *provided that*, notwithstanding anything to the contrary contained herein: (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 promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “**Change in Law**” regardless of the date enacted, adopted or issued.

“**Change of Control**” means (a) (x) prior to a Warrant Exercise Event, the failure of each Parent to own directly or indirectly, beneficially and of record, fifty percent (50.00%) each of the aggregate ordinary voting power and economic interests represented by the issued and outstanding Equity Interests of Epic, and (y) from and after a Warrant Exercise Event, the failure of each Parent to own directly or indirectly, beneficially and of record, (1) if the Warrant Percentage (as defined in the Epic Warrant Agreement) is 25%, thirty seven and one half percent (37.5%) each and (2) if the Warrant Percentage (as defined in the Epic Warrant Agreement) is 35%, thirty two and one half percent (32.5%) each, in each case, of the aggregate ordinary voting power and economic interests represented by the issued and outstanding Equity Interests in Epic, (b) [reserved]; (c) the failure of Clarke, together with AMC, to own directly or indirectly, beneficially and of record, one hundred percent (100.00%) of the aggregate ordinary voting power and economic interests represented by the issued and outstanding Equity Interests of Orinoco; (d) the failure of Wiley to own directly or indirectly, beneficially and of record, one hundred percent (100.00%) of the aggregate ordinary voting power and economic interests represented by the issued and outstanding Equity Interests of Oakridge Energy; and (e) the failure of Epic to own directly or indirectly, beneficially and of record, one hundred percent (100.00%) of the aggregate ordinary voting power and economic interests represented by the issued and outstanding Equity Interests of each Subsidiary of Epic that is a Loan Party.

“**Chattel Paper**” means, as to any Person, all chattel paper (as that term is defined in the Uniform Commercial Code), including electronic chattel paper (as that term is defined in the Uniform Commercial Code), now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party).

“**Chief Restructuring Officer**” means Jeffrey T. Varsalone or such other Person acceptable to the Administrative Agent and the Required Lenders in their sole and absolute discretion.

“Claims” means, collectively, any claim or cause of action based upon or arising out of this Agreement, the other Loan Documents or any of the transactions contemplated hereby or thereby, including contract claims, tort claims, breach of duty claims, and all other common law or statutory claims.

“Clarke” means Thomas M. Clarke, an individual.

“Closing Financial Statements” has the meaning set forth in **Section 5.11(a)**.

“Code” means the Internal Revenue Code of 1986, and, as applicable, the Treasury Regulations promulgated thereunder, or, if applicable, any successor Laws.

“Collateral” means, collectively, all right, title and interest of each Loan Party, whether now owned or hereafter acquired or arising (or in which such Loan Party has rights or the power to transfer rights to a secured party), in, to or upon all Accounts, Chattel Paper, Collateral Accounts, commercial tort claims, Documents, Equipment, General Intangibles, Goods, Instruments, Inventory, Investment Property, Letter-of-Credit Rights, Permits, Supporting Obligations, the Vessels (and any asset related thereto), Books and Records, immovable or real property, motor vehicles and other title vehicles, and all other assets, corporeal or tangible and incorporeal or intangible, real and personal, of such Loan Party and all Proceeds (in whatever form or nature) of the foregoing; provided that, notwithstanding the foregoing, “Collateral” shall not include Excluded Property of any such Loan Party.

“Collateral Accounts” means all commodity accounts, deposit accounts and securities accounts (in each case, as defined in the Uniform Commercial Code) of any Loan Party other than the Excluded Accounts.

“Collateral Documents” means, collectively: (a) this Agreement; (b) [reserved]; (c) [reserved]; (d) [reserved]; (e) [reserved], (f) [reserved] (g) [reserved], (h) any security agreement or other document similar to the documents referred to in clauses (a) through (g) of this definition executed on or after the Effective Date pursuant to the terms hereof or otherwise in connection with the transactions contemplated hereby; and (i) all financing statements (or comparable documents now or hereafter filed in accordance with the Uniform Commercial Code or other comparable Law) against any Loan Party or any other Loan Document as debtor in favor of Administrative Agent, for the benefit of each Lending Party (or any of the foregoing), as secured party.

“Commitment” means, as to each Lender as of any date of determination, such Lender’s Delayed Draw Term Loan Commitment.

“Committee” means an official committee of unsecured creditors appointed in the Cases.

“Committee Professionals” means the persons or firms retained by the Committee pursuant to section 328 or 1103 of the Bankruptcy Code.

“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.

“Contractual Obligation” means, as to any Person, any document or other agreement or undertaking to which such Person is a party or by which it or any of its property is bound.

“Control” means (other than when used in the terms **“Change of Control”**) the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. The terms **“Controlling”** and **“Controlled”** have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, the power to vote ten percent (10.00%) or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent. Notwithstanding the foregoing, none of Agent, any Lender or any of their Affiliates shall be deemed to have “Control” over any Loan Party.

“Conversion Date” means the first date on which (i) (a) the United States Bankruptcy Court for the Eastern District of Louisiana shall have entered an order dismissing the Involuntary Case or (b) the United States Bankruptcy Court for the Eastern District of Louisiana shall have entered an order transferring the venue of the Involuntary Case to the Bankruptcy Court; and (ii) an order for relief has been entered with respect to Epic under chapter 11 of the Bankruptcy Code.

“Copyright License” means, as to any Person, all rights under any written document now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party) granting the right to use any Copyright or Copyright registration.

“Copyrights” means, as to any Person, all of the following now owned or hereafter adopted or acquired by such Person: (a) all copyrights in any original work of authorship fixed in any tangible medium of expression, now known or later developed, all registrations and applications for registration of any such copyrights in the United States or any other country, including registrations, recordings and applications, and supplemental registrations, recordings, and applications in the United States Copyright Office; and (b) all proceeds of the foregoing, including license royalties and proceeds of infringement suits, the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all renewals and extensions thereof.

“Court Order” means any judgment, order, decree, writ, ruling, injunction, arbitration award or other award or other determination made or issued by any Governmental Authority or in or as a result of any Proceeding.

“Credit Extensions” means the Delayed Draw Term Loans.

“Credit Outstandings” means, as of any date of determination, the then Outstanding Amount of all Credit Extensions owing with respect thereto.

“Debt” means, as to any Person as of any date of determination, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP: (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (b) all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial letters of credit), bankers’ acceptances, bank guaranties, surety bonds and similar instruments; (c) the swap termination value under all Swap Contracts or hedge contracts to which such Person is a party; (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business not past due for more than sixty (60) days after the date on which such trade account payable was created); (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; (f) the amount of Attributable Debt in respect of all capital lease obligations and Synthetic Lease Obligations of such Person; (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Disqualified Equity Interest, valued, in the case of a Disqualified Equity Interest that is a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference *plus* accrued and unpaid dividends; and (h) all Guarantees of such Person in respect of any Debt referred to in the immediately preceding clauses (a) through (g). For all purposes hereof, the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venture, unless such Debt is expressly made non-recourse to such Person.

“Debtors” has the meaning set forth in the recitals hereto.

“Debtor Professionals” means the persons or firms retained by the Debtors pursuant to section 327, 328 or 363 of the Bankruptcy Code.

“Default” means any Event of Default or any event or condition that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“Default Rate” means an interest rate equal to the sum of: (a) the interest rate then applicable to the Delayed Draw Term Loans; plus (b) 300.00 basis points *per annum*.

“Defaulting Lender” means, subject to **Section 2.11**, any Lender that has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Bankruptcy Laws, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such capacity; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

“Delayed Draw Term Loan” has the meaning ascribed thereto in **Section 2.01(a)**.

“Delayed Draw Term Loan Commitment” means, with respect to a Lender, the “Delayed Draw Term Loan Commitment” set forth opposite the name of such Lender on **Schedule 2.01(a)** or in the Assignment and Assumption pursuant to which such Lender became a party hereto, as applicable, and with respect to all Lenders, the aggregate amount of all such Delayed Draw Term Loan Commitments; provided, that on and after the Delayed Draw Term Loan Commitment Termination Date, the amount of each Lender’s Delayed Draw Term Loan Commitment shall be zero.

“Delayed Draw Term Loan Commitment Termination Date” means the earlier of (i) the date of the consummation of the 363 Sale and (ii) November 11, 2019.

“Delayed Draw Term Loan Exposure” means, with respect to any Lender as of any date of determination: (a) prior to the funding of any Delayed Draw Term Loans, the amount of that Lender’s Delayed Draw Term Loan Commitment; and (b) after the funding of the Delayed Draw Term Loans, the Outstanding Amount of the Delayed Draw Term Loans of that Lender.

“Deposit Account” means any deposit account (as that term is defined in the Uniform Commercial Code).

“DIP Superpriority Claim” means the allowed superpriority administrative expense claim granted to the Lending Parties in the Cases and any Successor Cases pursuant to Section 364(c)(1) of the Bankruptcy Code for all of the Obligations with priority over any and all administrative expense claims and unsecured claims against the Debtors or their estates in the Cases and any Successor Cases, at any time existing or arising, of any kind or nature whatsoever, including administrative expenses of the kinds specified in or ordered pursuant to Sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b) (except as set forth in the Orders), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code, which shall at all times be senior to the rights of the Debtors and their estates, and any successor trustee or other estate representative; provided, however, that the DIP Superpriority Claim shall not have recourse to any Avoidance Actions but, notwithstanding such exclusion of Avoidance Actions, upon entry of the Final Order, to the extent approved by the Bankruptcy Court, such lien shall attach to any proceeds of Avoidance Actions; provided, further, that the DIP Superpriority Claim shall be subject to the Carve-Out.

“Disposition” means the sale, assignment transfer, conveyance, license, lease or other disposition (including any sale and leaseback transaction, any allocation of assets by division into two or more legal entities, and any allocation of assets among newly divided limited liability companies pursuant to a “plan of division” or similar plan under Section 18-217 of the Delaware Limited Liability Company Act or any similar laws of any other jurisdiction) of any property by any Person, including any sale, assignment, transfer, conveyance or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith. The term **“Dispose”** has a meaning correlative thereto.

“Disqualified Equity Interest” means any Equity Interest of any Person that, by its terms (or by the terms of any Equity Interest or other security into which it is convertible or for which it is exchangeable at the option of the holder thereof), or upon the happening of any event or circumstance, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or requires or mandates payments or distributions in cash, on or prior to the date that is one year after the Maturity Date.

“Documents” means, as to any Person, all documents (as that term is defined in the Uniform Commercial Code) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), wherever located, including all bills of lading, dock warrants, dock receipts, warehouse receipts, and other documents of title, whether negotiable or non-negotiable.

“Dollar” and **“\$”** mean lawful money of the United States.

“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.

“Effective Date” means the first date on which all of the conditions precedent in **Section 4.01** are satisfied (or waived in accordance with **Section 10.01**).

“Electronic Platform” means an electronic system for the delivery of information (including documents), such as IntraLinks On-Demand Workspaces™ or DXSyndicate™, or Firmex that may or may not be provided or administered by Administrative Agent or an Affiliate thereof.

“Eligible Assignee” means any of the following: (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; (d) any fund or account managed or administered solely by White Oak or any of its Affiliates or (e) any other Person designated by a Lender as an Eligible Assignee; *provided that “Eligible Assignee” shall not include any Defaulting Lender.*

“Environmental Claims” means all claims, however asserted, by any Governmental Authority or other Person alleging Environmental Liabilities.

“Environmental Laws” means all existing or future Laws and regulations, including requirements imposed by applicable common law, relating to the pollution or the protection of the environment and natural resources including the use, handling, transportation, treatment, storage, disposal, or release of, or exposure to, Hazardous Materials.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of any Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon: (a) violation of any Environmental Laws; (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials; (c) exposure to any Hazardous Materials; (d) the release or threatened release of any Hazardous Materials into the environment; or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

“Epic Alabama Steel” has the meaning set forth in the preamble to this Agreement.

“Epic Applied” has the meaning set forth in the preamble to this Agreement.

“Epic Diving” has the meaning set forth in the preamble to this Agreement.

“Epic Joinder” means that certain joinder agreement executed and delivered by Epic in favor of the Administrative Agent, in form and substance satisfactory to Administrative Agent, pursuant to which Epic is joined as a Borrower to this Agreement.

“Epic SF” has the meaning set forth in the preamble to this Agreement.

“Epic Specialty” has the meaning set forth in the preamble to this Agreement.

“Equipment” means, as to any Person, all equipment (as that term is defined in the Uniform Commercial Code) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), wherever located, including any and all machinery, apparatus, equipment, fittings, furniture, fixtures, motor vehicles and other corporeal or tangible personal property (other than Inventory) of every kind and description, and all parts, accessories and accessions thereto and substitutions and replacements therefor.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with any Loan Party or any Subsidiary thereof within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means any of the following: (a) a Reportable Event with respect to a Pension Plan; (b) the incurrence by any Loan Party or any ERISA Affiliate of any liability with respect to a withdrawal by any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) the incurrence by any Loan Party or any ERISA Affiliate of any liability with respect to a complete or partial withdrawal by any Parent or any ERISA Affiliate from a Multiemployer Plan or the receipt by any Loan Party or an ERISA Affiliate of notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Plan amendment as a termination under Sections 4041 or 4041A of ERISA, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan; (e) an event or condition that constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; or (f) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate.

“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 ascribed thereto in **Section 8.01**.

“Event of Loss” means, with respect to any property (including the Vessels) of any Loan Party, any of the following: (a) any loss, destruction or damage of such property; or (b) any actual condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, of such property, or confiscation of such property or the requisition of the title or use of such property.

“Exchange Act” means the Securities Exchange Act of 1934.

“Excluded Accounts” means, with respect to any Loan Party, such deposit accounts of such Loan Party constituting a payroll account, a pension or pension reserve account, or an employee benefits account; *provided*, that such accounts shall, in the aggregate, hold no more than the amount needed to fund payroll for the then-next two (2) payroll cycles.

“Excluded Property” means collectively, all right, title and interest of each Loan Party, whether now owned or hereafter acquired or arising (or in which such Loan Party has rights or the power to transfer rights to a secured party), in, to or upon all Excluded Accounts and all amounts deposited therein or credited thereto except to the extent any such amounts were deposited therein or credited thereto other than for the purposes for which such Excluded Accounts were established.

“Excluded Swap Obligation” means, with respect to any Person that has Guaranteed a Swap Obligation, including the grant of a Lien to secure the Guarantee of such Swap Obligation, any Swap Obligation if, and to the extent that, such Swap Obligation 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 guaranty or 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 Swap Obligation or security interest is or becomes illegal.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient: (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in the Delayed Draw Term Loan or Commitment pursuant to the Laws in effect on the date on which (i) such Lender acquires such interest in the Delayed Draw Term Loan or Commitment or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to **Section 2.08**, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient's failure to comply with **Section 2.08(d)** and (d) any U.S. federal withholding Taxes imposed under FATCA.

“Executive Order” means Executive Order No. 13224 of September 23, 2001 (effective September 24, 2001), Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.

“Existing Liabilities” means, collectively, the “Obligations” as defined in the Pre-Petition Loan Agreement.

“Existing Loan Parties” means, collectively, the “Loan Parties” as defined in the Pre-Petition Loan Agreement.

“Extraordinary Receipts” means any payments received by any Loan Party or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds relating to an Event of Loss or Disposition, as described in **Section 2.03(c)(ii)** of this Agreement) consisting of (a) proceeds of judgments, proceeds of settlements,

or other consideration of any kind received in connection with any cause of action or claim, (b) indemnity payments (other than to the extent such indemnity payments are immediately payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries), and (c) any purchase price adjustment (other than working capital and other similar adjustments) made pursuant to any acquisition document and/or indemnification payments made pursuant to any acquisition document (other than such indemnification payments to the extent that the amounts so received are applied by a Loan Party for the purpose of replacing, repairing or restoring any assets or properties of a Loan Party, thereby satisfying the condition giving rise to the claim for indemnification, or otherwise covering any out-of-pocket expenses incurred by any Loan Party in obtaining such payments).

“Facility” or “Facilities” means and refers to (i) each Vessel and (ii) any parcels of immovable or real property, OCS leases, and OCS rights-of-way (ROW) or rights-of-use and easements (RUE).

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided* that (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one one-hundredth of 1.00%) charged to major money center banks on such day on such transactions as determined by Administrative Agent.

“Final Order” means an order or judgment as entered on the docket of the Bankruptcy Court with respect to the Cases substantially in the form of the Interim Order, with only such modifications as are satisfactory in form and substance to the Administrative Agent and the Required Lenders.

“Final Order Date” means the date of the entry of the Final Order.

“Financial Advisor” means Jeffrey T. Varsalone or such other Person acceptable to the Administrative Agent and the Required Lenders in their sole and absolute discretion.

“First Day Orders” means Court Orders entered by the Bankruptcy Court or any other court having jurisdiction over the insolvency proceeding of any Loan Party pending outside of the Bankruptcy Court in respect of first day motions.

“Fiscal Month” means, as of any date of determination with respect to Loan Parties, each calendar month occurring during each Fiscal Year.

“Fiscal Quarter” means, as of any date of determination with respect to Loan Parties, each calendar quarter occurring during each Fiscal Year.

“Fiscal Year” means, as of any date of determination with respect to Loan Parties, the fiscal year of Loan Parties, which begins on January 1 and ends on December 31 in each calendar year.

“Foreign Lender” means any Lender that is not a “United States Person” (as such term is defined in Section 7701(a)(30) of the Code).

“FRB” means the Board of Governors of the Federal Reserve System of the United States.

“GAAP” means generally accepted accounting principles in the United States set forth in the Accounting Standards Codification of the Financial Accounting Standards Board or such other principles as may be approved by

a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

“General Intangibles” means, as to any Person, all general intangibles (as that term is defined in the Uniform Commercial Code) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), including all right, title and interest that such Person may now or hereafter have under any contract, all payment intangibles (as that term is defined in the Uniform Commercial Code), customer lists, licenses, Intellectual Property, interests in partnerships, joint ventures and other business associations, permits, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, Software, databases, data, skill, expertise, experience, processes, models, drawings, materials, Books and Records, Goodwill (including Goodwill associated with any Intellectual Property), all rights and claims in or under insurance policies (including insurance for fire, damage, loss, and casualty, whether covering personal property, immovable or real property, corporeal or tangible rights or incorporeal or intangible rights, all liability, life, key-person, and business interruption insurance, and all unearned premiums), uncertificated securities, choses-in-action, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for Equity Interests and other Investment Property, and rights of indemnification.

“Goods” means, as to any Person, all goods (as that term is defined in the Uniform Commercial Code) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), wherever located, including embedded software to the extent included in goods (as that term is defined in the Uniform Commercial Code) and fixtures (as that term is defined in the Uniform Commercial Code).

“Goodwill” means, as to any Person, all goodwill, trade secrets, proprietary or confidential information, technical information, procedures, formulae, quality control standards, designs, operating and training manuals, customer lists, and distribution agreements now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party).

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other Person exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” means, as to any Person, any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Debt or other obligation payable or performable by another Person (the **“primary obligor”**) in any manner, whether directly or indirectly, and including any obligation of such Person, whether direct or indirect: (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation; (b) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Debt or other obligation of the payment or performance of such Debt or other obligation; (c) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Debt or other obligation; or (d) entered into for the purpose of assuring in any other manner the obligee in respect of such Debt or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term **“Guarantee”** as a verb has a correlative meaning.

“Guaranteed Obligations” has the meaning ascribed thereto in **Section 10.14(a)**.

“Guarantor Subordinated Debt” has the meaning ascribed thereto in **Section 10.14(i)**.

“Guarantor Subordinated Debt Payments” has the meaning ascribed thereto in **Section 10.14(i)**.

“Guarantors” means, collectively, the following (together with their respective successors and assigns): (a) those entities named in the preamble hereto as Guarantors and each other Subsidiary or Affiliate of Borrowers that is a party hereto as a Guarantor as of the Effective Date or thereafter by joinder in form and substance satisfactory to Administrative Agent; (b) [reserved]; and (c) any other Person who, on or after the date hereof pursuant to the terms of any Loan Document, has executed or is required to execute: (i) as a guarantor, a Guaranty of all or any portion of the Obligations; or (ii) as a pledgor, a third party pledge agreement (or similar document) in favor of Administrative Agent or the Lending Parties with respect to all or any portion of the Obligations; each sometimes being referred to herein individually as a “Guarantor”; provided, that all references to “Guarantor” in this Agreement shall only refer to Subsidiaries of Borrowers.

“Guaranty” means any guaranty or third party pledge agreement (or similar document), in form and substance satisfactory to Administrative Agent, made by a Person for the benefit of the Lending Parties or Administrative Agent for the benefit of the Lending Parties and includes the Guaranty of the Guarantors set forth in **Section 10.14**.

“Hazardous Materials” means any pollutant, contaminant, material, chemical, waste, compound, constituent, or substance subject to regulation or which can give rise to liability under Environmental Law, including but not limited to polychlorinated biphenyls (“PCBs”) or any substance or compound containing PCBs, asbestos or any asbestos-containing materials in any form or condition, radon or any other radioactive materials, and petroleum, crude oil or any fraction thereof.

“Hedging Obligations” means, with respect to any Loan Party, all liabilities of such Person under Swap Contracts entered into with any Lender or an Affiliate of any Lender in connection with all or any portion of the Loans; *provided* that such liabilities under any Swap Contract with an Affiliate of a Lender shall not constitute **“Hedging Obligations”** hereunder unless and until such liabilities are certified as such in writing to Administrative Agent by Administrative Loan Party and such Affiliate of a Lender.

“Income Tax Purposes” means U.S. federal income and applicable state, local and foreign income and franchise tax purposes.

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

“Indemnitees” means, collectively, each Lending Party and each Related Party of any of the foregoing Persons.

“Information” has the meaning ascribed thereto in **Section 10.07**.

“Instrument” means, as to any Person, all instruments (as that term is defined in the Uniform Commercial Code) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), wherever located, including all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are part of a group of writings that constitute, Chattel Paper.

“Intellectual Property” means, as to any Person, all Copyrights, Licenses, Patents, Trademarks, inventions, designs, trade secrets and customers lists now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), wherever located.

“Interim Commitment Amount” means \$2,250,000.

“Interim Order” means the Court Order or judgment of the Bankruptcy Court as entered on the docket of the Bankruptcy Court with respect to the Cases substantially in the form of Exhibit B hereto, and as amended, amended and restated, supplemented or otherwise modified from time to time by the Bankruptcy Court prior to the Final Order Date, in each case a manner acceptable to the Administrative Agent and the Required Lenders in their sole and absolute discretion, approving, *inter alia*, this Agreement and the other Loan Documents, authorizing the

incurance by Borrower of interim secured indebtedness in accordance with this Agreement and, subject to the terms thereof, approving the payment by Borrower of the fees and other amounts contemplated by this Agreement.

“Interim Order Date” means the date on which the Interim Order is entered on the docket of the Bankruptcy Court in the Cases.

“Inventory” means, as to any Person, all inventory (as that term is defined in the Uniform Commercial Code) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), wherever located, including all inventory, merchandise, goods and other personal property that are held by or on behalf of such Person for sale or lease or are furnished or to be furnished under a contract of service or that constitute raw materials, work in process, finished goods, returned goods or materials or supplies of any kind.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person in another Person, whether by means of: (a) the purchase or other acquisition of capital stock or other securities of another Person; (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or Equity Interest in, another Person, including any partnership or limited liability company interest in such other Person and any arrangement pursuant to which the investor Guarantees Debt of such other Person; or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“Investment Property” means, as to any Person, all investment property (as that term is defined in the Uniform Commercial Code) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), wherever located.

“Involuntary Case” has the meaning set forth in the recitals hereto.

“IRS” means the United States Internal Revenue Service or, as applicable, any successor agency.

“Joinder Agreement” means an agreement (in form and substance satisfactory to Administrative Agent) entered into by a Subsidiary of any Loan Party on or following the date hereof to join in the Guaranty set forth in **Section 10.14**.

“Junior Loan Agreement” means those certain Third Amended and Restated Loan and Security Agreement, dated as of July 22, 2019, as amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date, by and among the applicable Borrowers party thereto, applicable Guarantors party thereto, and in each case Acqua Liana Capital Partners, LLC, as administrative agent thereunder, and the lenders from time to time a party thereto.

“Laws” means, collectively, all international, foreign, federal, state and local laws, statutes, treaties, rules, authorities, guidelines, regulations, ordinances, codes and administrative or judicial precedents or Court Orders, Permits and other governmental restrictions, 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, requests, licenses, authorizations, concessions, grants, franchises and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lender” means, as of any date of determination, any Lender party to this Agreement that has a Commitment or Delayed Draw Term Loan Exposure; sometimes being referred to herein collectively as the **“Lenders”**.

“Lending Office” means, as to any Lender, the office or account of such Lender described as such in such Lender’s Administrative Detail Form, or such other account, office or offices as a Lender may from time to time notify Administrative Loan Party and Lending Parties.

“Lending Parties” means, collectively, Administrative Agent and Lenders, and **“Lending Party”** means each or any of them individually.

“Lending Parties Consultants” has the meaning set forth in **Section 6.26**.

“Letter-of-Credit Rights” means, as to any Person, all letter-of-credit rights (as that term is defined in the Uniform Commercial Code) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), including rights to payment or performance under a letter of credit, whether or not such Person, as beneficiary, has demanded or is entitled to demand payment or performance thereunder.

“Licenses” means, as to any Person, all Copyright Licenses, Patent Licenses, Trademark Licenses or other licenses of rights or interests now held or hereafter acquired by such Person.

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, privilege, lien (statutory or other), preferred ship mortgage, charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement and any easement, right of way or other encumbrance on title to immovable or real property).

“Loan Documents” means, collectively, this Agreement, each Note, each Guaranty, each Collateral Document, all subordination agreements respecting Subordinated Debt (if any) and all other present or future documents entered into by any Loan Party for the benefit of Lending Parties (or any of them), in connection with this Agreement.

“Loan Parties” means, collectively, Borrowers and the Guarantors, and **“Loan Party”** means each or any of them individually.

“Loans” means the Delayed Draw Term Loans.

“M&E” means all Equipment (as defined in the Uniform Commercial Code) (in each case, other than fixtures (unless otherwise agreed by Administrative Agent), tooling, rolling stock or any equipment subject to special perfection requirements under federal law).

“Management Fees” means “Management Fees” as defined in the Clarke Management Agreement.

“Material Adverse Effect” means any of the following: (a) a material adverse change in or a material adverse effect upon (in either case, irrespective of whether occurring as a result of a specific event or circumstance or otherwise) the business, financial condition or results of operations of either: (i) Borrowers; (ii) Borrowers and the other Loan Parties taken as a whole; or (iii) Borrowers and the Loan Parties taken as a whole; (b) a material impairment (irrespective of whether occurring as a result of a specific event or circumstance or otherwise) of the ability of either (i) Borrowers; (ii) Loan Parties taken as a whole or (iii) Loan Parties taken as a whole, for any of them to perform their respective obligations under the Loan Documents; or (c) except if caused by actions or inactions of any Lending Party, a material adverse effect (irrespective of whether occurring as a result of a specific event or circumstance or otherwise) upon: (i) the legality, validity, binding effect or enforceability of any Loan Document to which any Loan Party is a party against either: (A) Borrowers; (B) Loan Parties taken as a whole or (C) Loan Parties taken as a whole; or (ii) the rights and remedies of Administrative Agent or any other Lending Party under or in respect of any Loan Document; *provided, however* that any such material adverse change or any material adverse effect that results solely from the consequences of filing the Cases and the impact thereof on the business or financial condition or results of operations of Borrowers and the other Loan Parties, whether individually or taken as a whole, shall be disregarded and shall not be taken into account in determining whether a Material Adverse Effect has occurred.

“Material Contract” means, with respect to Loan Parties and their Subsidiaries: (a) each contract or agreement listed on **Schedule 1.01-B**; (b) each other contract or agreement, or series of contracts or agreements

(irrespective of whether related to the same subject matter), to which any Loan Party or any of its Subsidiaries is a party involving aggregate consideration under each such contract and agreement payable to any Loan Party or any of its Subsidiaries by a specific Person or such Person's Affiliates of \$5 million or more in any calendar year, or by any Loan Party or any of its Subsidiaries to a specific Person or such Person's Affiliates of \$400,000 or more in any calendar year; and (c) any other contract or agreement the loss of which could reasonably be expected to result in a Material Adverse Effect.

"Maturity Date" means, subject to the provisions hereof, the earlier of (i) the date of the consummation of the 363 Sale and (ii) November 11, 2019.

"Maximum Rate" means, at any time, the maximum rate of non-usurious interest permitted by applicable Laws.

"Merida Note" means that certain \$1,500,000 Non-Negotiable, Revolving Promissory Note dated as of August 30, 2018 from Orinoco Leasing, LLC (which has been assigned to Epic) in favor of Merida Natural Resources, LLC, as such note is in effect on the Effective Date and as may be amended from time to time with the prior written consent of the Administrative Agent.

"Milestones" has the meaning set forth in **Section 8.01(s)**.

"Money Laundering Laws" means, collectively: (a) the Currency and Foreign Transactions Reporting Act (31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959); and (b) the applicable money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any Governmental Authority.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA to which any of the Loan Parties or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

"Net Proceeds" means, in respect of any Disposition or Event of Loss, the proceeds in cash or Cash Equivalents received by any Loan Party or any Subsidiary thereof with respect to or on account of such Disposition or Event of Loss, net of: (a) in the case of a Disposition, the direct costs of such Disposition then payable by the recipient of such proceeds, or, in the case of an Event of Loss, the direct costs of collecting insurance or other proceeds, in each case excluding amounts payable to any Loan Party or any Affiliate of any Loan Party; (b) sales and use taxes paid or payable by such recipient as a result thereof; and (c) amounts required to be applied to repay principal, interest and prepayment premiums and penalties on Debt secured by a Permitted Lien on the properties subject to such Disposition.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Note" means each promissory note (if any) executed and delivered by Borrowers in favor of a Lender evidencing that portion of the Delayed Draw Term Loans or owed to such Lender, such note being in form and substance acceptable to Administrative Agent.

"NVDC" means the National Vessel Documentation Center Office of the United States Coast Guard at Falling Waters, West Virginia.

"Oakridge Energy" means Oakridge Energy Partners LLC, a Delaware limited liability company.

"Obligations" means, collectively, all advances, debts, liabilities, obligations, covenants and duties of each Loan Party to any Lending Party, in each of the foregoing cases, under or in respect of any Loan Document, whether with respect to the Credit Extensions or otherwise (including all Hedging Obligations), whether direct or indirect

(including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising; provided, that “Obligations” shall not include Excluded Swap Obligations.

“**OFAC**” means the United States Department of Treasury’s Office of Foreign Assets Control and any successor thereto.

“**Operating Account**” means, with respect to any Loan Party, each Deposit Account described as such on **Schedule 6.12** (and specifically excluding the accounts identified therein as an Excluded Account).

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

“**Organizational Documents**” means: (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction) of such Person; (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement of such Person; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization of such Person and any agreement, instrument, filing or notice with respect thereto filed in connection with such Person’s formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such Person.

“**Orinoco**” means Orinoco Natural Resources, LLC, a Virginia limited liability company.

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

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a Lien under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“**Outstanding Amount**” means, with respect to any Loans on any date, the aggregate outstanding principal amount thereof after giving effect to prepayments or repayments of such Loans occurring on such date.

“**paid in full**” or “**repaid in full**” (or any variation thereof, such as “**payment in full**” or “**repayment in full**”) means, with respect to any Obligations, the indefeasible payment in full of such Obligations in cash (or otherwise to the written satisfaction, in such holder’s discretion, of the holder thereof), and, in the event any such Obligations are paid over time or modified pursuant to section 1129 of the Bankruptcy Code (or any similar provision of any other applicable Bankruptcy Laws), shall further mean that the holder thereof shall have received the final payment due on account of such Obligations. For purposes of the foregoing, the “holder” of any applicable Obligations shall be deemed to be the Person entitled to receipt of payment thereof. Notwithstanding the foregoing, the Obligations shall not be deemed to have been “paid in full” until all Commitments have expired or been terminated.

“**Parent**” or “**Parents**” means Orinoco and Oakridge Energy, and all permitted successors and assigns of such Persons.

“**Participant**” has the meaning ascribed thereto in **Section 10.06(d)**.

“**Participant Register**” has the meaning ascribed thereto in **Section 10.06(d)**.

“Patent License” means, as to any Person, all rights under any written agreement now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party) granting any right with respect to any invention on which a Patent is in existence.

“Patents” means, as to any Person, all of the following in which such Person now holds or hereafter acquires any interest: (a) all letters patent of the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State or Territory thereof, or any other country; and (b) all reissues, continuations, continuations-in-part or extensions thereof.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

“Payment Date” means: (a) the first (1st) Business Day of each calendar month during the term hereof commencing with October 1, 2019; and (b) the Maturity Date.

“PBGC” means the Pension Benefit Guaranty Corporation or, if applicable, any successor entity.

“Pension Plan” means any “employee pension benefit plan” (as that term is defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by Loan Parties or any ERISA Affiliate or to which Loan Parties or any ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the immediately preceding five plan years.

“Percentage Share” means, as to any Lender, (a) with respect to all payments, computations and other matters relating to the Delayed Draw Term Loan Commitment of any Lender, the percentage obtained by dividing (i) the Delayed Draw Term Loan Exposure of that Lender by (ii) the aggregate Delayed Draw Term Loan Exposure of all Lenders, and (b) for all other purposes with respect to each Lender, the percentage obtained by dividing (i) the sum of the Delayed Draw Term Loan Exposure of that Lender by (ii) the aggregate Delayed Draw Term Loan Exposure of all Lenders, in any such case as the applicable percentage may be adjusted by assignments permitted pursuant to **Section 10.06**. The Percentage Share of each Lender for purposes of each of clauses (a) and (b) of the preceding sentence is set forth opposite the name of such Lender on **Schedule 2.01(a)** or in the Assignment and Assumption pursuant to which such Lender became a party hereto, as applicable.

“Permit” means any permit, approval, authorization, certification, license, consent, exemption, variance, accreditation or permission required from or issued or granted by a Governmental Authority under any applicable Laws or any accrediting organization.

“Permitted Exceptions” means easements, rights-of-way, restrictions, plats, declarations of covenants, conditions and restrictions, or similar encumbrances on the use of real property (including any exceptions to title) which do not interfere with the ordinary conduct of business of any Loan Party or materially detract from the value or use of such real property.

“Permitted Liens” has the meaning ascribed thereto in **Section 7.01**.

“Permitted Maritime Liens” means any seaman’s wage liens (including those of masters) for wages, maintenance and cure, salvage and general average liens, stevedore’s wages, tort liens (including personal injury and death) and liens for necessities not more than 30 days overdue, all of the foregoing liens which are either unclaimed or covered by insurance (other than, and after giving effect to, any deductibles that Loan Parties may have on such insurance); *provided, that*, once any such lien is claimed, Loan Parties shall be permitted to contest any such lien in good faith by appropriate action promptly initiated and diligently conducted, if (i) such reserve as shall be required by GAAP shall be made therefor and (ii) Loan Parties shall have arranged for a bond or insurance (other than, and after giving effect to, any deductibles that Loan Parties may have on such insurance) related to such lien in a manner

that is satisfactory to Administrative Agent in accordance with law and (iii) such lien does not involve any risk of seizure or sale of any Vessel.

“Permitted Protest” means the right of Loan Parties and their respective Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), Taxes (other than Taxes subject to withholding or 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 its books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by such Loan Parties and their respective Subsidiaries, and (c) Administrative Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Administrative Agent’s or any Lender’s Liens.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Petition Date” has the meaning set forth in the recitals hereto.

“Plan” means any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) established by Loan Parties or, with respect to any such plan that is subject to Section 412 of the Code or Title IV of ERISA, any ERISA Affiliate.

“Post-Carve-Out Trigger Notice Cap” means Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$200,000 incurred after the first business day following delivery by the Administrative Agent of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order or otherwise.

“Pre-Petition Lender” means any lender under the Pre-Petition Loan Agreement.

“Pre-Petition Loan” means any loan made by a Pre-Petition Lender under the Pre-Petition Loan Agreement.

“Pre-Petition Parties” means the Existing Loan Parties and the agent, lenders and other secured parties under the Pre-Petition Loan Agreement, and related credit documentation.

“Proceeding” means any suit, action, case, arbitration, mediation, audit, investigation, or other proceeding before or by any Governmental Authority, recognized industry trade or professional association or organization, or other Person by whose Court Order the parties thereto have agreed or consented to be bound.

“Proceeds” means proceeds (as that term is defined in the Uniform Commercial Code).

“Professional Persons” means the Debtor Professionals and the Committee Professionals.

“Public Lender” has the meaning ascribed thereto in **Section 10.02(b)(ii)**.

“Real Property” means any estates or interests in real property now owned or hereafter acquired by any Loan Party or one of its Subsidiaries and the improvements thereto.

“Real Property Collateral” means (a) the Real Property identified on **Schedule 1.01-C** to this Agreement, and (b) any Real Property hereafter acquired by any Loan Party or one of its Subsidiaries with a fair market value in excess of \$500,000.

“Recipient” means (a) Administrative Agent, (b) any Lender or (c) any other Person entitled to payments under this Agreement or under any other Loan Document.

“Register” means a register for the recordation of the names and addresses of Lenders and, as applicable, the Commitments of, Credit Outstandings owing to each Lender pursuant to the terms hereof from time to time, and the principal amount of (and interest on) Lenders’ interests in the Loans and other Obligations.

“Related Business” means any business that is the same or substantially similar to the businesses of Loan Parties and their Subsidiaries on the Effective Date.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, members, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates, and specifically includes, in the case of the Lending Parties, White Oak in its capacity as Administrative Agent; provided that White Oak shall not be deemed to be a Related Party to any Loan Party or Affiliate thereof.

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty-day notice period has been waived.

“Required Lenders” means Non-Defaulting Lenders holding in excess of fifty percent (50.00%) of the aggregate Delayed Draw Term Loan Exposure of all Non-Defaulting Lenders; provided, however that if there are two or more Lenders, then “Required Lenders” must include more than one Lender.

“Resignation Agreement” means that certain Resignation, Loan Purchase and Sale Agreement, made as of October 12, 2018, by and among White Oak, the Selling Lenders (as defined therein), Acqua Liana and the Borrowers (as defined therein).

“Responsible Officer” means: (i) with respect to any Loan Party in connection with any request for any Delayed Draw Term Loan or any other certificate or notice pertaining to any financial information required to be delivered by any Loan Party hereunder or under any other Loan Document, the chief financial officer, treasurer or controller of such Person or of the managing member or manager of such Person; and (ii) otherwise, with respect to any Loan Party, the chief executive officer, president, chief financial officer, treasurer or controller of such Person or of the managing member or manager of such Person.

“Restricted Party” means any Person listed: (a) in the Annex to the Executive Order; (b) on the “Specially Designated Nationals and Blocked Persons” list maintained by the OFAC; (c) in any successor list to either of the foregoing; (d) any Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or (e) any Person designated as the target of any Sanctions.

“Restricted Payment” means, as to any Person: (a) any dividend or other distribution by such Person (whether in cash, securities or other property) with respect to any Equity Interests of such Person; (b) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interest; (c) any payment of principal or interest or any purchase, redemption, retirement, acquisition or defeasance with respect to any Debt of such Person which is subordinated to the payment of the Obligations; (d) the acquisition for value by such Person of any Equity Interests issued by such Person or any other Person that Controls such Person; (e) any management, servicing or other similar fees payable to any Loan Party or any Affiliate thereof; (f) any payment of Management Fees and (g) any other transaction that has a similar effect as clauses (a) through (f) of this definition.

“S&P” means Standard & Poor’s Financial Services LLC, a division of S&P Global Inc.

“Sale Motion” has the meaning specified in **Section 8.01(s)**.

“Sanctions” means any sanctions administered or enforced by the OFAC, the United Nations Security Council or any other relevant sanctions authority.

“Shipowner” means the owner of a Vessel.

“Software” means, as to any Person, all software (as that term is defined in the Uniform Commercial Code) now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party), including all computer programs and all supporting information provided in connection with a transaction related to any program.

“Specified Materials” means, collectively, all materials or information provided by or on behalf of any Loan Party, as well as all documents and other written materials relating to Loan Parties (or any of them) or their respective Affiliates or any other materials or matters relating to the Loan Documents (including any amendments or waivers of the terms thereof or supplements thereto).

“Stalking Horse Bidder” means the Lending Parties or such other party selected by the Debtors, with the consent of the Administrative Agent and the Required Lenders, to be the stalking horse bidder for a sale of substantially all of the Debtors’ assets pursuant to a 363 Sale.

“Subordinated Debt” means, collectively, any Debt which has been subordinated to the Obligations on terms and conditions, and pursuant to documents, satisfactory to Administrative Agent.

“Subsidiary” of a Person means any other Person of which a majority of the Equity Interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a **“Subsidiary”** or to **“Subsidiaries”** shall refer to a Subsidiary or Subsidiaries of a Loan Party.

“Successor Cases” means any case under Chapter 7 of the Bankruptcy Code upon the conversion of any the Cases, or in any proceedings superseding or related to any of the foregoing.

“Supporting Obligations” means all supporting obligations (as that term is defined in the Uniform Commercial Code), including letters of credit and guaranties issued in support of Accounts, Chattel Paper, Documents, General Intangibles, Instruments, or Investment Property.

“Swap Contract” means: (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement; and (b) any and all transactions of any kind, and the related confirmations, that are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement including any such obligations or liabilities under any such master agreement (in each case, together with any related schedules).

“Swap Obligation” means any Swap Contract that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act, as amended from time to time.

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

“Taxes” means all present or future federal, state, local, county, foreign and other taxes, assessments or other government charges, including, any income, alternative or add-on minimum tax, estimated gross income, gross receipts, sales, use, ad valorem, value added, transfer, capital, stock, franchise, profits, license, registration,

recording, documentary, intangibles, conveyancing, gains, withholding, payroll, employment, social security (or similar), unemployment, disability, excise, severance, stamp, occupation, premium, property (real and personal), environmental or windfall profit tax, custom duty or other tax, governmental fee or other like assessment, charge, or tax of any kind whatsoever, together with any interest, penalty, addition to tax or additional amount imposed by any Governmental Authority responsible for the imposition of any such tax (domestic or foreign) whether such Tax is disputed or not.

“Tax Return” means any report, return, declaration, claim for refund or other information or statement or schedule supplied or required to be supplied to a Governmental Authority relating to Taxes, including any schedules or attachments thereto and any amendments thereof.

“Tetra Documents” means each of (a) that certain Bonding Agreement dated as of February 26, 2018, by and among TETRA Technologies, Inc., a Delaware corporation, Orinoco and Epic, (b) that certain Membership Interest Purchase and Sale Agreement dated as of February 27, 2018, by and Among TETRA Applied Technologies, Maritch Resources, LLC, TETRA Technologies, Inc. and Orinoco and (c) each other document related to the foregoing, in each case as amended, amended and restated, supplemented or otherwise modified from time to time.

“Threshold Amount” means Two Hundred Fifty Thousand Dollars (\$250,000).

“Total Adjusted Cash Disbursements” means, for any period, the aggregate amount of cash expenditures of the Debtors for such period.

“Total Adjusted Cash Receipts” means, for any period, the aggregate amount of cash received by the Debtors for such period.

“Trademark License” means, as to any Person, all rights under any written document now owned or hereafter acquired by such Person (or in which such Person has rights or the power to transfer rights to a secured party) granting any right to use any Trademark or Trademark registration.

“Trademarks” means, as to any Person, all of the following now owned or hereafter adopted or acquired by such Person: (a) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State or Territory thereof, or any other country or any political subdivision thereof; (b) all reissues, extensions or renewals thereof; and (c) all Goodwill associated with or symbolized by any of the foregoing.

“Treasury Regulations” means the temporary and final U.S. Treasury Regulations promulgated under the Code.

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

“Unfunded Pension Liability” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 412 of the Code for the applicable plan year.

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

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

“**U.S. Tax Compliance Certificate**” has the meaning ascribed thereto in **Section 2.08(d)(i)(B)**.

“**Vessel**” means any vessel subject to a first priority lien in favor of Administrative Agent.

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

“**Wiley**” means David A. Wiley, an individual.

“**Wind Down Expenditures**” the expenses and other amounts to be paid in connection with the wind down of the Cases and a liquidation of the remaining assets of the Debtors pursuant to a process that is satisfactory to Administrative Agent after consultation with the Debtors.

“**Wind Down Loan**” means a term loan to the Borrowers in the amount not to exceed the lesser of (a) \$686,508.00 and (b) an amount that is determined by Administrative Agent after consultation with the Debtors to be sufficient to fund the Wind Down Expenditures.

“**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.

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

Section 1.02. CERTAIN RULES OF CONSTRUCTION.

(a) General Rules.

(i) Unless the context otherwise clearly requires, the meaning of a defined term is applicable equally to the singular and plural forms thereof.

(ii) The words “**hereof**,” “**herein**,” “**hereunder**” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement.

(iii) The word “**documents**” includes instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(iv) The words “**include**,” “**includes**” and “**including**” are not limiting and, unless the context otherwise clearly requires, the word “**or**” is not exclusive.

(v) A “**Default**” or “**Event of Default**” hereunder referenced as “**continuing**” (or any variation thereof) shall (i) with respect to a Default that has not yet matured into an Event of Default, be deemed to be continuing unless and until cured within any applicable cure period set forth in this Agreement (if susceptible to cure), and (ii) with respect to an Event of Default, be deemed to be continuing unless and until waived in writing by Administrative Agent.

(vi) In the computation of periods of time from a specified date to a later specified date, the word “**from**” means “**from and including**”; the words “**to**” and “**until**” each mean “**to but excluding**” and the word “**through**” means “**to and including**.”

(vii) Unless the context otherwise clearly requires, the words “**property**,” “**properties**,” “**asset**” and “**assets**” refer to both personal property (whether corporeal or tangible or incorporeal or intangible) and immovable or real property.

(viii) As used herein, “**ordinary course of business**” means, in respect of any transaction involving any Loan Party, the ordinary course of business of such Loan Party, as undertaken by such Loan Party in

accordance with past practices or reasonable extensions of such past practices, as applicable, or otherwise undertaken by such Loan Party in good faith and not for purposes of evading any covenant or restriction in any Loan Document.

(ix) Unless the context otherwise clearly requires: (A) Article, Section, subsection, clause, Schedule and Exhibit references are to this Agreement; (B) references to documents (including this Agreement) shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document; (C) references to any Law are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the Law; and (D) or unless prohibited by the terms of any Loan Document, references to any Person shall be deemed to include such Person's successors and assigns.

(b) **Time References.** Unless the context otherwise clearly requires, all references herein to times of day shall be references to Pacific time (daylight or standard, as applicable).

(c) **Captions.** The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(d) **Cumulative Nature of Certain Provisions.** This Agreement and the other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall be performed in accordance with their respective terms.

(e) **No Construction Against any Party.** This Agreement and the other Loan Documents are the result of negotiations among, and have been reviewed by counsel to, Loan Parties, Administrative Agent and the other Lending Parties and are the products of all parties. Accordingly, they shall not be construed against Administrative Agent or any other Lending Party merely because of the involvement of any or all of the preceding Persons in their preparation.

(f) **GAAP.** Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP applied in a manner consistent with that used in preparing the Closing Financial Statements, except as otherwise specifically prescribed herein. If at any time any change in GAAP would affect the computation of any financial ratio, financial covenant or other requirement set forth in any Loan Document, and either Administrative Loan Party or Required Lenders shall so request, Administrative Agent, Lending Parties and Administrative Loan Party shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of Required Lenders); *provided* that, until so amended: (i) such financial ratio, financial covenant or other requirement shall continue to be computed in accordance with GAAP prior to such change therein; and (ii) the Loan Parties shall provide or cause to be provided to Administrative Agent and the other Lending Parties financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such financial ratio, financial covenant or other requirement made before and after giving effect to such change in GAAP. Notwithstanding anything to the contrary contained herein, all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification Topic No. 825-10-25 - *Fair Value Option* (formerly known as the Statement of Financial Accounting Standards No. 159) or any other accounting principle that would result in any financial liability being set forth at an amount less than the actual outstanding principal amount thereof.

(g) **Rounding.** Any financial ratios required to be maintained by Loan Parties or any of them pursuant to the Loan Documents shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number using the common – or symmetric arithmetic – method of rounding (in other words, rounding-up if there is no nearest number).

(h) **Documents Executed by Responsible Officers.** Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all

necessary corporate or other organizational action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

ARTICLE II. CREDIT EXTENSIONS

Section 2.01. LOANS.

(a) **Delayed Draw Term Loans.** Subject to the terms and conditions set forth herein, each Lender with a Delayed Draw Term Loan Commitment agrees severally (not jointly and not jointly and severally) to make term loans to Borrowers (such loans, the “**Delayed Draw Term Loans**”), from time to time, and subject to the Orders, on a weekly basis in amounts not to exceed the amount of expenditures for the following week set forth in the Budget, and at all times not in excess of such Lender’s Delayed Draw Term Loan Commitment; provided, that (i) no more than one (1) Delayed Draw Term Loan borrowing per week, in accordance with the Budget, shall be made hereunder, (ii) prior to the Final Order Date, the aggregate borrowings hereunder shall not exceed the Interim Commitment Amount, (iii) in no event shall the aggregate outstanding principal balance of the Delayed Draw Term Loans at any time exceed the aggregate amount set forth in **Schedule 2.01(b)** and in no event shall any Lender’s Percentage Share of the outstanding principal balance of the Delayed Draw Term Loans exceed the amount set forth opposite such Lender on **Schedule 2.01(b)** and (iv) subject to the limitations set forth above (other than subclause (i) above), a Delayed Draw Term Loan in the amount of the Wind Down Loan shall be made within three Business Days prior to the consummation of the 363 Sale (or such other date as may be agreed by Administrative Agent and the Debtors), to fund the Wind Down Expenditures subject to the Budget. Any dispute regarding the Wind Down Expenditures shall be resolved by the Bankruptcy Court.

(b) **[Reserved]**

(c) **Notice of Borrowing.** For each weekly borrowing, Administrative Loan Party shall provide to Administrative Agent prior to noon each Monday, which date is four (4) Business Days prior to the Friday that shall be the proposed borrowing date for the applicable Delayed Draw Term Loan (in each case unless Administrative Agent waives such prior notice in Administrative Agent’s sole discretion), an irrevocable written notice in substantially the form attached hereto as **Exhibit D** (a “**Notice of Borrowing**”), which notice of Borrowing shall have been approved by the Chief Restructuring Officer; provided that in the case of the initial borrowing hereunder, the applicable Notice of Borrowing may be delivered one Business Day prior to the proposed borrowing date (which may be a date other than Friday). Such Notice of Borrowing shall specify (i) the aggregate principal amount of the Delayed Draw Term Loans to be made, (ii) the proposed borrowing date, which must be a Business Day and (iii) wire instructions for Administrative Loan Party. Administrative Agent and Lenders may act without liability upon the basis of such Notice of Borrowing believed by Administrative Agent in good faith to be from Administrative Loan Party and Administrative Agent and Lenders shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing. Administrative Agent shall promptly advise the applicable Lenders of any notice given pursuant to this **Section 2.01** (and the contents thereof), and of each Lender’s pro rata share of the requested Delayed Draw Term Loan. Each Lender shall make its Commitment for the applicable Delayed Draw Term Loan available to Administrative Agent, in immediately available funds, at Administrative Agent’s Office no later than noon on the proposed borrowing date of the Delayed Draw Term Loan in the Notice of Borrowing. Upon receipt of all amounts requested in the Notice of Borrowing, Administrative Agent will make the proceeds of such Delayed Draw Term Loans available to or as directed by Administrative Loan Party on the day of the proposed Delayed Draw Term Loan by causing said amount, in immediately available funds, to be disbursed as specified by Administrative Loan Party in the Notice of Borrowing.

(d) **Limit on Credit Extensions.** Notwithstanding anything to the contrary contained in this **Section 2.01**, no Lender will be required or have any obligation to make any extensions of credit hereunder if a Default then exists. No Credit Extension (or any portion thereof) that has been repaid or prepaid may be re-borrowed. Notwithstanding anything to the contrary contained herein, in no event shall Lenders be obligated to make to Borrowers, or Borrowers be entitled to borrow or receive from Lenders, any loans, advances or extensions of credit hereunder other than the Delayed Draw Term Loans.

Section 2.02. INTEREST.

(a) **Interest.** Subject to the provisions hereof (including **Section 2.02(d)**), from the Effective Date until each Delayed Draw Term Loan is paid in full, the Outstanding Amount of the Delayed Draw Term Loans shall bear interest at an annual rate of interest equal to ten percent (10.0%), payable in cash. Interest on the Delayed Draw Term Loans shall be calculated based on a principal balance equal to the Outstanding Amount thereof.

(b) **[Reserved].**

(c) **Payment Dates.** Interest on the Outstanding Amount of the Delayed Draw Term Loans shall accrue beginning on the Effective Date from the first calendar day of each calendar month following the Effective Date through the last day of each calendar month, and be due and payable in cash in arrears on each Payment Date and at such other times as may be specified herein. Subject to the provisions hereof (including **Section 2.02(e)**), Borrowers shall pay accrued and unpaid interest under **Section 2.02(a)** to Administrative Agent, on behalf of Lenders, for delivery to Lenders as follows: (i) subject to **Section 2.02(b)**, on a calendar month basis in arrears on each Payment Date; (ii) contemporaneously with the payment or prepayment of the principal balance of the Delayed Draw Term Loans or any portion thereof on the amount so paid or prepaid in accordance with **Section 2.03**, and (iii) on the Maturity Date. Interest hereunder shall be due and payable in accordance with the terms hereof both before and after judgment, and both before and after the commencement of any proceeding under any Bankruptcy Law.

(d) **Default Rate.** Notwithstanding anything to the contrary contained in **Section 2.02(a)**, at any time that an Event of Default exists, then, unless Required Lenders otherwise agree and without affecting any of Administrative Agent's or any Lender's rights and remedies hereunder or in respect hereof, all (or, in the sole discretion of Required Lenders, any portion) of the Obligations shall bear interest contemplated by **Section 2.02(a)**, at the Default Rate, such interest to be payable in cash upon demand therefor by Administrative Agent.

(e) **Compounding.** Subject to the other provisions of this **Section 2.02**, without affecting any of Administrative Agent's or any Lender's rights and remedies hereunder or in respect hereof, the failure to timely pay all interest (including interest at the Default Rate) on the Delayed Draw Term Loans when due shall, at Administrative Agent's discretion (acting at the direction of the Required Lenders), either be declared an Event of Default hereunder and the Delayed Draw Term Loans shall thereupon be subject to the Default Rate retroactively effective as of the date such payment was due or the amount of such unpaid interest shall be added, effective as of the date such payment was due, to the Outstanding Amount thereof, and thereafter bear interest at the rate then applicable to the Outstanding Amount of the Delayed Draw Term Loans.

Section 2.03. PAYMENT AND PREPAYMENTS OF PRINCIPAL.

Subject to the provisions hereof:

(a) **Payments.** Borrowers shall repay the Outstanding Amount of the Delayed Draw Term Loans and shall repay in full the remaining Credit Outstandings and all other Obligations on the Maturity Date.

(b) **Voluntary Prepayments of the Delayed Draw Term Loans.**

Borrowers may voluntarily prepay the Outstanding Amount of the Delayed Draw Term Loans, in an amount not less than \$1,000,000.00 or an integral multiple of \$100,000.00 in excess thereof (or, if less, the entire Outstanding Amount of the Delayed Draw Term Loans), upon not less than fifteen Business Days prior irrevocable written notice to Administrative Agent, which notice shall state the Outstanding Amount of the Delayed Draw Term Loans being prepaid. In connection with any such voluntary prepayment, Borrowers shall pay the sum of: (x) the Outstanding Amount of the Delayed Draw Term Loans being prepaid; plus (y) interest at the rate then applicable to the Delayed Draw Term Loans on the amounts prepaid through and including the date of prepayment. All such prepayments of Delayed Draw Term Loans made pursuant to this **Section 2.03(b)** shall not reduce the mandatory prepayments of the Delayed Draw Term Loans otherwise required pursuant to **Section 2.03(c)**. In connection with any such voluntary prepayment of the Delayed Draw Term Loans, each Borrower acknowledges that such

prepayment may result in Lenders incurring additional costs, expenses or liabilities, and that, as of the date hereof, it is difficult to ascertain the full extent of such costs, expenses or liabilities.

(c) **Mandatory Repayments of the Delayed Draw Term Loans.**

(i) **Ongoing Cash Sweep.** So long as any Obligations remain outstanding hereunder, commencing with the Effective Date and continuing through the Maturity Date, the Borrowers shall prepay the outstanding principal balance of the Delayed Draw Term Loans with all cash and Cash Equivalents received by Borrowers (but in no event more than the Outstanding Amount of the Delayed Draw Term Loans). Administrative Agent shall, pursuant to any existing control agreement and subject to the Orders, direct the depository institutions party to such control agreements to sweep the balances of the Loan Parties' Deposit Accounts (other than Excluded Accounts or Operating Accounts) on a daily basis (or such other periodic basis at the discretion of Administrative Agent) and such funds shall be applied to the Obligations in the manner set forth in **Section 8.02(d)**.

(ii) **Loss and Disposition Payments.** In the event that any Net Proceeds result from any (A) Event of Loss or (B) Disposition or series of Dispositions by Loan Parties or any Subsidiary thereof undertaken pursuant to **Section 7.05(a)**, Borrowers shall, unless waived by the Required Lenders in their sole discretion, prepay the Delayed Draw Term Loans in an amount equal to the sum of: (1) 100% of such Net Proceeds *plus* (2) interest at the rate then applicable to the Delayed Draw Term Loans on the amounts in the immediately preceding clause (1) through and including the date of prepayment. Nothing contained in this **Section 2.03(c)(ii)** shall permit Loan Parties to sell or otherwise Dispose of any assets other than in accordance with **Section 7.05(a)** or **Section 7.05(h)**.

(iii) **Payments in respect of Extraordinary Receipts.** Within three (3) Business Days after the date of receipt by Loan Parties of the Net Proceeds of any Extraordinary Receipts, Borrowers shall, unless waived by the Required Lenders in their sole discretion, prepay the Delayed Draw Term Loans in an amount equal to the sum of (A) the lesser of (1) 100% of such Net Proceeds received and (2) the Outstanding Amount of the Delayed Draw Term Loans *plus* (B) interest at the rate then applicable to the Delayed Draw Term Loans on the amounts prepaid in the immediately preceding clause (A), through and including the date of prepayment.

(iv) **Payments in respect of Debt.** Within three (3) Business Days after the date of receipt by Loan Parties of the Net Proceeds of any Debt incurred (other than Debt permitted under **Section 7.03**), Borrowers shall, unless waived by the Required Lenders in their sole discretion, prepay the Delayed Draw Term Loans in an amount equal to the sum of (A) the lesser of (1) 100% of such Net Proceeds received and (2) the Outstanding Amount of the Delayed Draw Term Loans *plus* (B) interest at the rate then applicable to the Delayed Draw Term Loans on the amounts prepaid in the immediately preceding clause (A), through and including the date of prepayment. The provisions of this **Section 2.03(c)(iv)** shall not be deemed to be implied consent to any incurrence of Debt otherwise prohibited by the terms of this Agreement.

(v) **[Reserved].**

(vi) **Payments in respect of Equity.** Within three (3) Business Days after the date of the issuance by any Loan Party or any of its Subsidiaries of any Equity Interests (other than (w) in the event that any Loan Party or any of its Subsidiaries forms any Subsidiary in accordance with the terms hereof, the issuance by such Subsidiary of Equity Interests to such Loan Party or such Subsidiary, as applicable, (x) the issuance of Equity Interests of any Loan Party to directors, officers and employees of any Loan Party and its Subsidiaries pursuant to employee stock option plans (or other employee incentive plans or other compensation arrangements) approved by the board of directors of such Loan Party, and (y) the issuance of Equity Interests by a Subsidiary of a Loan Party to its parent or member in connection with the contribution by such parent or member to such Subsidiary of the proceeds of an issuance described in clauses (w) – (x) above), Borrowers shall prepay the Delayed Draw Term Loans in an amount equal to the sum of the lesser of (1) 100% of such Net Proceeds received in connection with such issuance and (2) the Outstanding Amount of the Delayed Draw Term Loan. The provisions of this **Section 2.03(c)(vi)** shall not be deemed to be implied consent to any issuance of Equity Interests or formation or acquisition of any Subsidiary otherwise prohibited by the terms of this Agreement.

(d) **Payments under Certain Circumstances.** Notwithstanding anything to the contrary contained herein, at any time that an Event of Default exists (whether by virtue of the Obligations (other than Unasserted

Obligations) not being paid in full on the Maturity Date or as a result of the acceleration of the Obligations in accordance with the provisions thereof or otherwise) when Borrowers make or are required to make any payment or prepayment of the Delayed Draw Term Loan, Borrowers agree that (without notice or demand of any kind from any Lending Party, such notice and demand being hereby expressly waived) Borrowers shall be required to pay and shall pay the sum of: (i) the Outstanding Amount of the Delayed Draw Term Loans being paid or prepaid; *plus* (ii) interest (at the rate then applicable to the Delayed Draw Term Loans) on the amounts in the immediately preceding clause (i) through and including the date of prepayment or repayment.

(e) **Notice of Payments; Interest.** Administrative Loan Party shall provide written notice of any payments made pursuant to **Section 2.03(c)** by at least 12:00 p.m. two (2) Business Days prior to the proposed prepayment date, which notice shall state pursuant to which paragraph of **Section 2.03(c)** the prepayment is being made. Any prepayment of the Delayed Draw Term Loans pursuant to **Section 2.03(c)** shall be accompanied by the payment of all accrued and unpaid interest on the amount of such prepayment through to the date of prepayment.

Section 2.04. CERTAIN FEES.

(a) **[Reserved.]**

(b) **Certain Fees.** On August 28 of each year, if any Obligations (other than Unasserted Obligations) remain outstanding, Borrowers shall pay to Administrative Agent: (A) an annual loan administration fee equal to Twenty Two Thousand Dollars (\$22,000), and (B) an annual loan valuation fee equal to Twenty Five Thousand Dollars (\$25,000); and each installment of each such fee shall be fully earned when due.

(c) **[Reserved].**

(d) **Other Provisions.** Except as otherwise expressly set forth herein, once paid, each fee (or portion thereof) referenced in this **Section 2.04** shall not be refundable under any circumstances and will not be subject to counterclaim or setoff or otherwise affected. At the sole discretion of each Lender, all or any portion of any of the fees referenced herein that are payable to such Lender may be allocated or paid to any of its Affiliates or any other Lender(s).

Section 2.05. BROKERS AND FINANCIAL ADVISORS.

In connection with the transactions contemplated hereby, Loan Parties have not engaged any brokers or arrangers, other than financial advisors, accountants and legal advisors. Loan Parties hereby agree to pay, and hereby indemnify each Indemnitee from and against, all fees, costs and expenses of any advisors (financial or otherwise), brokers or arrangers engaged by or on behalf of Loan Parties in connection with the transactions contemplated hereby.

Section 2.06. MANNER OF PAYMENTS.

(a) **Payments Generally.** Each payment or prepayment of principal, interest, fees and other amounts required to be paid to Administrative Agent or Lenders under the Loan Documents shall be made to Administrative Agent on account of Administrative Agent or Lenders, as applicable, at the Administrative Agent's Office in Dollars and in immediately available funds without setoff, recoupment, deduction or counterclaim of any kind before noon on the date such payment is due. Administrative Agent agrees to endeavor to provide Borrowers with an invoice setting forth the Outstanding Amount of the Delayed Draw Term Loans and stating the amount of interest due on any Payment Date in reasonable detail, not later than five (5) days prior to such Payment Date; *provided that*: (i) Administrative Agent shall have no liability for failing to do so; and (ii) any failure by Administrative Agent to provide any such invoice shall not affect Borrowers' (or any other party's) obligation to pay when due any amounts owing hereunder in accordance with the provisions hereof.

(b) **Payments on Business Days.** If any payment hereunder becomes due and payable on a day (including a Payment Date) that is not a Business Day, then such due date shall be extended to the next succeeding Business Day; *provided that* interest and fees shall continue to accrue during the period of any such extension.

(c) **Computations.** All interest and fees owing hereunder shall be computed on the basis of a year of three hundred and sixty (360) days and calculated in each case for the actual number of days elapsed.

(d) **Evidence of Debt.** The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by Administrative Agent in the ordinary course of business. The accounts or records maintained by Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by Lenders to Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of Borrowers hereunder to pay any amount owing with respect to the Obligations. If any conflict exists between the accounts and records maintained by any Lender and the accounts and records of Administrative Agent in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through Administrative Agent, Borrowers shall execute and deliver to such Lender (through Administrative Agent) a Note, which shall evidence such Lender's Delayed Draw Term Loan in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, amount and maturity of its Delayed Draw Term Loan, as applicable, and payments with respect thereto.

Section 2.07. INCREASED COSTS.

(a) **Increased Costs Generally.** If any Change in Law shall:

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

(ii) subject Administrative Agent or any Recipient to any Tax of any kind whatsoever with respect to this Agreement or any Credit Extension made by it, or change the basis of taxation of payments to Administrative Agent or Recipient in respect thereof (except for any Excluded Taxes); or

(iii) impose on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or the Delayed Draw Term Loan made by such Lender; and the result of any of the foregoing shall be to increase the cost to such Lender or such other Person of making, converting to, continuing or maintaining any Delayed Draw Term Loan or to increase the cost to such Lender, or to reduce the amount of any sum received or receivable by such Lender hereunder (whether of principal, interest or any other amount), then, upon request of such Lending Party, Borrowers shall pay to such Lending Party such additional amount or amounts as will compensate such Lending Party for such additional costs incurred or reduction suffered.

(b) **Capital Requirements.** If any Lender determines that any Change in Law affecting such Lender or such Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Credit Extensions made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time Borrowers shall pay to such Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section 2.07, as well as the basis for determining such amount or amounts, and delivered to Borrowers shall be conclusive absent manifest error. Borrowers shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender to demand compensation pursuant to the foregoing provisions of this Section 2.07 shall not constitute a waiver of such Lender's right to demand such compensation, *provided* that Borrowers shall not be required to compensate a Lender pursuant to the foregoing

provisions of this **Section 2.07** for any reductions suffered more than nine months prior to the date that such Lender notifies Administrative Loan Party of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor (*except* that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to in this subsection (d) shall be extended to include the period of retroactive effect thereof).

(e) **Survival.** All obligations of each Loan Party under this **Section 2.07** shall survive termination of the Commitments and survive the payment in full of all Obligations.

Section 2.08. PAYMENTS FREE OF TAXES.

(a) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made free and clear of and without deduction or withholding for any and all Indemnified Taxes, and all liabilities with respect thereto, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority. If any Indemnified Taxes are required to be withheld after the date hereof from or in respect of any sum payable under this Agreement or any other Loan Document to a Recipient, (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this **Section 2.08**) such Recipient receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrowers shall make such deductions, (iii) Borrowers shall timely pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable Laws, and (iv) Borrowers shall furnish to the Recipient the original or a certified copy of a receipt evidencing payment thereof or other evidence of payment reasonably acceptable to such Recipient; *provided* that Borrowers shall not be required to increase such amounts payable to such Recipient with respect to any Taxes (A) that are attributable to such Recipient's failure to comply with the requirements of **Section 2.08(d)** or (B) that are United States federal withholding taxes imposed on amounts payable to such Recipient at the time such Recipient becomes entitled to payment under this Agreement, except to the extent that the such Recipient's assignor (if any) was entitled, at the time of assignment, to receive additional amounts from Borrowers with respect to such Taxes pursuant to this paragraph.

(b) As soon as practicable after any payment of Taxes by any of Borrowers to a Governmental Authority pursuant to this **Section 2.08**, such Borrower shall deliver to Administrative 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 Administrative Agent.

(c) Without duplication, each Borrower jointly and severally agrees to indemnify each Recipient for the full amount of Indemnified Taxes paid by such Recipient and any liability (including penalties, interest, and reasonable expenses) arising therefrom or with respect thereto.

(d) Each Lender and Administrative Agent, on or prior to the date of this Agreement, and from time to time thereafter if requested in writing by Borrower, shall provide Administrative Agent with (i) a complete and properly executed IRS Form W-8BEN, W-8BEN-E, W-8ECI or W-8IMY (including all required accompanying information), as appropriate, or any successor form prescribed by the IRS (including a United States taxpayer identification number) and, to the extent applicable: (A) certifying that such Person is entitled to benefits under an income tax treaty to which the United States is a party that reduces the rate of withholding tax on payments of interest; or (B) providing a U.S. Tax Compliance Certificate, a form of which is attached hereto at **Exhibit C**, which generally provides certification certifying that such Person is eligible for the "portfolio interest exemption"; or (C) certifying that the income receivable pursuant to this Agreement is effectively connected with the conduct of a trade or business in the United States; or (ii) an IRS Form W-9 or any successor form prescribed by the IRS. In addition, each Lender and Administrative Agent will (A) take all actions reasonably requested in good faith by Borrowers in writing that are consistent with applicable legal and regulatory restrictions to claim any available reductions or exemptions from Indemnified Taxes and (B) otherwise cooperate with Administrative Loan Party to minimize any amounts payable by Borrowers under this **Section 2.08**; *provided* that, in each case: (x) any out-of-pocket cost relating directly to such action or cooperation requested by Borrowers shall be borne by Borrowers, and Administrative Agent and each Lender shall not be required to take any action that it determines in its sole good faith discretion may be adverse in any non *de minimis* respect to it and not indemnified to its satisfaction; and (y) notwithstanding anything in this Agreement to the contrary, neither Administrative Agent nor Lenders will have any

obligation to disclose to any Borrower or any other Person (except to a Governmental Authority in accordance with applicable Laws as determined by Administrative Agent in its reasonable discretion) the identity of any Lender.

(e) 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 Code, as applicable), such Lender shall deliver to Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrowers or Administrative Agent such documentation prescribed by applicable Laws (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrowers or Administrative Agent as may be necessary for compliance with 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 2.08(e)**, "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(f) For purposes of this **Section 2.08**, Administrative Agent is a "withholding agent" for purposes of Sections 1441, et seq. and FATCA, and will provide Borrowers an IRS Form W-9 or any successor form proscribed by the IRS.

(g) Without prejudice to the survival of any other agreement of Borrowers hereunder, the agreements and obligations of Borrowers contained in this **Section 2.08** shall survive the Obligations being paid in full.

Section 2.09. SHARING OF PAYMENTS.

If any Lender shall, by exercising any right of setoff, recoupment or counterclaim or otherwise, obtain payment in respect of any Credit Outstandings or accrued and unpaid interest thereon resulting in such Lender receiving payment of a proportion of the Credit Outstandings or accrued and unpaid interest thereon greater than its Percentage Share (or other applicable share) thereof as provided herein, then such Lender receiving such greater proportion shall: (a) notify Administrative Agent in writing (including via email) of such fact; and (b) purchase (for cash at face value) participations in that portion of the Credit Outstandings or accrued and unpaid interest thereon held by the other applicable Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by Lenders ratably in accordance with their respective Percentage Shares thereof; *provided that*: (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and (ii) the provisions of this **Section 2.09** shall not be construed to apply to: (A) any payment made by Borrowers pursuant to and in accordance with the express terms of this Agreement; or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any portion of the Credit Outstandings held by it to any assignee or participant, other than to any Loan Party (as to which the provisions of this **Section 2.09** shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable Laws, that any Lender acquiring a participation pursuant to the foregoing arrangements may, except to the extent otherwise specified in such Lender's participation agreement, exercise against such Loan Party rights of setoff, recoupment and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

Section 2.10. PAYMENTS GENERALLY; RIGHT OF ADMINISTRATIVE AGENT TO MAKE DEDUCTIONS AUTOMATICALLY.

(a) Payments Generally.

(i) All payments to be made by any Loan Party hereunder shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by any Loan Party hereunder shall be made to Administrative Agent, for the account of the respective Lenders to which such payment is owed, at Administrative Agent's Office in Dollars and in immediately available funds not later than 11:00 a.m. on the date specified herein. Administrative Agent will promptly distribute to each

Lender its applicable Percentage Share (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by Administrative Agent after 11:00 a.m. may, in Administrative Agent's sole discretion, be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(ii) Each Borrower hereby authorizes Administrative Agent: (A) to deduct automatically all principal, interest or fees when due hereunder or under any Note from any account (other than an Excluded Account) of any Borrower maintained with or under the control of Administrative Agent (if any); and (B) if and to the extent any payment of principal, interest or fees under this Agreement or any Note is not made when due to deduct any such amount from any or all of the accounts of any Borrower maintained at Administrative Agent or under the control of Administrative Agent (if any). Administrative Agent agrees to provide written notice to each Borrower of any automatic deduction made pursuant to this Section 2.10(a)(ii) showing in reasonable detail the amounts of such deduction. Each Lender agrees to reimburse each Borrower based on its applicable Percentage Share for any amounts deducted from such accounts in excess of amount due hereunder and under any other Loan Documents.

(b) **Clawback Rights.** Unless Administrative Agent shall have received notice from Administrative Loan Party prior to the date on which any payment is due hereunder to Administrative Agent for the account of Lenders that Borrowers will not make such payment, Administrative Agent may assume that Borrowers have made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to Lenders the amount due. In such event, if Borrowers have not in fact made such payment, then each Lender severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lender in immediately available funds with interest thereon, for each day from the date such amount is distributed to it to the date of payment to Administrative Agent, at the Federal Funds Rate. A notice of Administrative Agent to any Lender or Administrative Loan Party with respect to any amount owing under this **Section 2.10(b)** shall be conclusive, absent manifest error.

(c) **[Reserved].**

(d) **Obligations of Lenders Several.** The obligations of Lenders hereunder to make the payments under **Section 10.04(c)** are several and not joint. The failure of any Lender to make any payment under **Section 10.04(c)** on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to make its payments under **Section 10.04(c)**.

(e) **[Reserved].**

(f) **Cash Management.** Administrative Agent shall have full access to all of the Operating Accounts and all other Deposit Accounts of Loan Parties and their Subsidiaries (excluding Excluded Accounts), including (i) direct access to all information concerning such Deposit Accounts, and (ii) in Administrative Agent's sole discretion, the institution of such automatic notifications to Administrative Agent with respect to such Deposit Accounts (or any of them) as Administrative Agent may request. Each Loan Party and each of its Subsidiaries hereby specifically grants a Lien in all such Deposit Accounts to Administrative Agent to secure the payment and performance when due of the Obligations.

Section 2.11. DEFAULTING LENDERS.

(a) **Adjustments.** Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Laws:

(i) **Waivers and Amendments.** That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in **Section 10.01**.

(ii) **Reallocation of Payments.** Any payment of principal, interest, fees or other amounts received by Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Section 8.02** or otherwise) shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to Administrative Agent hereunder; *second*, to the payment of any amounts owing to Lenders, as a result of any judgment of a court of competent jurisdiction obtained by any Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *third*, so long as no Default exists, to the payment of any amounts owing to Borrowers as a result of any judgment of a court of competent jurisdiction obtained by Borrowers against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *fourth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) **Certain Fees.** That Defaulting Lender shall not be entitled to receive any fee (if any) pursuant to **Section 2.04** for any period during which that Lender is a Defaulting Lender (and Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) for any period during which that Lender is a Defaulting Lender.

(b) **Defaulting Lender Cure.** If Administrative Loan Party and Administrative Agent agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, Administrative Agent will so notify the parties hereto, whereupon, as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of the outstanding Delayed Draw Term Loans of the other Lenders or take such other actions as Administrative Agent may determine to be necessary to cause the Delayed Draw Term Loans to be held on a pro rata basis by the applicable Lenders in accordance with their Percentage Shares of the Delayed Draw Term Loans; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of Borrowers while that Lender was a Defaulting Lender; *provided further* that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) **Replacement of Defaulting Lenders.** If any Lender shall become a Defaulting Lender, then Administrative Agent or Borrowers may replace such Lender (the "*affected Lender*"), or cause such affected Lender to be replaced, with another lender (the "*replacement Lender*") satisfying the requirements of an Eligible Assignee of a Lender under **Section 10.06(a)** by having the affected Lender sell and assign all of its rights and obligations under this Agreement and the other Loan Documents to the replacement Lender pursuant to **Section 10.06(b)**; *provided* that, if Borrowers seeks to exercise such right, it must do so within one hundred and eighty (180) days after it first knows of the occurrence of the event or events giving rise to such right, and neither Administrative Agent nor any Lender shall have any obligation to identify or locate a replacement Lender for Borrowers (it being expressly agreed that in such circumstances it is Borrowers' obligation to identify or locate a replacement Lender that is an Eligible Assignee and is reasonably acceptable to Administrative Agent).

Section 2.12. REPLACEMENT OF LENDERS.

(a) If any Lender requests compensation under **Section 2.07** or **Section 2.08**, or if Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 2.08**, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking the Delayed Draw Term Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to **Sections 2.07** or **2.08**, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under **Section 2.07**, or if Borrowers are required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any

Lender pursuant to **Section 2.08**, then Borrowers may, at their sole expense and effort, upon notice to such Lender and Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in **Section 10.06**), all its interests, rights (other than its existing rights to payments pursuant to **Sections 2.07** or **2.08**) and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided that* (i) Borrowers shall have received the prior written consent of Administrative Agent which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of the Delayed Draw Term Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or Borrowers (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under **Section 2.07** or payments required to be made pursuant to **Section 2.08**, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrowers to require such assignment and delegation cease to apply.

Section 2.13. JOINT AND SEVERAL LIABILITY.

The Delayed Draw Term Loans deemed made to Borrowers hereunder shall be deemed jointly funded to, and received by, Borrowers. Each Borrower jointly and severally agrees to pay, and shall be jointly and severally liable for the payment and performance of, all Obligations. Each Borrower acknowledges and agrees that the joint and several liability of such Borrower is provided as an inducement to the Lending Parties to provide loans and other financial accommodations to Borrowers, and that each such loan or other financial accommodation shall be deemed to have been done or extended by the Lending Parties in consideration of, and in reliance upon, the joint and several liability of Borrowers. The joint and several liability of each Borrower hereunder is absolute, unconditional and continuing, regardless of the validity or enforceability of any of the Obligations, or the fact that a Lien in any Collateral may not be enforceable or subject to equities or defenses or prior claims in favor of others, or may be invalid or defective in any way and for any reason. Each Borrower hereby waives: (a) all notices to which such Borrower may be entitled as a co-obligor with respect to the Obligations, including, notice of (i) acceptance of this Agreement, (ii) the making of loans or other financial accommodations under this Agreement, or the creation or existence of the Obligations, and (iii) presentment, demand, protest, notice of protest and notice of non-payment; and (b) all defenses based on (i) any modification (or series of modifications) of this Agreement or the other Loan Documents that may create a substituted contract, or that may fundamentally alter the risks imposed on such Borrower hereunder, (ii) the release of any other Borrowers (or any other Loan Party) from its duties under this Agreement or the other Loan Documents, or the extension of the time of performance of any other Borrower's duties hereunder or thereunder, (iii) the taking, releasing, impairment or abandonment of any Collateral, or the settlement, release or compromise of the Obligations or any other Borrower's, Guarantor's liabilities with respect to all or any portion of the Obligations, or (iv) any other act (or any failure to act) that fundamentally alters the risks imposed on such Borrower by virtue of its joint and several liability hereunder. It is the intent of each Borrower by this paragraph to waive any and all suretyship defenses available to such Borrower with respect to the Obligations, whether or not specifically enumerated above. Notwithstanding any provisions of this Agreement to the contrary, it is the intent of the parties hereto that the joint and several nature of the liabilities of Borrowers, and the Liens granted by Borrowers to secure the Obligations, not constitute a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the United States Code (11 U.S.C. § 101, et seq.), as amended, or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance, fraudulent transfer or similar law of any state, nation or other governmental unit, as in effect from time to time. Accordingly, Administrative Agent and Borrowers agree that if the obligations and liabilities of any Borrower hereunder, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a fraudulent conveyance or fraudulent transfer under applicable Laws, the obligations and liabilities of such Borrower hereunder, as well as the Liens securing such obligations and liabilities, shall be valid and enforceable only to the maximum extent that would not cause such obligations, liabilities or Liens to constitute a fraudulent conveyance or fraudulent transfer under applicable Laws. Each Loan Party hereby agrees that until the full and final payment and satisfaction of the Obligations and the termination of this Agreement, such Loan Party will not exercise any subrogation, contribution or other right or remedy against any other Loan Party or any security for any of the Obligations arising by reason of such Loan Party's performance or satisfaction of its joint and several liability hereunder. In addition, each Loan Party agrees that (a) such Loan Party's right to receive any payment of amounts due with respect to such subrogation, contribution or other rights is subordinated to the full and final payment and satisfaction of the

Obligations, and (b) such Loan Party agrees not to demand, sue for or otherwise attempt to collect any such payment until the full and final payment and satisfaction of the Obligations and the termination of this Agreement.

Section 2.14. ADMINISTRATIVE LOAN PARTY.

Each Loan Party hereby irrevocably appoints Epic Applied as the borrowing agent and attorney-in-fact for each Loan Party (the “**Administrative Loan Party**”) which appointment shall remain in full force and effect unless and until Administrative Agent shall have received prior written notice signed by each Loan Party that such appointment has been revoked and that another Loan Party has been appointed Administrative Loan Party. Each Loan Party hereby irrevocably appoints and authorizes Administrative Loan Party (a) to provide Administrative Agent with all notices with respect to Loans obtained for the benefit of any Loan Party and all other notices and instructions under this Agreement and (b) to take such action as Administrative Loan Party deems appropriate on its behalf to obtain Loans 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 Loans and the Collateral of Loan Parties in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Loan Parties in order to utilize the collective borrowing powers of Loan Parties in the most efficient and economical manner and at their request, and that Administrative Agent shall not incur any liability to any Loan Party as a result hereof. Each Loan Party expects to derive benefit, directly or indirectly, from the handling of Loans and the Collateral in a combined fashion since the successful operation of each Loan Party is dependent on the continued successful performance of the integrated group. To induce Administrative Agent to do so, and in consideration thereof, each Loan Party hereby jointly and severally agrees to indemnify Administrative Agent and hold it harmless against any and all liability, expense, loss or claim of damage or injury, made against Administrative Agent by any Loan Party or by any third party whosoever, arising from or incurred by reason of (a) the handling of the Collateral of Loan Parties as herein provided, (b) Administrative Agent relying on any instructions of Administrative Loan Party, or (c) any other action taken by Administrative Agent hereunder or under the other Loan Documents, *except* that Loan Parties will have no liability under this **Section 2.14** with respect to any liability that has been finally determined by a court of competent jurisdiction if such liability resulted solely from the gross negligence or willful misconduct of Administrative Agent.

Section 2.15. CERTAIN BANKRUPTCY MATTERS

(a) Except to the extent expressly provided otherwise in an Order, the Loan Parties hereby agree that, subject only to the Carve-Out, the Obligations shall be deemed to (i) constitute DIP Superpriority Claims and (ii) be secured as set forth in **Section 6.29(a)** pursuant to Sections 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code and, to the extent provided in any of the Orders.

(b) In the event of a conflict between, or inconsistency among, the Interim Order or the Final Order, on the one hand, and any Loan Document, on the other hand, the Interim Order or the Final Order, as the case may be, shall control.

(c) Notwithstanding anything to the contrary contained herein or elsewhere:

(i) the parties hereto agree, and the Orders shall provide, that the Lending Parties shall not be required to prepare, file, register or publish any financing statements, mortgages, account control agreements, notices of Lien or similar instruments in any jurisdiction or filing or registration office, or to take possession of any Collateral or to take any other action in order to validate, render enforceable or perfect the Liens on the Collateral granted by or pursuant to this Agreement, the Orders or any other Loan Document. If the Administrative Agent (in its sole discretion), from time to time elects to prepare, file, register or publish any such financing statements, mortgages, account control agreements, notices of Lien or similar instruments, take possession of any Collateral, or take any other action to validate, render enforceable or perfect all or any portion of the Administrative Agent’s Liens on the Collateral, (A) all such documents and actions shall be deemed to have been filed, registered, published or recorded or taken at the time and on the date that the Interim Order is entered, and (B) shall not negate or impair the validity or effectiveness of this **Section 2.15(c)** or of the perfection of any other Liens in favor of the Administrative Agent, for the benefit of the Lenders and the other Lending Parties, on the Collateral; and

(ii) except as otherwise agreed to by the Lenders, the Liens, Lien priorities, DIP Superpriority Claims and other rights and remedies granted to the Lending Parties pursuant to this Agreement, the Orders or the other Loan Documents (specifically including, but not limited to, the existence, perfection, enforceability and priority of the Liens provided for herein and therein, and the DIP Superpriority Claims 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 or any other Loan Party (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by dismissal or conversion of the Cases, or by any other act or omission whatsoever.

(d) Without limiting the generality of the foregoing, notwithstanding any such financing, extension, incurrence, dismissal, conversion, act or omission:

(i) subject to the entry of the Final Order, and subject only to the Carve-Out and to the extent provided in any of the Orders and subject to the Orders, no costs or expenses of administration which have been or may be incurred in the 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 a parity with any claim of any Lender or the Administrative Agent against Borrower in respect of any Obligations;

(ii) other than as provided in the Orders or the Loan Documents, the Administrative Agent's Liens on the Collateral shall constitute valid, enforceable and perfected Liens, and, except with respect to the Carve-Out (and as otherwise set forth in the Orders), shall be prior to all other Liens now existing or hereafter arising, in favor of any other creditor or other Person; and

(iii) the parties hereto agree, and the Orders shall provide, that the Administrative Agent's Liens on the Collateral shall continue to be valid, enforceable and perfected without the need for the Administrative Agent or any Lender to prepare, file, register or publish any financing statements, mortgages, hypothecs, account control agreements, notices of Lien or similar instruments or to otherwise perfect the Administrative Agent's Liens under applicable non-bankruptcy law.

(e) As of the Final Order Date, in connection with any sale or Disposition of 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 as part of restructuring plan subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code, or at any sale or foreclosure conducted by the Administrative Agent, in accordance with applicable law and, with respect to any credit bid, Section 363(k) of the Bankruptcy Code, the Administrative Agent (at the direction of the Required Lenders) shall have the power and right, without assent by any Loan Party, to "credit bid" the full amount of all Obligations and any Existing Liabilities then outstanding, in order to purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral.

ARTICLE III. THE COLLATERAL

Section 3.01. GRANT OF SECURITY INTEREST.

(a) [Reserved]

(b) Each Loan Party hereby grants, pledges and assigns a security interest in and Lien on the Collateral to Administrative Agent, for the benefit of the Lending Parties, to secure the prompt payment in full and performance when due of all of the Obligations. Each Loan Party represents, warrants and covenants to the Lending Parties that: (a) the Lien granted by it herein is and shall at all times continue to be a perfected, first priority (subject to the Carve-Out and Permitted Liens having priority by operation of law and except to the extent otherwise expressly provided in any Loan Document or expressly agreed to in writing by Administrative Agent) Lien in the Collateral (subject only to the Carve-Out and Permitted Liens); (b) it has rights in and the power to transfer each item of the Collateral upon which it purports to grant a Lien pursuant to the Loan Documents, free and clear of any and all Liens or claims of others, other than the Carve-Out and Permitted Liens; and (c) no effective security agreement, mortgage, deed of trust, financing statement (as that term is defined in the Uniform Commercial Code),

or other security or Lien instrument covering all or any part of the Collateral is or will be on file or of record in any public office, except those relating to the Carve-Out and Permitted Liens. If any Loan Party shall acquire a commercial tort claim (as that term is defined in the Uniform Commercial Code), such Loan Party shall promptly notify Administrative Agent in a writing signed by such Loan Party of the details thereof and grant to Administrative Agent, for the benefit of the Lending Parties, a Lien therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Administrative Agent. Notwithstanding any termination of this Agreement, Administrative Agent's Lien in the Collateral shall continue until all Obligations (other than Unasserted Obligations) are repaid in full. At such time as the Obligations (other than Unasserted Obligations) have been paid in full and the Lending Parties shall have received a release of all Claims from Loan Parties, Administrative Agent shall, at Borrowers' sole cost and expense, release its Liens on the collateral the subject of all Collateral Documents.

Section 3.02. ADMINISTRATIVE AGENT'S RIGHTS REGARDING THE COLLATERAL.

(a) If an Event of Default then exists, Administrative Agent may, (i) at any time in Administrative Agent's own name or in the name of any Loan Party, communicate with Account Debtors and obligors in respect of Instruments, Chattel Paper or other Collateral to verify to Administrative Agent's satisfaction, the existence, amount and terms of, and any other matter relating to, Accounts, Instruments, Chattel Paper or other Collateral, and (ii) without prior notice to any Loan Party, notify Account Debtors or other Persons obligated on any Collateral that Administrative Agent has a Lien therein and that payments shall be made directly to Administrative Agent. Upon the request of Administrative Agent, each Loan Party shall so notify such Account Debtors and other Persons. Each Loan Party hereby appoints Administrative Agent or Administrative Agent's designee as such Person's attorney at any time an Event of Default exists, with power to endorse such Person's name upon any notes, acceptance drafts, money orders or other evidences of payment of Collateral.

(b) Each Loan Party shall remain liable under any evidence of Collateral to observe and perform all the conditions and obligations to be observed and performed by it thereunder, and neither Administrative Agent nor any Lender shall have any obligation or liability whatsoever to any Person under any such Collateral by reason of or arising out of the execution, delivery or performance of this Agreement or the other Loan Documents, and neither Administrative Agent nor any Lender shall be required or obligated in any manner (i) to perform or fulfill any of the obligations of any Loan Party that is a party thereto, (ii) to make any payment or inquiry thereunder, or (iii) to take any action of any kind to collect, compromise or enforce any performance or the payment of any amounts that may have been assigned to it or to which it may be entitled at any time or times under or pursuant to any Collateral.

(c) In the event that any Collateral, including Proceeds, is evidenced by or consists of Negotiable Collateral, and if and to the extent that perfection or priority of Administrative Agent's Lien is dependent on or enhanced by possession, Loan Parties, immediately upon the request of Administrative Agent, shall endorse and deliver physical possession of such Negotiable Collateral and all agreements and documents related thereto, to Administrative Agent or to a custodian to hold on behalf of Administrative Agent. Upon the request of Administrative Agent, all Negotiable Collateral shall be delivered to Administrative Agent or a custodian for the benefit of Administrative Agent, duly endorsed as follows on the back of the signature page thereof or on a separate allonge affixed thereto:

Pay to the order of White Oak Global Advisors, LLC, as Administrative Agent
[applicable Loan Party]

By: _____

Name:

Title:

(d) Administrative Agent (through any of its officers, employees, or agents (which may include any Lending Party)) shall have the right, from time to time upon its reasonable request, and after reasonable prior notice and during regular business hours, (i) to inspect and examine the Books and Records and the Collateral, (ii) during the existence of an Event of Default, to communicate directly with any and all Account Debtors to verify the existence and terms of Collateral, and (iii) to check, test, and appraise the Collateral, or any portion thereof, in order to verify Loan Parties' financial condition or the amount, quality, value, condition of, or any other matter relating to, the Collateral, and Loan Parties shall permit any designated representative of Administrative Agent (which shall

include any Lending Party) to visit and inspect any of the properties of Loan Parties to inspect and to discuss its finances and properties and Collateral, during normal business hours. Without limiting the provisions of **Section 6.10**, each Loan Party shall, with respect to any Collateral owned, leased or otherwise controlled by it, upon reasonable prior appointment during normal business hours, will:

(i) provide access to such Collateral to Administrative Agent and its officers, employees and agents, as frequently as is commercially reasonable or, at any time an Event of Default exists, as frequently as Administrative Agent determines to be appropriate;

(ii) permit Administrative Agent or any of its officers, employees and agents to inspect, audit and make extracts and copies from all of such Loan Party's Books and Records; and

(iii) permit Administrative Agent to inspect, review, evaluate and make physical verifications and appraisals of the Inventory and other Collateral in any manner and through any means that Administrative Agent considers reasonably advisable, and such Loan Party agrees to render to Administrative Agent, at Borrowers' sole cost and expense, such clerical and other assistance as may be reasonably requested with regard thereto; provided that, if an Event of Default shall have occurred and be continuing, no advance notice (whether during normal business hours or otherwise) shall be required, the rights in this clause (d) shall extend to each Lending Party and the Lending Parties shall have access at any and all times.

(e) Beyond the exercise of reasonable care to assure the safe custody of Collateral in Administrative Agent's possession and the accounting for moneys actually received by Administrative Agent or any Lender hereunder, neither Administrative Agent nor any Lender shall have any duty or liability to exercise or preserve any rights, privileges or powers pertaining to the Collateral.

Section 3.03. GRANT OF LICENSE TO USE INTELLECTUAL PROPERTY COLLATERAL; ADDITIONAL INTELLECTUAL PROPERTY.

Each Loan Party hereby grants to Administrative Agent an irrevocable, non-exclusive license, exercisable upon the occurrence and during the continuance of an Event of Default without payment of royalty or other compensation to such Loan Party, to use, transfer, license or sublicense any Intellectual Property now owned, licensed to, or hereafter acquired by such Loan Party, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof, and represents, promises and agrees that any such license or sublicense is not and will not be in conflict with the contractual or commercial rights of any third Person or applicable Laws; provided that such license will terminate on the date on which all Obligations (other than Unasserted Obligations) are paid in full; provided further that, upon the request of Administrative Agent, the applicable Loan Party will use reasonable commercial efforts to obtain from any third party a Lien in any license of Intellectual Property granted by such third party to such Loan Party. In addition, on such periodic basis as Administrative Agent shall require, Loan Parties shall: (i) provide Administrative Agent with a report of all new patentable, copyrightable, or trademarkable materials acquired or generated by each Loan Party during the prior period; (ii) cause all Intellectual Property acquired or generated by each Loan Party that is not already the subject of a registration with the appropriate filing office (or an application therefor diligently prosecuted) to be registered with such appropriate filing office in a manner sufficient to impart constructive notice of such Loan Party's ownership thereof; and (iii) cause to be prepared, executed, and delivered to Administrative Agent supplemental schedules to the applicable Collateral Documents to identify such Intellectual Property as being subject to the Lien created thereunder; provided that neither Loan Parties nor any of their Subsidiaries shall register with the U.S. Copyright Office any unregistered Copyrights (whether in existence on the Effective Date or thereafter acquired, arising, or developed) unless (A) Loan Parties provide Administrative Agent with written notice of its intent to register such Copyrights not less than thirty (30) days prior to the date of the proposed registration, and (B) prior to such registration, the applicable Loan Party executes and delivers to Administrative Agent a copyright security agreement in form and substance satisfactory to Administrative Agent, supplemental schedules to any existing copyright security agreement or such other documentation as Administrative Agent reasonably deems necessary in order to perfect and continue perfected Administrative Agent's Liens on such Copyrights following such registration.

Section 3.04. AUTHORIZATION TO FILE FINANCING STATEMENTS.

Each Loan Party hereby authorizes Administrative Agent to file, without notice to any Loan Party, financing statements under the Uniform Commercial Code with all appropriate jurisdictions to perfect, maintain, preserve or protect Administrative Agent's and Lenders' interest or rights hereunder or any Collateral Document in the Collateral the subject hereof or thereof, including a notice that any Disposition of all or any such collateral that is not otherwise permitted hereunder, whether by any Loan Party or any other Person, shall be deemed to violate the rights of Administrative Agent and Lenders hereunder and under applicable Laws. Without limiting the generality of the foregoing, each Loan Party hereby: (a) authorizes Administrative Agent to file, without notice to any such Loan Party, financing statements under the Uniform Commercial Code with all appropriate jurisdictions listing all assets or all personal property of such Loan Party as the collateral covered by such financing statements; and (b) ratifies and approves the filing of any financing statements by or on behalf of Administrative Agent or any Lender (or any such Person's predecessor(s)-in-interest) prior to the Effective Date against such Loan Party and listing the Collateral or all assets or all personal property of such Loan Party as the collateral covered by such financing statements.

**ARTICLE IV.
CONDITIONS PRECEDENT**

Section 4.01. CONDITIONS PRECEDENT TO EFFECTIVENESS.

The obligation of the Administrative Agent and each Lender to enter into this Agreement is subject to the satisfaction of the following conditions precedent (all Loan Documents and other documents to be delivered to Administrative Agent or any other Lending Party pursuant to this **Section 4.01** shall be subject to prior approval as to form and substance (including as to results) by Lenders, with delivery by a Lender of its signature page to this Agreement evidencing such Person's acknowledgment that the conditions set forth in this **Section 4.01** have been satisfied, unless otherwise waived in writing):

(a) **Receipt of Certain Documents and Assurances.** Administrative Agent shall have had delivered to it all of the following, each of which shall be, unless otherwise specified herein or otherwise required by Lenders, originals (or facsimiles or portable document format versions thereof (in either such case, promptly followed by originals thereof)), each, to the extent to be executed by a Loan Party, properly executed by a Responsible Officer of such Loan Party, each dated the Effective Date (or, in the case of certificates of governmental officials, a recent date before the Effective Date), all in sufficient number as Administrative Agent shall separately identify and the same shall be in full force and effect.

- (i) counterparts of this Agreement, duly executed by each of the parties hereto;
- (ii) if requested by any Lender, a Note duly executed by Borrowers in favor of such Lender evidencing such Lender's Percentage Share of the Delayed Draw Term Loan owing to such Lender by Borrowers;
- (iii) counterparts of each of the other Loan Documents (including all applicable Collateral Documents), duly executed by each of the parties thereto;
- (iv) all other documents, including Uniform Commercial Code financing statements, required by applicable Laws or reasonably requested by any Lending Party to be filed, registered or recorded to reaffirm the Liens reaffirmed under this Agreement on the Effective Date;
- (v) such certificates of resolutions or other action, incumbency certificates or other certificates of Responsible Officers of each Loan Party that is not a natural person as any Lending Party may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with the Loan Documents to which such Loan Party is a party;
- (vi) such documents and certifications as Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each such Loan Party is validly existing, in

good standing and qualified to engage in business in: (A) the State of its jurisdiction of organization or formation; and (B) each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and

(vii) evidence that all insurance required to be maintained pursuant to this Agreement (including **Section 6.07** herein) and the other Loan Documents has been obtained and is in effect;

(viii) a favorable opinion of Porter Hedges LLP reasonably acceptable to Administrative Agent, addressed to each Lending Party, providing that each Loan Party is validly existing under the laws of its state of organization, each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto, that the applicable officers of each Loan Party has been duly authorized to execute and deliver each such Loan Document, and each Loan Party (other than Epic SF) has the requisite authority to execute and deliver each Loan Document to which it is a party;

(ix) the Budget; and

(x) such other assurances, certificates, documents, consents, reports or opinions as Administrative Agent or any other Lending Party may reasonably require.

(b) **Other Matters.** Each of the conditions precedent set forth in **Section 4.02** shall have been satisfied.

Section 4.02. CONDITIONS PRECEDENT TO ALL CREDIT EXTENSIONS.

The obligation of each Lender to make each Delayed Draw Term Loan or other Credit Extension hereunder is subject to, the satisfaction of the following conditions precedent:

(a) **Truth and Correctness of Representations and Warranties; No Default.** The representations and warranties of Borrowers and each other Loan Party as regards any Loan Party contained in **Article V** or any other Loan Document, or that are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of the applicable Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date. No Default shall result, or then could reasonably be expected to result, from the Loan Parties entering into the Loan Documents on the Effective Date.

(b) **Request for Borrowing.** The Administrative Agent shall have received a Notice of Borrowing with respect to the Credit Extension in accordance with the requirements hereof, and no motion, order or injunction challenging the Credit Extension shall exist.

(c) **Bankruptcy Matters.**

(i) The Loan Parties shall have retained and shall continue to retain the Financial Advisor and Chief Restructuring Officer on terms and conditions acceptable to the Administrative Agent and the Required Lenders in their sole and absolute discretion.

(ii) With respect to the Credit Extensions before the Final Order Date, the Interim Order Date shall have occurred not later than three (3) Business Days after the Petition Date, the Interim Order shall be in full force and effect and shall not have been vacated, stayed, or reversed, shall not be subject to a pending appeal and shall not have been modified or amended in any respect without the prior written consent of the Administrative Agent and the Required Lenders.

(iii) With respect to the Credit Extensions on or after the Final Order Date, the Final Order Date shall have occurred not later than 30 days after the Petition Date, the Final Order shall be in full force and effect and shall not have been vacated, stayed, or reversed, shall not be subject to a pending appeal and shall not

have been modified or amended in any respect without the prior written consent of the Administrative Agent and the Required Lenders.

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

(v) The First Day Orders entered by the Bankruptcy Court or any other court, to the extent affecting the rights or obligations of the Administrative Agent, the Lenders, or the agent or the lenders under the Pre-Petition Loan Agreement and the other “Loan Documents” (as defined in the Pre-Petition Loan Agreement), or which may give rise to a post-petition claim, administrative in nature or otherwise, shall be in form and substance acceptable to the Administrative Agent and the Required Lenders in their sole and absolute discretion. Such First Day Orders shall have been entered on or prior to the Effective Date.

(d) **Payment of Fees.** Borrower shall have paid all fees and reasonable and documented out-of-pocket expenses of the Administrative Agent and the Lenders (including the reasonable and documented fees and expenses of outside counsel and financial advisors) accrued and payable on or prior to the date of such Credit Extension, including without limitation all fees, charges and disbursements of counsel to such Lending Party and White Oak.

(e) **Commitments.** After giving effect to any requested Delayed Draw Term Loan, the Outstanding Amount of Delayed Draw Term Loans hereunder shall not exceed the aggregate of the Delayed Draw Term Loan Commitments of all Lenders and shall be subject to the limitations in **Section 2.01(a)** hereof.

(f) **Budget.** The Administrative Agent shall have received an updated Budget approved by the Chief Restructuring Officer.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

Each Loan Party represents and warrants to each Lending Party that:

Section 5.01. CORPORATE EXISTENCE AND POWER.

Each of the Loan Parties: (a) is a corporation, partnership or limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation (subject to such changes after the date hereof as are permitted under the Loan Documents); (b) subject to the entry of the Interim Order or the Final Order, as applicable, has the power and authority and all governmental licenses, authorizations, consents and approvals: (i) to own its assets and carry on its business, except to the extent that any failure to have any of the foregoing could not reasonably be expected to have a Material Adverse Effect; and (ii) to execute, deliver, and perform its obligations under the Loan Documents to which each is a party; and (c) is duly qualified as a foreign corporation, partnership or limited liability company, as applicable, and is licensed and in good standing under the laws of each jurisdiction where its ownership, leasing or operation of property or the conduct of its business requires such qualification or license, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 5.02. CORPORATE AUTHORIZATION; NO CONTRAVENTION.

The execution and delivery by each of the Loan Parties of, and the performance by each of the Loan Parties of its obligations under, each Loan Document to which such Person is party have been duly authorized by all necessary corporate or other organizational action, and, subject to entry of the Interim Order or the Final Order, as applicable, do not and will not: (a) contravene the terms of any of such Person’s Organizational Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under: (i) any Contractual Obligation to which such Person is a party or affecting such Person

or the properties of such Person or (ii) any Court Order to which such Person or its property is subject, except in each case where enforcement is stayed upon the commencement of the Cases; or (c) violate any Laws.

Section 5.03. GOVERNMENTAL AUTHORIZATION; COMPLIANCE WITH LAWS; COOPERATION.

(a) **Governmental Authorizations.** Subject to the entry of the Interim Order or the Final Order, as applicable, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is necessary or required in connection with the execution and delivery by any Loan Party (or any Subsidiary thereof) of, or the performance by any Loan Party of its obligations under, any Loan Document to which it is a party other than the Interim Order or the Final Order, as applicable, and (i) such as have been obtained or made and are in full force and effect, or (ii) filings necessary to perfect Liens created by the Loan Documents. Each Loan Party has all material Permits required for the operation of its business and the use of the Facilities and is compliance therewith in all material respects.

(b) **Compliance with Laws.** Loan Parties are in compliance in all respects with the requirements of all Laws (including the Patriot Act) applicable to it or to its properties, except in such instances in which: (i) such requirement of Laws is being contested in good faith by appropriate Proceedings diligently conducted; or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect. Notwithstanding the foregoing:

(A) neither any Loan Party nor any Subsidiary thereof: (1) is, or is controlled by or is acting on behalf of, a Restricted Party; (2) has received funds or other property from a Restricted Party; or (3) is in breach of or is the subject of any action or investigation under any Anti-Terrorism Law;

(B) Loan Parties and each Subsidiary thereof has taken reasonable measures to ensure compliance with the Anti-Terrorism Laws;

(C) the operations of Loan Parties and their Subsidiaries are and have been conducted at all times in compliance with applicable Anti-Terrorism Laws and Money Laundering Laws and without violation of the Sanctions, and Loan Parties and their Subsidiaries have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith;

(D) neither Loan Parties nor any of their Subsidiaries (or, to the knowledge of Loan Parties, any director, officer, employee, agent, affiliate or representative of Loan Parties or any of their Subsidiaries) is a Person currently the subject of any Sanctions, and neither Loan Parties nor any of their Subsidiaries is located, organized or resident in a country or territory that is the subject of any Sanctions. Each Loan Party represents that it will not directly or indirectly use the proceeds of any Credit Extension to fund any activities of or business with any Restricted Party or in any other manner that would result in a violation by any Person (including any Person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of any Sanctions; and

(E) the operations of Loan Parties and their Subsidiaries are and have been conducted at all times in material compliance with the Outer Continental Shelf Lands Act and all applicable regulations thereunder related to oil, gas and sulphur exploration, development and production operations on the Outer Continental Shelf, including decommissioning activities.

(c) **Required Bonding.** Loan Parties shall obtain all required bonds and other surety arrangements that exceed the Threshold Amount relating to the ownership, use, or operation of the Facilities.

(d) **Cooperation.** Loan Parties shall, to the extent permitted by law: (i) promptly notify the Lenders of, and if in writing, furnish the Lenders with copies of any communication to it from a Governmental Authority concerning or claiming a violation above the Threshold Amount of any applicable law or regulation, including but not limited to any incident of non-compliance, decommissioning order, civil enforcement order, or notice of

investigation, and (ii) keep the Lender informed of any developments, meetings or discussions with any Governmental Authority in respect of any filings, investigation or inquiry concerning or claiming such a violation of any applicable law or regulation.

(e) **Certain Actions.** No Loan Party is engaged in or has engaged in any course of conduct that could subject any of their respective properties to any Lien, seizure or other forfeiture under any racketeer influenced and corrupt organizations law, whether civil or criminal, or other similar Laws.

(f) **Due Documentation.** Each Vessel is duly documented in the name of the Shipowner, as owner thereof, under the Laws and flag of the United States or Vanuatu, as the case may be, free of any Liens of record other than Liens in favor of Administrative Agent, the Carve-Out and other Permitted Liens and, if a U.S. Vessel, with a coastwise trade endorsement under and pursuant to the Laws of the United States with the NVDC.

(g) **[Reserved]**

(h) **The Vessels.** Each of the Vessels is in all respects seaworthy and operable, is in class, without any recommendations affecting class. No U.S. Vessels are required to comply with the International Safety Management Code or the International Ship and Port Facility Code; instead, they are required to comply with, and the U.S. Vessels do comply with, the requirements of the Alternative Security Program developed by the Offshore Marine Service Association.

Section 5.04. BINDING EFFECT.

Subject to the entry of the Interim Order or the Final Order, as applicable, this Agreement has been, and each other Loan Document (when delivered hereunder) will have been, duly executed and delivered by each Loan Party that is party thereto. Subject to the entry of the Interim Order or the Final Order, as applicable, this Agreement and each other Loan Document to which any Loan Party is a party constitute the legal, valid and binding obligations of such Loan Party, enforceable against such Loan Party in accordance with their respective terms, except as enforceability may be limited by general principles of equity.

Section 5.05. LITIGATION.

Except for the Cases or as specifically disclosed on **Schedule 5.05**, there are no Proceedings pending, or to the knowledge of any Loan Party, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, against any Loan Party or any Subsidiary of any Loan Party that: (a) purport to affect or pertain to any Loan Document or any of the transactions contemplated thereby; or (b) could reasonably be expected to have a Material Adverse Effect. No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority purporting to enjoin or restrain the execution, delivery or performance of this any Loan Document, or directing that the transactions provided for therein not be consummated as therein provided.

Section 5.06. [RESERVED].

Section 5.07. EMPLOYEE BENEFIT PLANS.

(a) **Compliance with ERISA Generally.** Each Plan is in compliance with the applicable provisions of ERISA, the Code and other applicable Laws. Each Plan which is intended to qualify under subsection 401(a) of the Code either (i) has obtained from the IRS a favorable determination letter from the IRS as to its qualified status under the Code, or the expiration of the requisite period under applicable regulations promulgated by the IRS under the Code or IRS pronouncements in which to apply for such determination letter and to make any amendments necessary to obtain a favorable determination has not occurred, or (ii) has been established under a prototype plan for which an IRS opinion letter has been obtained by the plan sponsor and is valid as to the adopting employer, and nothing has occurred that would cause the loss of such qualification.

(b) **No Actions.** There are no pending or, to the knowledge of Loan Parties, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan.

(c) **Certain Events.** (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) no Pension Plan has any Unfunded Pension Liability; and (iii) no event or circumstance has occurred or exists that, if such event or circumstance had occurred or arisen after the Effective Date, would create an Event of Default under **Section 8.01(i).**

Section 5.08. [RESERVED].

Section 5.09. TITLE TO PROPERTIES.

(a) A Loan Party is the sole owner of each Vessel and each Vessel is duly registered in the name of such Loan Party with (i) the NVDC, under the laws and flag of the United States of America, (ii) the registry maintained by Vanuatu Maritime Services under the laws and flag of the Republic of Vanuatu, or (iii) in such jurisdiction and registry as Administrative Agent permits a Loan Party to register its Vessel under the laws and flag of another country; in each case free and clear of all Liens other than the Carve-Out and Permitted Liens.

(b) Each Loan Party and each Subsidiary thereof has good record and marketable title in fee simple to, or valid leasehold interests in, or valid rights to use (including easements) all real property necessary to the ordinary conduct of their respective businesses, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. As of the Effective Date, the properties of each Loan Party and each Subsidiary thereof are subject to no Liens other than the Carve-Out and Permitted Liens;

(c) None of any Loan Party's assets are held outside of the United States of America, unless, as regards Vessels, cutting and plugging and abandonment equipment, diving equipment or aircraft, movement outside the United States whereby the Administrative Agent consents to such relocation.

Section 5.10. TAXES.

Each Loan Party and its Subsidiaries have filed all Tax Returns required to be filed, and have paid all Taxes when due, regardless of whether shown on any Tax Return. There is no proposed tax assessment against any Loan Parties and their respective Subsidiaries. Each Loan Party and its Subsidiaries have made adequate provision in accordance with GAAP for all Taxes not yet due and payable. No Loan Party or any Subsidiary of any Loan Party is currently a party to any tax audit or other Proceeding or controversy or knows of any proposed Tax assessment against it that is not being actively contested by such Loan Party or its Subsidiary diligently, in good faith, and by appropriate proceedings and with respect to which it has made adequate reserves in conformity with GAAP. There is no proposed tax assessment of which any Loan Party is aware against any Loan Party or any Subsidiary thereof that would, if made, have a Material Adverse Effect.

Section 5.11. FINANCIAL CONDITION.

(a) **Financial Statements.** The unaudited consolidated balance sheet of Loan Parties and their Subsidiaries dated on or about the date hereof, and the related consolidated statements of income or operations, shareholders' equity and cash flows for the period ended on such date (collectively, the "**Closing Financial Statement**"): (A) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (B) fairly present the consolidated financial condition of Loan Parties and their Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (A) and (B), to the absence of footnotes and to normal year-end audit adjustments.

(b) **[Reserved].**

Section 5.12. ENVIRONMENTAL MATTERS.

Neither any Loan Party's nor any Subsidiary's past or present operations, real estate or other properties are subject to any federal, state or local investigation to determine whether any remedial action is needed to address any environmental pollution, Hazardous Material or environmental clean-up and neither any Borrower nor any Subsidiary has received any notice of any such investigation. Neither any Loan Party nor any Subsidiary has any contingent liability in excess of the Threshold Amount with respect to any release (as defined in any applicable Environmental Law), environmental pollution or Hazardous Material on any real estate or other property now or previously owned, leased or operated by it.

Section 5.13. MARGIN REGULATIONS; REGULATED ENTITIES.

Neither Loan Parties nor any Subsidiary thereof is engaged or will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of Loan Parties, any Subsidiary thereof or any Person controlling Loan Parties is an "investment company" within the meaning of the Investment Company Act of 1940. Loan Parties are not subject to regulation under the Federal Power Act, any state public utilities code or any other federal or state statute or regulation limiting its ability to incur Debt.

Section 5.14. SWAP OBLIGATIONS.

Neither Loan Parties nor any Subsidiary thereof has incurred any outstanding obligations under any Swap Contracts, other than obligations under Swap Contracts expressly permitted hereby. Loan Parties have voluntarily entered into each Swap Contract to which it is a party based upon its own independent assessment of its consolidated assets, liabilities and commitments, in each case as an appropriate means of mitigating and managing risks associated with such matters, and has not relied on any swap counterparty or any Affiliate of any swap counterparty in determining whether to enter into any Swap Contract.

Section 5.15. INTELLECTUAL PROPERTY.

Each Loan Party and each Subsidiary thereof owns or is licensed or otherwise has the right to use all of the Intellectual Property and other rights that are reasonably necessary for the operation of their respective businesses, except for those the failure of which to own or license could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The use of such Intellectual Property by each Loan Party and its Subsidiaries and the operation of their respective businesses do not infringe any valid and enforceable intellectual property rights of any other Person, except to the extent any such infringement could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by Loan Parties or any Subsidiary thereof infringes upon any rights held by any other Person, except to the extent any such infringement could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No claim or litigation regarding any of the foregoing is pending or, to the knowledge of Loan Parties, threatened, and no patent, invention, device, application, principle or any statute, law, rule, regulation, standard or code is pending or, to the knowledge of Loan Parties, proposed, which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.16. EQUITY INTERESTS AND INVESTMENT HELD BY LOAN PARTIES; EQUITY INTERESTS IN LOAN PARTIES.

As of the Effective Date: (a) Loan Parties have no Subsidiaries other than those listed on **Schedule 5.16**; (b) Loan Parties hold no Equity Interests in any other Person or Investments in any other Person, other than those specifically disclosed on **Schedule 5.16**; and (c) the holders of all Equity Interests in Loan Parties are those listed on **Schedule 5.16**. All of the outstanding Equity Interests in Loan Parties and in each Subsidiary thereof have been validly issued and are fully paid and non-assessable.

Section 5.17. INSURANCE.

The properties of each Loan Party and each Subsidiary thereof are insured with financially sound and reputable insurance companies or “Protection and Indemnity” clubs that are not Affiliates of any Loan Party, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Loan Party or its Subsidiary operates.

Section 5.18. COLLATERAL AND COLLATERAL DOCUMENTS.

(a) **Enforceable and Perfected Security Interest.** The provisions of this Agreement and each of the other Collateral Documents, taken together with the Interim Order and/or the Final Order, are effective to create in favor of the Administrative Agent (for the benefit of itself and the other applicable Lending Parties) a legal, valid, continuing and enforceable security interest in the Collateral pledged hereunder or thereunder, in each case subject to no Liens other than the Carve-Out and Permitted Liens.

(b) **Enforceable and Perfected Liens.** The Orders are effective to create in favor of the Administrative Agent (for the benefit of itself and the other applicable Lending Parties) a legal, valid, continuing and enforceable first preferred mortgage on the Vessels in favor of Administrative Agent.

(c) **Automatic Perfection.** Pursuant to the terms of the Orders, no filing or other action will be necessary to perfect or protect the Liens, security interests and first preferred mortgages on the Collateral.

(d) **Super-Priority.** Pursuant to and to the extent provided in the Interim Order and/or the Final Order, the Obligations of the Loan Parties under this Agreement will constitute allowed super-priority administrative expense claims in the Case under Section 364(c) of the Bankruptcy Code as DIP Superpriority Claims, subject only to the Carve-Out. Notwithstanding anything to the contrary herein, the Carve-Out shall be senior to all Liens and claims (including administrative and superpriority claims) securing the Obligations, the Loan Parties’ pre-petition obligations, Adequate Protection Liens, and all other Liens or claims (including administrative claims and DIP Superpriority Claims), including all other forms of adequate protection, Liens, or claims (including administrative claims and DIP Superpriority Claims) securing the Obligations and pre-petition obligations granted or recognized as valid, including the Liens, security interests, and claims (including administrative claims and DIP Superpriority Claims) granted to the Administrative Agent and the other Lending Parties.

(e) **Truth and Correctness of Representations and Warranties.** All representations and warranties of each Loan Party in each Collateral Document are true and correct, *provided* that, if such representations and warranties expressly relate solely to a specified date, then such representations and warranties were true and correct as of such specified date.

Section 5.19. LABOR RELATIONS.

There are no strikes, lockouts or other material labor disputes against any Borrower or any Subsidiary thereof, or to any Loan Party’s knowledge, threatened against or affecting any Loan Party or any Subsidiary thereof, and no significant unfair labor practice complaint is pending against any Loan Party or any Subsidiary thereof or, to the knowledge of any Loan Party, threatened against any of them before any Governmental Authority. Except as set forth on **Schedule 5.19**: (a) no Loan Party is a party to any collective bargaining agreements or contracts; and (b) no union representation exists and, to the knowledge of any Loan Party, no union organizing activities are taking place.

Section 5.20. USE OF PROCEEDS.

The proceeds of the Loans and Credit Extensions hereunder shall be used solely in accordance with the Budget.

Section 5.21. MATTERS RELATING TO THE FACILITIES.

(a) **Compliance; Zoning.** Loan Parties have complied in all material respects with all Laws and all recorded instruments affecting the Facilities. The use of the Facilities complies in all material respects with all Laws.

(b) **Utilities.** To the best of Loan Parties' knowledge, in all material respects, all utility services that are necessary for the full development, construction, equipping and operation of all improvements are available at no cost or expenses and at the title lines of the Facility (or, if they pass through adjoining private land, in accordance with valid public or unencumbered private easements which inure to the benefit of Loan Parties and run with the Facility) including public sanitary sewer service, storm sewers, public water, electricity, gas and telephone service. To the best of Loan Parties' knowledge, all such utility services are non-interruptible. All material Permits have been obtained or are available so that all improvements may be connected to the sanitary sewer service, which sanitary sewer service shall be available to the full extent required for the full operation of all improvements and shall permit the discharge of sewage for the types and amounts anticipated to be produced from the Facilities. Each Loan Party has all Permits required for the operation of its business, except for the Permits specified on **Schedule 5.21**.

Section 5.22. FULL DISCLOSURE.

To the knowledge of Loan Parties after due inquiry of each Responsible Officer of Loan Parties, none of the representations or warranties made by any Loan Party in the Loan Documents to which it is a party as of the date such representations and warranties are made or deemed made, and none of the statements contained in any exhibit, report, statement or certificate furnished by or on behalf of any Loan Party in connection with the Loan Documents (including the disclosure materials delivered by or on behalf of any Loan Party to Lending Parties (or any of the foregoing Persons) prior to the Effective Date), contains any untrue statement of a material fact or omits any material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they are made, not misleading as of the time when made or delivered; *provided* that, with respect to any projections and forecasts provided by Loan Parties (whether with respect of Borrowers or any other Loan Party): (a) Loan Parties represent that such projections and forecasts were prepared in good faith based upon assumptions believed to be reasonable at the time of the preparation thereof; and (b) Lending Parties acknowledge that such projections and forecasts are not to be viewed as facts and that actual results during the period or periods covered thereby may differ from the projected or forecasted results.

Section 5.23. INTERRELATED BUSINESSES.

Loan Parties make up a related organization of various entities constituting an overall economic and business enterprise such that any benefit from the Loans or other financial accommodations hereunder received by any one of them benefits the others. Loan Parties render services to or for the benefit of the other Loan Parties and/or purchase or sell and supply goods to or from or for the benefit of the others, make loans, advances and provide other financial accommodations to or for the benefit of the other Loan Parties and provide administrative, marketing, payroll and management services to or for the benefit of the other Loan Parties, as the case may be. Loan Parties have the same chief executive office, certain centralized accounting and legal services, certain common officers, directors and/or managers. Parents are, collectively, 100% direct owners of the Equity Interests in Epic. Clarke, Wiley and AMC are, collectively, 100% direct owners of the Equity Interests of a Parent, respectively.

Section 5.24. OCS LEASES

Each Loan Party owning an interest in and to an OCS Lease is and remains duly qualified to own or hold offshore federal leases on the Outer Continental Shelf as required by 43 U.S.C.A. § 1337 and 30 C.F.R. § 256.35.

Section 5.25. [RESERVED].**Section 5.26. LOCATIONS OF M&E.**

The M&E of the Loan Parties is not stored with a bailee, warehouseman, or similar party and is located only at, or in-transit between, the locations identified on **Schedule 5.26** to this Agreement.

Section 5.27. BURDENSOME OBLIGATIONS.

None of the Loan Parties is a party to any agreement or contract or subject to any restriction contained in its Organizational Documents or its governing documents that could reasonably be expected to have a Material Adverse Effect.

Section 5.28. BUDGET.

A true and complete copy of the Budget as of the Effective Date is attached as **Schedule 5.28** hereto

Section 5.29. ORDERS.

The Loan Parties are in compliance with the terms and conditions of the Orders. Each of the Interim Order (to the extent necessary after the Interim Order Date) or the Final Order (from after the Final Order Date) is in full force and effect and has not been vacated, reversed or rescinded or, without the prior written consent of the Administrative Agent and each Lender, no change, amendment or modification or any application or motion for any change, amendment or modification to any of the Orders shall be made, in each case, that is adverse to the interests of the Lenders.

ARTICLE VI. AFFIRMATIVE COVENANTS

So long as any Obligations (other than Unasserted Obligations) have not been repaid in full:

Section 6.01. FINANCIAL STATEMENTS.

Administrative Loan Party shall deliver to Administrative Agent a sufficient number of copies for delivery by Administrative Agent to each Lender, in form and detail satisfactory to Administrative Agent and Required Lenders:

- (a) **[Reserved.]**;
- (b) **[Reserved.]**;
- (c) **[Reserved.]**;
- (d) **[Reserved.]**;

(e) **Collateral and Other Reporting.** Provide Administrative Agent with the following documents at the following times in form satisfactory to Administrative Agent:

Monthly (or more frequently if so requested by Administrative Agent):	(i) not later than thirty (30) days after each Fiscal Month: (A) accounts receivable listings and agings and Inventory reports for the preceding Fiscal Month; and (B) accounts payable listings and agings as at the preceding Fiscal month end;
	(ii) information regarding idle and repair times for any Vessel;

	(iii) a detailed asset report setting forth the information listed in Exhibit E together with other information requested by Agent and Lenders from time to time;
Upon request by Administrative Agent:	(iv) a revised Budget of Loan Parties; and
	(v) such other reports as to the Collateral, or the financial condition of Loan Parties, as Administrative Agent may reasonably request.

Section 6.02. CERTIFICATES; OTHER INFORMATION.

Loan Parties shall deliver or cause to be delivered to Administrative Agent a sufficient number of copies for Administrative Agent to deliver to each Lender, in form and detail satisfactory to Administrative Agent and Required Lenders:

(a) **[Reserved.]**

(b) **[Reserved.]**

(c) **Additional Accountant Reports.** Promptly after any request by Administrative Agent or any other Lending Party, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors of the Loan Parties by independent accountants in connection with the accounts or books of each Epic Loan Party or any Subsidiary thereof, or any audit of any of them;

(d) **[Reserved.]**

(e) **Debt Holder Reports.** Promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party pursuant to the terms of any indenture, loan or credit or similar agreement that are not otherwise required to be furnished to Lending Parties pursuant to **Section 6.01** or any other clause of this **Section 6.02**;

(f) **Materials from or to Governmental Authorities.** Promptly, and in any event within five (5) Business Days after receipt thereof by any Loan Party, copies of each material notice or other correspondence received from, or delivered to, any Governmental Authority concerning any investigation or possible investigation or other inquiry (other than in connection with the Cases) by such agency regarding any material financial or other material operational results of any Loan Party or any Subsidiary thereof;

(g) **Changes in Officers and Directors.** Promptly, and in any event within five Business Days of a Responsible Officer of Administrative Loan Party becoming aware thereof, written notice of any change in the Persons constituting any of the officers, directors or managers of any Loan Party;

(h) **Tax Returns.** No later than five (5) Business Days after the date they are required to be filed (subject to any permitted extensions), copies of the executed and dated federal income tax returns of Loan Parties and each of their Subsidiaries and all related schedules, and copies of any extension requests;

(i) **Additional Information.** Promptly upon (but no later than three (3) Business Days after) request therefor by any Lending Party, such additional information (including budgets, sales projections, operating plans and other financial information and any information required to be delivered pursuant to the terms of the Patriot Act) regarding the business or the financial or corporate affairs of any Loan Party or the compliance by Loan Parties with the terms of the Loan Documents as Administrative Agent may from time to time reasonably request; and

(j) **Updated Budget.** No later than each Friday on or before 5:00 p.m., New York City time, an updated Budget acceptable to the Administrative Agent and the Required Lenders in their sole and absolute discretion.

(k) **Cash Flow Projections, Budget, Etc.** On each Friday on or before 5:00 p.m., New York City time, (i) the Loan Parties' rolling 13-week cash flow projections (together with a reporting package which shall include a weekly and cumulative budget variance (as compared to (x) the Budget in effect on the Petition Date and (y) the Budget in effect immediately prior to such updated projections) discussion and such other information related to any budget variances as the Administrative Agent may reasonably request) (which may be updated at the reasonable request of the Lenders), (ii) outstandings under any factoring facility as of the Thursday prior to the delivery of the information required pursuant to this clause (i), (iii) certification that no proceeds of the Loans have been used for purposes other than as set forth in the Budget, and (iv) the cash balance of the Loan Parties;

(l) **Draft Bankruptcy Filings.** All draft (i) documents, (ii) pleadings and (iii) motions, in each case at least two (2) Business Days prior to filing with the Bankruptcy Court and copies of all pleadings, motions, applications, judicial information, financial information and other documents filed by the Loan Parties with the Bankruptcy Court;

(m) **Sale Discussions.** On each Friday on or before 5:00 p.m., following the Petition Date, commencing with the first full week following the Petition Date, on a confidential basis, a summary of any confidentiality agreements executed during such week along with a breakdown of confidentiality agreements entered into with strategic and/or financial buyers. Such summary shall also include updates on the 363 Sale and discussions with buyers;

(n) **Professionals Fee and Expenses.** Commencing with the month ending August 31, 2019, within five (5) days after the end of each month, a report of the (i) fees and expenses of the Debtor Professionals, any Committee Professionals and the Lending Parties Consultants incurred during such month (and on a cumulative basis since the Petition Date), (ii) fees and expenses referred to in clause (i) that were not paid during such month (and on a cumulative basis since the Petition Date) and (iii) fees and expenses referred to in clause (i) that were paid during such month (and on a cumulative basis since the Petition Date);

(o) **Receivables.** Commencing with the month ending August 31, 2019, within fifteen (15) days after the end of each month, a report setting forth aging of accounts receivable and accounts payable.

(p) **Electronic Delivery.** At the request of Administrative Agent, Loan Parties shall deliver or shall cause to be delivered all documents required to be delivered pursuant to **Section 6.01** or **Section 6.02** electronically (and in such format(s) as may be specified by such Lending Party (acting reasonably)). If such documents are so delivered, they shall be deemed to have been delivered on the date: (i) on which Loan Parties post such documents, or provides a link thereto on Loan Parties' website on the Internet at the website address listed on **Schedule 10.02**; or (ii) on which such documents are posted on Loan Parties' behalf on an Electronic Platform to which each Lending Party has access; *provided that*: Loan Parties shall notify Administrative Agent (by facsimile or electronic mail) of the posting of any such documents and provide to Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to in this paragraph.

Section 6.03. NOTICES.

Loan Parties shall promptly notify each Lending Party in writing of:

(a) **Defaults; Events of Loss or Damage.** As soon as possible and in any event within five calendar days of the occurrence of: (i) any Default; or (ii) any Event of Loss or damage with respect to the Vessels in excess of \$500,000.00;

(b) **Matters Involving a Material Adverse Effect.** Any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including any such matter arising from: (i) any breach or non-performance of, or any default under, a Contractual Obligation of any Loan Party or any Subsidiary thereof; (ii) any dispute, Proceeding or suspension between any Loan Party or any Subsidiary thereof and any Governmental Authority; (iii) the commencement of, or any material development in, any Proceeding (other than the Cases)

affecting any Loan Party or any Subsidiary thereof, including pursuant to any applicable Environmental Laws; or (iv) the loss of all or any material portion of the Collateral;

(c) **ERISA Events.** The occurrence of any ERISA Event (together with a copy of any notice to or from the PBGC regarding such ERISA Event);

(d) **[Reserved.]**

(e) **Labor Controversies.** Any material labor controversy resulting in or threatening to result in any strike, work stoppage, boycott, shutdown or other material labor disruption against or involving any Loan Party or any Subsidiary thereof;

(f) **Financial Matters.** Any material change in accounting policies or financial reporting practices by Loan Parties;

(g) **Vessel Insurances and Classification.** Any failure to renew the insurances relating to the Vessels;

(h) **Charters or Other Contracts.** Any entry by Shipowner into a charter in respect of any Vessel for a period in excess of six months;

(i) **Certain Dispositions.** Any material Disposition of collateral the subject of any Collateral Document, or the incurrence of any Contractual Obligations that would qualify as a Material Contract;

(j) **Material Contracts.** Any termination (other than termination upon expiry of the stated term of the agreement) or loss of a Material Contract, any default or event of default (however defined) under a Material Contract that gives the non-defaulting party the right to terminate such Material Contract, or any modification, amendment or supplement to a Material Contract in a manner that could adversely affect Administrative Agent or the Lenders; and

(k) **Environmental Matters.** The Loan Parties shall promptly notify the Administrative Agent in writing upon receipt of any written claim, suit, investigation, inquiry or proceeding by or before any court or Governmental Authority or of any remedial obligations or other liabilities under Environmental Laws that would reasonably be expected to result in greater than \$100,000 in liability.

Each notice pursuant to this **Section 6.03** shall be accompanied by a statement of a Responsible Officer of Administrative Loan Party setting forth details of the occurrence referred to therein.

Section 6.04. PAYMENT OF CERTAIN OBLIGATIONS.

Each Loan Party and each Subsidiary of each Loan Party will (taking into account all applicable provisions of the Bankruptcy Code) pay in full before delinquency or before the expiration of any extension period all Taxes imposed, levied, or assessed against it, or any of its assets or in respect of any of its income, businesses, or franchises, except to the extent that the validity of such governmental assessment or Tax is the subject of a Permitted Protest. Each Loan Party and each Subsidiary of each Loan Party will: (a) timely and correctly file all Tax Returns required to be filed by it; and (b) withhold, collect and remit all Taxes that it is required to collect, withhold or remit.

Section 6.05. PRESERVATION OF EXISTENCE, ETC.

Each of the Loan Parties shall and shall cause each of its respective Subsidiaries to: (a) preserve, renew and maintain in full force and effect their respective legal existence and good standing under the Laws of the jurisdiction of their organization except in a transaction expressly permitted by **Section 7.04** or **Section 7.05**; (b) take all reasonable actions to maintain all rights, privileges, Permits, licenses and franchises necessary or desirable in the normal conduct of their respective businesses, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect; (c) use the standard of care typical in the industry in the

operation and maintenance of its facilities; and (d) preserve or renew all of their respective registered Intellectual Property, the non-preservation of which would have or could reasonably be expected to have a Material Adverse Effect.

Section 6.06. MAINTENANCE OF PROPERTIES.

Each of the Loan Parties shall and shall cause each of its respective Subsidiaries to: (a) maintain, preserve and protect all of their respective Facilities, material properties and material equipment necessary to the operation of their respective businesses in good working order and condition, ordinary wear and tear and permitted Dispositions hereunder excepted; (b) make all commercially reasonable repairs thereto and renewals and replacements thereof; in each of the foregoing clauses (a) and (b), except where the failure to do so does not have and could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) operate the facilities owned, leased or operated by such Person now or in the future in a manner consistent with Environmental Laws, zoning codes, contractual requirements and applicable prevailing industry standards in the locations where the facilities exist from time to time, except to the extent failure to do so does not and could not reasonably be expected to have a Material Adverse Effect. Each Loan Party shall maintain all records required to be maintained by all applicable Environmental Laws. Each Loan Party shall maintain all of its assets within the United States of America, unless, as regards Vessels, cutting and plugging and abandonment equipment, diving equipment or aircraft, movement outside the United States whereby the Administrative Agent consents to such relocation.

Section 6.07. MAINTENANCE OF INSURANCE.

Each of the Loan Parties shall and shall cause each of its respective Subsidiaries to maintain, with financially sound and reputable insurance companies not Affiliates of any Loan Party, insurance with respect to their respective properties and businesses against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons. All property policies shall have a lender's loss payable endorsement showing Administrative Agent, for the ratable benefit of the Lending Parties, as primary loss payee and waive subrogation against the Lending Parties, and all liability policies shall show Administrative Agent, on behalf of the Lending Parties, or have endorsements showing Administrative Agent, on behalf of the Lending Parties, as an additional insured. All policies (or the loss payable and additional insured endorsements) shall provide that the insurer shall give Administrative Agent, on behalf of the Lending Parties, at least thirty (30) days' notice before canceling, amending, or declining to renew its policy and ten (10) days' notice of any non-payment of premiums. At any Lending Party's request, Loan Parties shall deliver certified copies of all of the insurance policies of Loan Parties and its Subsidiaries and evidence of all premium payments. Subject to the provisions hereof, proceeds payable under any policy shall, during the existence of an Event of Default, be payable to Administrative Agent for the benefit of the Lending Parties on account of the Obligations. If any Loan Party fails to obtain insurance as required under this **Section 6.07** or to pay any amount or furnish any required proof of payment to third persons and Lenders, Administrative Agent or Lenders may make all or part of such payments or obtain such insurance policies required in this **Section 6.07** and take any action under the policies that Lenders and Administrative Agent deem necessary or prudent.

Each Vessel shall be and shall remain adequately insured to the satisfaction of Administrative Agent against marine perils, with such insurance being in form and substance (including with respect to deductibles) and with insurers acceptable to Administrative Agent. Such insurance shall specifically include, but shall not be limited to, (a) hull and machinery insurance with respect to each Vessel, (b) protection and indemnity insurance, including, without limitation, pollution liability insurance issued in accordance with the Oil Pollution Act of 1990 (and without any named windstorm exclusions at any time a Vessel is located in the Gulf of Mexico or any other geographic location where a named windstorm exclusion is applicable), unless such risk is fully covered by the entry of the Vessels into an international group protection and indemnity association or club acceptable to Administrative Agent, (c) war risk insurance with respect to each Vessel, and (d) mortgagee interest insurance and mortgagee's additional perils (pollution) insurance, and, if a Vessel is operating in an area declared as a war zone or an area restricted by war risk underwriters, mortgagee's rights insurance or similar coverage, providing coverage. Loan Parties, upon request of Administrative Agent, will deliver to Administrative Agent from time to time the policies, standard letters of undertaking or certificates of insurance in form satisfactory to Administrative Agent, including stipulations that coverages will not be canceled or diminished without at least thirty (30) days' prior written notice to Administrative

Agent. In connection with all policies covering assets in which Administrative Agent holds or is offered a security interest for the Obligations, Loan Parties will provide Administrative Agent with such lender's loss payable or other endorsements as Administrative Agent may require. Insurance proceeds shall be paid to Administrative Agent. If any of the insurances referred to in this **Section 6.07** form part of a fleet cover, the Loan Parties shall procure that the brokers shall undertake to Administrative Agent that such brokers shall neither set off against any claims in respect of a Vessel any premiums due in respect of other vessels under such fleet cover or any premiums due for other insurances, nor cancel the insurance for reason of non-payment of premiums for other vessels under such fleet cover or of premiums for such other insurances, and shall undertake to issue a separate policy or policies in respect of each Vessel if and when so requested by Administrative Agent.

Section 6.08. COMPLIANCE WITH LAWS.

Each of the Loan Parties shall comply in all material respects with the requirements of all Laws and all Court Orders applicable to them or to their respective properties or businesses, except in such instances in which: (a) such requirement of Laws or Court Order is being contested in good faith by appropriate Proceedings timely instituted and diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

Section 6.09. BOOKS AND RECORDS.

Each of the Loan Parties shall: (a) maintain proper Books and Records, in which full, true and correct (in all material respects) entries in conformity with GAAP consistently applied are made of all financial transactions and matters involving their respective properties and businesses; and (b) maintain such Books and Records in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over them, as the case may be.

Section 6.10. INSPECTION RIGHTS; LENDER MEETINGS.

Each of the Loan Parties shall and shall cause each of its respective Subsidiaries to permit representatives and independent contractors (including marine surveyors) of Administrative Agent to visit and inspect any of their respective properties, including the Vessels and the Facilities, to examine their corporate, financial and operating records, and make copies thereof or abstracts therefrom, to examine and audit the Collateral and to discuss their respective affairs, finances and accounts with their respective directors, officers, members, managers and independent public accountants, at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice (which the parties contemplate to be at least two (2) days advance notice, other than under exigent circumstances as determined in Administrative Agent's reasonable judgment, where less than two (2) days advance notice may be given) to such Person. Loan Parties shall cause its senior management to attend meetings with Administrative Agent in person (if requested by Administrative Agent) to discuss Loan Parties' financial performance and projections. Loan Parties shall reimburse Administrative Agent for all reasonable out-of-pocket expenses incurred in connection with Administrative Agent's attendance at such meetings.

Section 6.11. USE OF PROCEEDS.

Use the proceeds of any Loan or Credit Extension hereunder, whether directly or indirectly, solely as set forth in the Budget.

Section 6.12. COLLATERAL ACCOUNTS AND EXCLUDED ACCOUNTS.

Schedule 6.12 sets forth details with respect to all Collateral Accounts and Excluded Accounts of each of the Loan Parties and its Subsidiaries in existence on the Effective Date. Each of the Loan Parties shall provide Administrative Agent five (5) days (or such shorter period as Administrative Agent, in its sole discretion, may otherwise agree) prior written notice before: (a) establishing any Collateral Account or Excluded Account at or with any bank or other financial institution; or (b) terminating or otherwise materially modifying any Collateral Account or Excluded Account.

Section 6.13. FINANCIAL COVENANTS.

- (a) **[Reserved]**
- (b) **Maximum Capital Expenditures.** Loan Parties shall not make Capital Expenditures.

Section 6.14. PROTECTION OF INTELLECTUAL PROPERTY RIGHTS.

Each of the Loan Parties shall and shall cause each of its respective Subsidiaries to: (a) protect, defend and maintain the validity and enforceability of their respective Intellectual Property, except to the extent that the failure to do so does not and could not reasonably be expected to result in a Material Adverse Effect; (b) promptly advise Administrative Agent in writing of material infringements of their respective Intellectual Property; and (c) not allow any Intellectual Property that is material to the business of Loan Parties or any of their Subsidiaries to be abandoned, forfeited or dedicated to the public without Administrative Agent's written consent.

Section 6.15. LITIGATION COOPERATION.

Loan Parties shall make available to Lending Parties, without expense to Lending Parties and as reasonably requested by Administrative Agent, each Loan Party and its officers, employees and agents and such Loan Party's Books and Records, to the extent that any Lending Party may deem them reasonably necessary to prosecute or defend any third-party Proceeding instituted by or against any Lending Party with respect to any collateral the subject of any Collateral Document or relating to such Loan Party.

Section 6.16. ERISA COMPLIANCE.

Loan Parties shall comply and shall cause each of its respective Subsidiaries to comply with the provisions of ERISA with respect to any Plans to which Loan Parties or any such Subsidiary is a party as employer.

Section 6.17. CLASSIFICATION.

Except for the Epic Explorer, each Vessel shall be in compliance with the requirements of the American Bureau of Shipping or any other classification society acceptable to Administrative Agent, for the highest classification for vessels of like age and type at all times and upon Administrative Agent's request, Loan Parties shall promptly provide to Administrative Agent a copy of a certificate duly issued by the American Bureau of Shipping or other classification society acceptable to Administrative Agent, to the effect that each Vessel has been given the highest classification and rating for vessels of the same age and type free of all recommendations and notations of such classification society affecting class. The Epic Explorer is not classified by the American Bureau of Shipping and so long as it is not so classified shall not be required to maintain such classification.

Section 6.18. ADDITIONAL ITEMS IN CONNECTION WITH THE FACILITIES.

(a) **Payment of Claims.** Loan Parties shall pay and discharge all claims for labor done and materials and services furnished, and shall take all other steps to forestall the assertion of claims against or Liens upon the Facilities, except if subject to dispute by such Loan Party, the holder of such claim is not levying to enforce any Lien against the assets of such Loan Party which is not fully bonded and such dispute or claim is not in excess of the Threshold Amount.

(b) **Compliance with Laws and Agreements.** Loan Parties shall in all material respects comply with all Laws and with all contracts, leases, agreements and restrictions pertaining to the Facilities.

(c) **Flood Insurance Regulations.** Notwithstanding any provision herein to the contrary, in no event is any Building (as defined in the applicable Flood Insurance Regulations) included in the definition of "Mortgaged Property," or "Collateral," or "Property," and no Building or Manufactured (Mobile) Home (as defined in the applicable Flood Insurance Regulations) is hereby encumbered hereby. As used herein, "Flood Insurance Regulations" shall mean (a) the National Flood Insurance Act of 1968, (b) the Flood Disaster Protection Act of

1973, (c) the National Flood Insurance Reform Act of 1994 (amending 42 USC 4001, et seq.), and (d) the Flood Insurance Reform Act of 2004, in each case as now or hereafter in effect or any successor statute thereto and including any regulations promulgated thereunder.

Section 6.19. [RESERVED.]

Section 6.20. FURTHER ASSURANCES.

Promptly upon the written request by Administrative Agent, each of the Loan Parties shall take such further acts (including the acknowledgment, execution, delivery, recordation, filing and registering of documents) as may reasonably be required from time to time to: (a) carry out more effectively the purposes of this Agreement or any other Loan Document; (b) subject to the Liens created by any of the Collateral Documents any of the properties, rights or interests covered by any of the Collateral Documents or any other properties, rights or interests (including immovable or real property) acquired by Loan Parties or any Subsidiary thereof following the Effective Date; (c) perfect and maintain the validity, effectiveness and priority of the Liens created or intended to be created by any of the Loan Documents; and (d) better assure, convey, grant, assign, transfer, preserve, protect and confirm to Lending Parties the rights, remedies and privileges existing or granted or now or hereafter intended to be granted to such Persons under any Loan Document or other document executed in connection therewith.

Section 6.21. POST-CLOSING MATTERS.

With respect to each condition to closing set forth in **Section 4.01(a)** that is not delivered on or before the Effective Date, Administrative Agent shall have received the deliveries set forth on **Schedule 6.21** within the time period specified on such **Schedule 6.21** (or by such later date as Administrative Agent agrees to in its sole discretion). Any representation or covenant provided for in this Agreement that refers to the items listed on **Schedule 6.21** shall not be considered in breach due solely to the fact that such item was not delivered to Administrative Agent on or before the Effective Date, and Borrowers shall have until the applicable time period provided for on **Schedule 6.21** to provide such items to Administrative Agent.

Section 6.22. [RESERVED.]

Section 6.23. ENVIRONMENTAL MATTERS.

Each of the Loan Parties shall and shall cause each of their Subsidiaries to: (i) conduct their operations in compliance with Environmental Laws in all material respects, including duly obtaining or filing for all permits, licenses, exemptions, approvals or similar authorizations, if any, required to be obtained or filed in connection with the operation or use of any and all Facilities of the Loan Parties and each of their Subsidiaries and complying with the terms and conditions of all such permits, licenses and similar authorizations; (ii) manage all Hazardous Material used or generated by the Loan Parties and each of their Subsidiaries in accordance with Environmental Laws and so as not to pose an imminent and substantial endangerment to public health or welfare or the environment; (iii) not cause the exposure of any person or property to any Hazardous Materials in connection with any Facility or operation of the Loan Parties or any of their Subsidiaries that could reasonably be expected to violate any Environmental Law; and (iv) respond to any release of any Hazardous Materials at, on, or from any of Loan Parties or any of their Subsidiaries' Facilities as required by Environmental Laws.

Section 6.24. ACCESS TO DATA.

Epic shall at all times maintain all of its electronic business records and business systems comprising its data on a duplicate server located at 811 Louisiana St., Houston, Texas 77002, and ensure that certain employees of Administrative Agent designated by Administrative Agent shall at all times have both remote and physical access to such business records and systems pursuant to arrangements that are satisfactory to Administrative Agent.

Section 6.25. [RESERVED.]**Section 6.26. CHIEF RESTRUCTURING OFFICER AND FINANCIAL ADVISOR.**

(a) The Loan Parties shall have retained as of the Petition Date, and continue to retain during the Cases, (i) the Chief Restructuring Officer and (ii) the Financial Advisor, in each case, on terms and conditions acceptable to the Administrative Agent and the Required Lenders in their sole and absolute discretion; provided that each of the Administrative Agent and the Required Lenders acknowledges that the arrangements in place with the Chief Restructuring Officer and Financial Advisor on the Closing Date are satisfactory to the Administrative Agent and the Required Lenders. Borrower acknowledges that the Administrative Agent (including at the direction of the Required Lenders) shall be permitted to engage such outside consultants and advisors (each, a “**Lending Parties Consultant**”), for the sole benefit of the Administrative Agent and other Lending Parties, as the Administrative Agent may determine to be necessary or appropriate in its sole discretion. Borrower agrees that it shall provide its reasonable cooperation during normal business hours with any Lending Parties Consultant (including providing reasonable access to its business, books and records).

Section 6.27. [RESERVED.]**Section 6.28. [RESERVED.]****Section 6.29. PRIORITY AND LIENS.**

At all times during the term hereof, ensure each of the following:

(a) Upon the entry of each of the Orders, Borrower and each other Debtor’s Obligations hereunder and other each of the other Loan Documents shall, at all times:

(i) constitute an allowed DIP Superpriority Claim on a joint and several basis in the Case of such Debtor;

(ii) subject to the Carve-Out, pursuant to section 364(c)(2) of the Bankruptcy Code, be secured by first priority, valid, binding, continuing, enforceable and fully-perfected security interests in, and Liens upon, all Collateral that, on or as of the Petition Date, is not subject to valid, perfected and non-avoidable liens (excluding any Avoidance Actions (but including, following the entry of the Final Order, the proceeds therefrom));

(iii) pursuant to section 364(c)(3) of the Bankruptcy Code, be secured by valid, binding, continuing, enforceable and fully-perfected security interests in, and Liens upon, the Collateral, whether existing on the Petition Date or thereafter acquired, that is subject to Liens of parties other than the Pre-Petition Parties, Liens securing the Adequate Protection Liens of the Pre-Petition Parties, the Carve-Out or any Permitted Lien, which security interests and liens in favor of the Administrative Agent, are junior to such valid, perfected and non-avoidable Liens; and

(iv) pursuant to section 364(d) of the Bankruptcy Code, be secured by valid, binding, continuing, enforceable, fully perfected first priority senior priming security interests and Liens upon all Collateral that is subject to valid, perfected and non-avoidable liens presently held for the benefit of the Pre-Petition Parties (such priming liens, the “**Priming Liens**” and such primed liens of the Pre-Petition Parties, the “**Primed Liens**”). The Priming Liens shall be senior in all respects to the Primed Liens and to the interests in property of the Pre-Petition Parties (including any and all forms of adequate protection granted to the foregoing). The Primed Liens shall be primed and made subject and subordinate to the Priming Liens, but the Priming Liens shall not prime liens, if any, to which the Primed Liens are subordinate as of the Petition Date.

(b) The Liens of the Administrative Agent described in section 6.18(a) and the DIP Superpriority Claim shall have priority over any claims arising, upon entry of the Final Order, under sections 105 and 506(c) of the Bankruptcy Code, and shall be subject only to the Carve-Out (and as otherwise set forth in the Orders). Except as set forth herein, no other claim having priority superior to or pari passu with that granted to the Lending Parties

by the Order then in effect shall be granted or approved while any Obligations under this Agreement remain outstanding.

(c) Except for the Carve-Out, no costs or expenses of administration shall be imposed against the Administrative Agent, the Lenders, or any other Lending Party or any of the Collateral or, subject to the entry of the Final Order, under sections 105 or 506(c) of the Bankruptcy Code, or otherwise, and each of the Debtors hereby waives for itself and on behalf of its estate and all rights under section 105 and, upon entry of the Final Order, section 506(c) of the Bankruptcy Code, or otherwise, to assert or impose or seek to assert or impose, any such costs or expenses of administration against the Administrative Agent, the Lenders, or any Lending Party.

(d) Except for the Carve-Out, the DIP Superpriority Claims of the Lending Parties and the Pre-Petition Parties shall at all times be senior to the rights of such Debtor, any chapter 11 trustee and, subject to section 726 of the Bankruptcy Code, any chapter 7 trustee, or any other creditor (including post-petition counterparties and other post-petition creditors) in the Cases or any subsequent proceedings under the Bankruptcy Code, including any chapter 7 cases (if any of such Debtor's cases are converted to cases under chapter 7 of the Bankruptcy Code).

(e) For the avoidance of doubt and notwithstanding anything to the contrary herein or elsewhere, the Carve-Out shall be senior to all liens securing the Obligations as well as any Adequate Protection Liens and claims granted by any Order. Nothing herein shall be construed to impair the ability of any party to object to any of the fees, expenses, reimbursement or compensation of any professional retained by any Debtor or a Committee. Notwithstanding anything herein to the contrary, prior to an Event of Default, the Debtors shall, in accordance with the Budget and subject to the terms of the Orders and any other relevant orders of the Bankruptcy Court, be permitted to pay compensation and reimbursement of expenses to professionals allowed and payable under sections 330 and 331 of the Bankruptcy Code and such orders of the Bankruptcy Court authorizing the payment of compensation and reimbursement of expenses that have been incurred prior to the occurrence of such Event of Default, and such amounts paid will not reduce the Post-Carve-Out Trigger Notice Cap.

ARTICLE VII. NEGATIVE COVENANTS

So long as any Obligations (other than Unasserted Obligations) have not been repaid in full, Loan Parties shall not directly or indirectly to do any of the following:

Section 7.01. LIENS.

Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, including on the Collateral, Facilities, or any materials, equipment, or other property used in the Facilities other than any of the following (collectively, "***Permitted Liens***"):

(a) any Lien created in favor of any Lending Party under any Loan Document or, to the extent that such Liens are in favor of the Lending Parties, any Order;

(b) (i) Adequate Protection Liens, (ii) Liens in favor of, or held by the Administrative Agent for the benefit of, the Pre-Petition Lenders, and (iii) Liens created prior to the Petition Date and existing on the date hereof that were permitted by the Pre-Petition Loan Agreement, in each case as described and listed on **Schedule 7.01** and any renewals or extensions thereof, *provided* that: (i) the property encumbered thereby is not changed; (ii) the amount secured or benefited thereby is not increased; (iii) the direct or any contingent obligor with respect thereto is not changed; (iv) the priority of any Liens referenced in **Section 7.01(a)** are not adversely affected thereby; and (v) any renewal or extension of the obligations secured or benefited thereby is permitted by **Section 7.03(b)**;

(c) any Lien for tax liabilities, assessments and governmental charges or levies not yet due or to the extent that non-payment thereof is permitted by **Section 6.04**, or which constitute prepetition claims in the Cases; *provided* that no notice of lien has been filed or recorded under the Code;

(d) any landlord's, supplier's, producer's, carrier's, warehouseman's, mechanic's, materialman's, repairman's or other like Lien arising in the ordinary course of business that is not overdue for a period of more than thirty (30) days which constitute prepetition claims in the Cases; provided that the aggregate amount of obligations secured by Liens under this **Section 7.01(d)** shall not exceed \$250,000;

(e) any pledge or deposit in the ordinary course of business prior to the Petition Date in connection with workers' compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;

(f) any deposit to secure the performance of bids, trade contracts or leases (other than Debt), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature, in each case incurred in the ordinary course of business prior to the Petition Date;

(g) any sublease of immovable or real property in the ordinary course of business and any lease, sublease, easement, right-of-way, encroachment, restriction or other similar encumbrance affecting immovable or real property that, when aggregated with all other such Liens, does not in any case materially detract from the value of the property subject thereto or adversely affect the priority or value of any rights arising from or related to such property, or materially interfere with the ordinary conduct of the business of the applicable Person;

(h) any Lien securing a judgment for the payment of money not constituting an Event of Default under **Section 8.01(h)** or securing an appeal or other surety bond related to any such judgment;

(i) any Lien existing on any property prior to the acquisition thereof by any Loan Party or any Subsidiary thereof or existing on any property of any Person that becomes a Subsidiary of a Loan Party after the date hereof prior to the time such Person becomes a Subsidiary of such Loan Party; *provided* that: (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary of a Loan Party, as the case may be; (ii) such Lien shall not apply to any other property or assets of a Loan Party or any Subsidiary thereof; (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary of a Loan Party, as the case may be; and (iv) such Lien does not adversely affect the priority of any Liens referenced in **Section 7.01(a)**;

(j) [Reserved];

(k) any Lien arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; *provided* that: (i) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by any Loan Party or any Subsidiary thereof in excess of those set forth by regulations promulgated by the FRB; and (ii) such deposit account is not intended by a Loan Party or any Subsidiary thereof to provide collateral to the depository institution;

(l) [Reserved];

(m) the right of a licensee under a license agreement entered into by a Loan Party or any Subsidiary thereof, as licensor, in the ordinary course of business for the use of Intellectual Property or other incorporeal or intangible assets of a Loan Party or any such Subsidiary; *provided* that, in the case of any such license granted by a Loan Party or any such Subsidiary on an exclusive basis: (i) such Person shall have determined in its reasonable business judgment that such Intellectual Property or other incorporeal or intangible assets are no longer useful in the ordinary course of business; (ii) such license is for the use of Intellectual Property or other incorporeal or intangible assets in geographic regions in which a Loan Party or any Subsidiary thereof does not have material operations or in connection with the exploitation of any product not then produced or planned to be produced by a Loan Party or any Subsidiary thereof; or (iii) such license is granted in connection with a transaction otherwise permitted by this Agreement in which a third party acquires the right to manufacture or sell any product covered by such Intellectual Property or other incorporeal or intangible assets from a Loan Party or such Subsidiary; *provided further* that, in the case of clauses (ii) and (iii) of this subsection (m), a Loan Party or such Subsidiary has determined that it is in its best economic interest to grant such license;

- (n) Permitted Maritime Liens;
- (o) Permitted Exceptions; and
- (p) Liens securing Debt permitted under **Section 7.03(c)**.

Anything to the contrary notwithstanding, no Lien shall be pari passu with or senior to the claims or Liens of the Administrative Agent or the Lenders securing the Obligations hereunder.

Section 7.02. INVESTMENTS.

Make or suffer to exist any Investments, except:

- (a) Investments in cash and Cash Equivalents;
- (b) Investments arising from transactions by a Loan Party or any Subsidiary thereof with customers or suppliers in the ordinary course of business, including Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers and suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;
- (c) Investments of Loan Parties on the Effective Date disclosed on **Schedule 5.16**;
- (d) Investments existing as of the Petition Date; and
- (e) Investments permitted both by the Budget and either the First Day Orders or the Interim Order.

Section 7.03. DEBT.

Create, incur, assume or suffer to exist any Debt, except:

- (a) Debt under the Loan Documents;
- (b) Debt incurred prior to the Petition Date and listed on **Schedule 7.03**;
- (c) Debt incurred under the Junior Loan Agreements;
- (d) [Reserved];
- (e) [Reserved];
- (f) Debt in respect of: (i) workers' compensation claims or obligations in respect of health, disability or other employee benefits; (ii) property, casualty or liability insurance or self-insurance; (iii) completion, bid, performance, appeal or surety bonds issued for the account of Loan Parties or any Subsidiary thereof; (iv) taxes, assessments or other government charges not yet delinquent or which are being contested in compliance with **Section 6.04**; or (v) bankers' acceptances and other similar obligations not constituting Debt for borrowed money; in each of the foregoing cases, to the extent incurred in the ordinary course of business;
- (g) intercompany Debt of Loan Parties or any Subsidiary owing to and held by Loan Parties or any Subsidiary; *provided* that (i) all such Debt of any Loan Party owed to any Person that is not a Loan Party shall be subordinated to the Obligations, the Adequate Protection Liens and the Carve-Out on terms reasonably acceptable to the Administrative Agent, (ii) if a Loan Party is the obligor on such Debt and any Subsidiary (other than a Guarantor) is the obligee thereof, such Debt must be unsecured and expressly subordinated to the prior payment in full in cash of all Obligations (including, with respect to any Guarantor, its obligations under **Section 10.14**), and (iii) Debt owed to Loan Parties or any Guarantor shall not be in excess of the Threshold Amount in the aggregate

during the term of this Agreement and must be evidenced by an unsubordinated promissory note pledged to Administrative Agent under the applicable Collateral Document;

(h) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently (except in the case of daylight overdrafts) drawn against insufficient funds in the ordinary course of business, *provided* that such Debt is promptly extinguished;

(i) Debt arising in connection with endorsement of instruments for deposit in the ordinary course of business;

(j) Debt of Loan Parties or any of their Subsidiaries arising from customary cash management services or in connection with any automated clearinghouse transfer of funds in the ordinary course of business;

(k) Debt of Loan Parties or any of their Subsidiaries, in an aggregate outstanding face amount not to exceed at any time the Threshold Amount, arising under or in respect of letters of credit that secure obligations under immovable or real property leases and subleases;

(l) Credit cards of any Loan Party in amounts ordinary and customary and consistent with past credit amounts not to exceed, in the aggregate outstanding at any time, Seven Hundred Thousand Dollars (\$700,000); and

(m) Debt incurred under the Merida Note so long as (i) such Debt is at all times subject to a subordination agreement with Administrative Agent which is in form and substance satisfactory to Administrative Agent and (ii) no payments or prepayments of any kind in cash (whether in respect of principal, interest, expenses or other amounts) may be made thereon prior to the Maturity Date.

In addition, neither Loan Parties nor any of their Subsidiaries shall maintain any Collateral Account other than in accordance with the provisions of **Section 6.12**.

Section 7.04. FUNDAMENTAL CHANGES.

(a) Engage in any material line of business other than a Related Business;

(b) Merge, dissolve, liquidate, consolidate (including, without limitation, by division or by an allocation of assets among newly divided limited liability companies pursuant to a “plan of division” or similar plan under the Delaware Limited Liability Company Act or any similar law of any other jurisdiction) with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person or permit any Subsidiary to do so, except in connection with the consummation of a 363 Sale.

(c) Make any voluntary, optional payment or prepayment on account of, or optional redemption or acquisition for value of any portion of, any Debt for borrowed money (other than that arising under: (i) the Loan Documents in accordance with the provisions thereof and (ii) corporate credit cards to the extent such Debt is otherwise permitted under **Section 7.03**);

(d) Without at least thirty (30) days’ prior written notice to Administrative Agent: (i) change its jurisdiction of organization; (ii) change its organizational structure or type; (iii) change its legal name; or

(e) Create or acquire any Subsidiary.

Section 7.05. DISPOSITIONS.

Make any Disposition or enter into any agreement to make any Disposition, except:

(a) [Reserved];

- (b) [Reserved];
- (c) [Reserved];
- (d) Dispositions permitted by **Section 7.04(b)**;
- (e) (i) the unwinding of any Swap Contract; (ii) to the extent permitted hereunder, Restricted Payments; and (iii) to the extent permitted hereunder and otherwise constituting Dispositions, Investments;
- (f) Dispositions of cash and Cash Equivalents in the ordinary course of business;
- (g) Dispositions of accounts receivable in connection with the compromise, settlement or collection thereof in the ordinary course of business; and
- (h) Dispositions pursuant to any 363 Sale.

Section 7.06. RESTRICTED PAYMENTS.

Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, *except* that: (a) each Subsidiary may make Restricted Payments to Loan Parties (and, in the case of a Restricted Payment by a non-wholly-owned Subsidiary, to Loan Parties and to any Subsidiary and to each other owner of Equity Interests of such Subsidiary on a pro rata basis based on their relative ownership interests); and (b) to the extent constituting Restricted Payments, the Borrowers and their Subsidiaries may enter into and consummate transactions expressly permitted by any provision of **Section 7.02** or **Section 7.08**; provided, however, that no Restricted Payment may be made solely pursuant to this **Section 7.06(b)**.

Section 7.07. CAPITAL EXPENDITURES.

Make (whether in one transaction or a series of transactions) any financed or unfinanced Capital Expenditures.

Section 7.08. TRANSACTIONS WITH AFFILIATES.

Enter into any transaction of any kind with any Affiliate of Loan Parties, irrespective of whether in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to Loan Parties or a Subsidiary of Loan Parties as would be obtainable by such Person at the time in a comparable arm's-length transaction with a Person other than such Affiliate, provided that the foregoing restriction shall not apply to: (a) to the extent permitted by the Budget, transactions between or among Borrowers and Guarantors, (b) to the extent permitted by the Budget, Restricted Payments permitted hereunder, (c) transactions with Acqua Liana, White Oak, any Affiliate of Acqua Liana or White Oak, the Selling Lenders (as defined in the Resignation Agreement), or the Lenders.

Section 7.09. BURDENSOME AGREEMENTS.

(a) Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that: (i) limits the ability: (A) of any Subsidiary of Loan Parties to make Restricted Payments to Loan Parties or to otherwise transfer property to Loan Parties; (B) of any Subsidiary of Loan Parties to Guarantee the Debt of Loan Parties; or (C) of Loan Parties or any Subsidiary thereof to create, incur, assume or suffer to exist Liens on property of such Person; *provided* that this sub-clause (C) shall not prohibit any negative pledge incurred or provided in favor of any holder of Debt under **Section 7.03(b)**, **Section 7.03(d)** or **Section 7.03(f)** solely to the extent that any such negative pledge relates to the property financed by or the subject of such Debt; or (ii) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person;

(b) (i) Amend, supplement, modify, waive or alter (or agree to do so): (A) any provisions of the Merida Note without the express prior written consent of Administrative Agent, (B) any of its material rights or

material obligations, including any of the foregoing arising under any Material Contract, without the express prior written consent of Administrative Agent unless no Default exists or could reasonably be expected to result by virtue thereof; or (C) its Organizational Documents unless no Default exists or could reasonably be expected to result by virtue thereof; or (ii) terminate any Material Contract other than as a result of a material breach by the counterparty(ies) thereunder;

(c) Pay salaries, bonuses, commissions, consultant fees or other compensation to any officer, director, manager, equity holder or consultant of any Loan Party or any of its Subsidiaries, or any family member of any of the foregoing unless the board of directors of such Loan Party, acting in good faith, has determined that such amounts are not excessive or unreasonable; or

(d) Enter into any charter or other lease or services agreement with respect to a Vessel for a period exceeding six months without the prior written consent of Administrative Agent.

Section 7.10. [RESERVED.]

Section 7.11. CERTAIN GOVERNMENTAL REGULATIONS.

(a) Be or become subject at any time to any law, regulation, or list of any government agency (including the OFAC list) that prohibits or limits any Lending Party from making any loans or extensions of credit to any Loan Party or from otherwise conducting business with any Loan Party, or (b) fail to provide documentary and other evidence of any Loan Party's identity as may be requested by any Lending Party at any time to enable such Lending Party to verify any Loan Party's identity or to comply with any applicable Laws, including Section 326 of the Patriot Act.

Section 7.12. DISQUALIFIED EQUITY INTERESTS.

(a) Issue any Disqualified Equity Interests, or (b) be or become liable in respect of any obligation (contingent or otherwise) to purchase, redeem, retire, acquire or make any other payment in respect of any Equity Interests of any Loan Party or any Subsidiary, except as permitted under **Section 7.06**.

Section 7.13. VESSELS; PROHIBITION ON ASSIGNMENT OF CHARTER.

- (a) Change the register, the flag, class, ownership or management of any Vessel.
- (b) Assign a charter agreement with respect to the any Vessel, by means of an outright assignment, a collateral assignment, or otherwise, to any person or entity, other than Administrative Agent.
- (c) Permit the Vessels to be managed by any other Person other than a Loan Party.
- (d) Permit the Vessels to be chartered by any Person if such Person's unenhanced senior unsecured long-term debt is not is rated by a rating agency and at a level satisfactory to Administrative Agent.
- (e) Enter into any demise or bareboat charter with respect to any Vessel.
- (f) Move or employ any Vessels outside of the Gulf of Mexico, without advance written consent of Administrative Agent.

Section 7.14. COMPLIANCE WITH BUDGET

(a) Except as otherwise provided herein or approved by the Administrative Agent (and regardless of whether or not a Carve-Out Trigger Notice has been delivered), Borrowers and their Subsidiaries shall not, directly or indirectly (i) use any cash or the proceeds of any Loans in a manner or for a purpose other than those consistent with this Agreement, the Orders and the Budget (and any variances permitted hereunder), (ii) permit a disbursement causing any variance other than any variances permitted hereunder without the prior written consent of the

Administrative Agent or (iii) make any payment (as adequate protection or otherwise), or application for authority to pay, on account of any claim or Debt arising prior to the Petition Date other than payments set forth in the Budget and authorized by the Bankruptcy Court.

(b) Prior to the occurrence of an Event of Default, Borrowers shall be permitted to pay compensation and reimbursement of fees and expenses solely to the extent that such fees and expenses are in accordance with the Budget and authorized to be paid under Sections 330 and 331 of the Bankruptcy Code pursuant to an order of the Bankruptcy Court, as the same may be due and payable. Upon the occurrence of an Event of Default and delivery of a Carve-Out Trigger Notice (as defined in the Interim Order), the right of Borrowers to pay professional fees of Case Professionals outside the Carve-Out shall terminate, and Borrowers shall provide immediate notice to all Case Professionals informing them that Borrowers' ability to pay such Case Professionals is subject to and limited by the Carve-Out.

(c) For each week, calculated as of the Friday of such week and commencing August 30, 2019:

(i) Adjusted Operating Cash Flow on a cumulative basis from the Petition Date through the end of such week shall not be less than the corresponding amount set forth in the Budget for such period(s), subject to a variance of not greater than 10% of such amount set forth in the Budget for such period(s);

(ii) Total Adjusted Cash Receipts less intercompany receipts on a cumulative basis from the Petition Date through the end of such week shall not be less than the corresponding amount set forth in the Budget for such period(s), subject to a variance of not greater than 10%, in each case as compared to such amount set forth in the Budget for such period(s); and

(iii) Total Adjusted Cash Disbursements less intercompany disbursements on a cumulative basis from the Petition Date through the end of such week shall not be greater than the corresponding amounts set forth in the Budget for such period(s), subject to a variance of not greater than 10%, in each case as compared to such amount set forth in the Budget for such period(s).

(d) For any month commencing with the month ending August 31, 2019, the fees and expenses of the Debtor Professionals and Committee Professionals respectively incurred during any month shall not be greater than the corresponding amounts for such professionals set forth in the Budget for such period(s), subject to a variance of not greater than 10% as compared to such amounts set forth in the Budget for such period(s).

Section 7.15. USE OF COLLATERAL

Use or permit the use of Collateral, proceeds of Loans, portion of the Carve-Out or any other amounts directly or indirectly by any of the Loan Parties, the Committee (if any) or any trustee or other estate representative appointed in the Cases (or any Successor Case) or any other Person (or to pay any professional fees, disbursements, costs or expenses incurred in connection therewith):

(a) other than as expressly permitted in the Orders, to seek authorization to obtain Liens or security interests that are senior to, or on a parity with, the Liens granted under the Loan Documents or the DIP Superpriority Claims other than in connection with any replacement debtor-in-possession financing that will pay the Lenders in "full" in cash; or

(b) to investigate (including by way of examinations or discovery proceedings), prepare, assert, join, commence, support or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination or similar relief against, or adverse to the interests of, in any capacity, against the Administrative Agent, the Lenders, the other Lending Parties or the Existing Loan Parties, and each of their respective officers, directors, controlling persons, employees, agents, attorneys, affiliates, assigns, or successors of each of the foregoing, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof), including (i) any Avoidance Actions; (ii) any so-called "lender liability" claims and causes of action; (iii) any action with respect to the validity, enforceability, priority and extent of, or asserting any defense, counterclaim, or offset to, the

Obligations, the DIP Superpriority Claims, the Liens granted under the Loan Documents, the Loan Documents, the Pre-Petition Loan Agreement, the Existing Liabilities or the Existing Liens; (iv) any action seeking to invalidate, modify, reduce, expunge, disallow, set aside, avoid or subordinate, in whole or in part, the Obligations; or (v) any action seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to the Administrative Agent or the Lenders hereunder or under any of the other Loan Documents (including claims, proceedings or actions that might prevent, hinder or delay any of their assertions, enforcements, realizations or remedies on or against the Collateral in accordance with the Loan Documents and the Orders). Notwithstanding anything to the contrary herein, the Committee may use up to \$50,000 in the aggregate amount of the Carve-Out, any cash-collateral, or proceeds of the Loan to investigate the Pre-Petition Parties (the “**Committee Investigation Budget**”); provided that each Borrower’s stipulations as to validity, priority and security of the Existing Liabilities shall be binding upon each other party in interest, including the Committee, unless such party in interest commences a challenge by (x) with respect to the Committee, 60 days after the initial appointment of the Committee, and (y) with respect to any other party in interest, 75 days after the date of entry of the Interim Order.

Section 7.16. BANKRUPTCY COVENANTS

(a) The Loan Parties shall not (i) assume or reject leases without the consent of the Administrative Agent, (ii) enter into any agreement that provides for limitations on priority claims or administrative expense claims or other claims against the Loan Parties, (iii) enter into any order which authorizes the return of any of the Loan Parties’ property pursuant to Section 546(h) of the Bankruptcy Code without the consent of the Administrative Agent, (iv) enter into any agreement which grants prepayments of indebtedness or “adequate protection” without the consent of the Administrative Agent, (v) file a plan of reorganization that provides for treatment of the Facilities other than repayment thereof in full in cash, (vi) enter into any agreement that provides for limitations on actions relating to reclamation claims with respect to inventory, (vii) enter into any agreement that provides for limitations on seeking orders contrary to the Loan Documents or (viii) repay debt or provide payments to affiliates, in each case, not provided for in the Budget.

(b) Notwithstanding the Budget or any First Day Order, the Loan Parties shall not pay, in the aggregate, any trade claims, vendor claims or similar pre-petition claims against the Debtors without the written consent of the Administrative Agent in their sole and absolute discretion. Nothing in this **Section 7.16(b)** shall limit any payment to the Pre-Petition Lenders or the Lenders in accordance with this Agreement or the Orders.

(c) Each payment made pursuant to any critical vendor orders shall only be made to entities that agree to provide trade terms at least as favorable to the Debtors as those terms (including credit limits, pricing, cash discounts, timing of payments, allowances, product mix, availability, and other terms) in place in the 120 days immediately prior to the Petition Date.

ARTICLE VIII. EVENTS OF DEFAULT AND REMEDIES

Section 8.01. EVENTS OF DEFAULT.

Each of the following shall constitute an event of default hereunder (each, an “**Event of Default**”):

(a) **Non-Payment.** Borrowers or any other Loan Party fails to pay: (i) when and as required to be paid herein, any amount of principal of any Term Loan; (ii) within three (3) Business Days after the same becomes due, any interest on any Term Loan or any fee due hereunder; or (iii) within five (5) Business Days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants.** Any Loan Party or Subsidiary thereof fails to perform or observe: (A) any term, covenant or agreement contained in any of **Section 6.01, Section 6.02, Section 6.03, Section 6.05, Section 6.07, Section 6.10, Section 6.11, Section 6.13, Section 6.17, Section 6.18, Section 6.19, Section 6.21 or Article VII**, as applicable; or (B) any other applicable term, covenant or agreement contained in any Loan Document, which failure is determined by Required Lenders (acting reasonably) not to be capable of being cured; or

(c) **Representations and Warranties.** Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party herein, in any other Loan Document or in any document delivered in connection herewith or therewith shall be incorrect or misleading in any material respect when made or deemed made; or

(d) **Other Defaults.** Any Loan Party fails to perform or observe any other covenant or agreement (not specified in **Section 8.01(a)**, **Section 8.01(b)** or **Section 8.01(c)**) contained in any Loan Document on its part to be performed or observed and such failure continues for thirty (30) days; or

(e) **Cross-Default.** If, except as a result of the commencement of the Cases or unless payment, acceleration and/or the exercise of rights and remedies as a result thereof (as applicable) is stayed by the Bankruptcy Court, any (x) Loan Parties: (i) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Debt (other than Debt hereunder and Debt under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount; (ii) fails to observe or perform any other agreement or condition relating to any such other Debt or contained in any document evidencing, securing or relating to any of the foregoing, or any other default or event occurs, the effect of which failure, default or other event is to cause, or to permit the holder or holders of such Debt (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice if required, such Debt to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Debt to be made, prior to its stated maturity or (iii) fails to observe or perform any other agreement or condition relating to any Tetra Document or any other default or event of default occurs with respect to any Tetra Document resulting in liability of any Loan Party; or (y) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from: (A) any event of default under such Swap Contract as to which Loan Party is the Defaulting Party (as defined in such Swap Contract); or (B) any Termination Event (as so defined) under such Swap Contract as to which any Loan Party is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by any Loan Party as a result thereof is greater than the Threshold Amount; or

(f) **[Reserved];** or

(g) **Inability to Pay Debts; Attachment.** (i) Any Loan Party becomes unable or admits in writing its inability or fails generally to pay its debts as they become due; or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) **Judgments.** There is entered against any Loan Party: (i) after the Petition Date a final Court Order for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage); or (ii) any one or more non-monetary final Court Orders that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case: (A) enforcement Proceedings are commenced by any creditor upon such Court Order; or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such Court Order, by reason of a pending appeal or otherwise, is not in effect, or enforcement of such judgment is not subject to the automatic stay provided by the Bankruptcy Code; or

(i) **ERISA.** (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of Loan Parties under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount; or (ii) Loan Parties or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) **Invalidity of Loan Documents.** Any Loan Document or any provision thereof, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or the satisfaction in full of all of the Obligations (other than Unasserted Obligations) and other than as a result of an action or inaction by Administrative Agent or any Lender, ceases to be in full force and effect in accordance with its terms;

or any Loan Party or any other Person (other than a Lending Party) contests in any manner in writing the validity or enforceability of any Loan Document or any provision thereof; or any Loan Party or any other Person obligated under any Loan Document denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document or any provision thereof; or

(k) **Impairment of Collateral.** Any Lien purported to be created by any Collateral Document shall cease to be, or shall be asserted by any Loan Party or any other Person obligated thereunder not to be, a valid, perfected, first-priority Lien (except as otherwise expressly provided in this Agreement or such Collateral Document and subject to Permitted Liens) in the assets covered thereby, other than in respect of assets that, individually and in the aggregate, are not material to Loan Parties, taken as a whole, or in respect of which the failure of the Lien thereon to be a valid, perfected first priority (except as otherwise expressly provided in this Agreement or such Collateral Document) Lien could not in the reasonable judgment of Administrative Agent or Required Lenders, be expected to have a Material Adverse Effect; or

(l) **Vessels.** (i) Any Vessel shall be condemned, seized or otherwise appropriated, or custody or control of a Vessel shall be assumed or the operation thereof or production therefrom shall cease by or as a result of any action by any Governmental Authority or court of competent jurisdiction or at the insistence of any Governmental Authority, and such circumstance shall continue for a period of thirty (30) days, (ii) any Vessel or Loan Party shall be enjoined, restrained or in any way prevented by the final, non-appealable order of any court or any administrative or regulatory agency from conducting any material part of its business and such final order shall continue in effect for more than thirty (30) days, (iii) there shall occur the loss, suspension or revocation of, or failure to renew, any license or permit now held or hereafter acquired by any Loan Party with respect to a Vessel and such circumstance shall continue for a period of thirty (30) days; (iv) Administrative Agent shall have received a report by the American Bureau of Shipping or any other applicable classification society that a Vessel is not in compliance with the requirements for the highest classification for vessels of like age and type or is not in compliance with the requirements of Law for use as intended by those provisions of the applicable charter agreement and action shall not have been commenced within fifteen (15) days after written notice thereof shall have been given by Administrative Agent to Administrative Loan Party and such corrective action shall not be diligently prosecuted or completed in a manner and time schedule consistent with industry standards; or

(m) **[Reserved];** or

(n) **Certain Actions.** Any Loan Party or any of any of their senior officers is criminally indicted or convicted of (i) a felony or (ii) violating any state or federal Laws (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act) that has resulted in, or could reasonably be expected to lead to, a forfeiture of any material property or any assets (including the Collateral) upon which such Loan Party has granted a Lien to Administrative Agent or the right to conduct a material part of its business; or

(o) **Change of Control.** There occurs a Change of Control; or

(p) **Material Contracts.** Any termination (other than termination upon expiry of the stated term of the agreement) or loss of a Material Contract, or any default or event of default (however defined) under a Material Contract that gives the non-defaulting party the right to terminate such Material Contract in a manner that could adversely affect Administrative Agent or the Lenders; or

(q) **Material Adverse Effect.** There occurs a Material Adverse Effect; or

(r) **Cases, Motions Etc.** Any of the following shall occur in any Case:

(i) the dismissal of the Cases or the entry of an order converting the Cases to a Chapter 7 proceeding under the Bankruptcy Code, or filing of a reorganization plan that is not approved by the Administrative Agent and the Required Lenders, or if any Loan Party applies for, consents to, or acquiesces in, such above relief;

(ii) entry of an order appointing a Chapter 11 trustee or examiner, or any similar insolvency official or administrator, with expanded powers, or the filing of any motion to so appoint brought by any Loan Party;

(iii) the dissolution of any Loan Party;

(iv) (A) failure by any Loan Party to perform under any Order in any material respect, (B) any failure of the applicable Order to remain in full force and effect or (C) any breach by any Loan Party of any material term or condition of the applicable Order that continues beyond any applicable cure period;

(v) entry of an order staying, reversing or otherwise modifying (other than immaterial modifications to correct grammatical or typographical errors), in each case without the prior consent of the Required Lenders, this Agreement, the Delayed Draw Term Loans, any Order or any order entered in connection with the Sale Motion or the 363 Sale;

(vi) 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, or entering into any agreement to effectuate any of the foregoing by the Loan Parties, unless the Delayed Draw Term Loans have been paid in full and the commitments thereunder have been terminated (or will be paid and terminated on the consummation of such transaction);

(vii) entry of an order granting relief from the automatic stay 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 having a value in excess of the Threshold Amount without the consent of the Required Lenders;

(viii) (A) entry of an order granting other super-priority liens or administrative expense claims with priority over or *pari passu* with the liens granted in connection with the Delayed Draw Term Loans, (B) the Administrative Agent shall fail to have a first priority perfected security interest in the Collateral, except for the Carve-Out or (C) any loss of the Collateral with a market value or book value in excess of the Threshold Amount;

(ix) (A) the payment of, or filing of a motion or other pleading by any Loan Party for authority to pay, any pre-petition claim or administrative expense except as may be provided for in the Orders, the First Day Orders (as permitted by the Budget or agreed by the Administrative Agent and the Required Lenders in their reasonable discretion), the Budget or the Loan Documents, or as may be approved by the Bankruptcy Court as payments to critical vendors pursuant to a critical vendor or foreign vendor motion and order acceptable to the Administrative Agent and the Required Lenders in their sole and absolute discretion or (B) the filing of a motion by any Loan Party (or any party in interest or the committee or any other person) that is not dismissed or denied within thirty (30) days after the date of the filing of such motion, or the entry of any order in the Cases permitting recovery from any portion of the Collateral (or from Administrative 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 (or otherwise);

(x) entry of an order granting payment of, or granting adequate protection with respect to, prepetition Debt, other than as expressly set forth in the Orders and the Budget; or

(s) **Milestones.** The failure to meet any of the following milestones (the “*Milestones*”):

(i) on the Petition Date, the Loan Parties shall file a motion seeking approval of this Agreement and the Delayed Draw Term Loans;

(ii) on or before the date that is three (3) days after the Petition Date, the Interim Order shall have been entered by the Bankruptcy Court;

(iii) on or before the 20th day after the Petition Date, the Conversion Date shall have occurred;

(iv) to the extent that (A) Epic is not a Party to this Agreement, or (B) Epic has not been authorized by the Orders to incur secured indebtedness or to make payments in respect of the fees and other amounts

as contemplated by and in accordance with this Agreement, then on or before the date that is two Business Days after the Conversion Date (X) Epic shall have executed and delivered the Epic Joinder to Administrative Agent, and (Y) to the extent not already provided for in the applicable Order then in effect, the Bankruptcy Court shall have entered a Court Order, on terms consistent with the Orders and otherwise in form and substance satisfactory to Administrative Agent authorizing Epic to execute the Epic Joinder and providing that the Orders are applicable with respect to Epic, in each case *nunc pro tunc* to the Petition Date;

(v) on or before the date that is thirty-five (35) days after the Petition Date, the Final Order shall have been entered by the Bankruptcy Court and shall apply to all of the Loan Parties (including Epic);

(vi) on or before the date that is three (3) days after the Petition Date, the Loan Parties shall have filed a motion with the Bankruptcy Court seeking approval of a 363 Sale (including approval of the right of the Lenders and the Pre-Petition Parties to “credit bid” for or otherwise purchase the Loan Parties), approval of such sale to the Stalking Horse Bidder (subject to higher and better offers), if any, and bid protections, sale procedures and auction procedures in connection therewith, in form and substance satisfactory to the Administrative Agent and Required Lenders (the “**Sale Motion**”);

(vii) [reserved];

(viii) on or before the date that is thirty-five (35) days after the Petition Date, the Loan Parties shall have obtained an order of the Bankruptcy Court, in form and substance satisfactory to the Administrative Agent and Required Lenders, approving bid protections, sale procedures and auction procedures in connection with the 363 Sale and of the bid of the Stalking Horse Bidder;

(ix) on or before the date that is sixty-five (65) days after the Petition Date, the Loan Parties shall have obtained an order of the Bankruptcy Court, in form and substance satisfactory to the Administrative Agent, granting the Sale Motion in form and substance satisfactory to the Administrative Agent and Required Lenders; and

(x) on or before the date that is seventy-five (75) days after the Petition Date, the Loan Parties shall have consummated the 363 Sale.

Section 8.02. RIGHTS AND REMEDIES.

(a) **Rights and Remedies Generally.** Notwithstanding anything in Section 362 of the Bankruptcy Code, but subject to the Orders, if an Event of Default exists, Administrative Agent may (or, upon the request of the Required Lenders, shall), without notice or demand, do any or all of the following actions, at the same time or different times, in each case without further order of or application to the Bankruptcy Court:

(i) declare all Obligations immediately due and payable (but if an Event of Default described in **Section 8.01(f)** occurs, all Obligations shall immediately be due and payable without any action by Administrative Agent or any Lender);

(ii) stop advancing money or extending credit for Borrowers’ benefit under this Agreement or under any other agreement among Borrowers and Administrative Agent or any Lender;

(iii) settle or adjust disputes and claims directly with Account Debtors on accounts of any Loan Party for amounts on terms and in any order that Administrative Agent considers advisable, notify any Person owing money to any Loan Party, of Administrative Agent’s Lien on such funds, and verify the amount of such account. Each Loan Party shall collect all payments in trust for Administrative Agent for the benefit of Lenders and, if requested by Administrative Agent, immediately deliver the payments to Lenders in the form received from the Account Debtor, with proper endorsement for deposit;

(iv) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its Lien upon the Collateral. Each Loan Party shall assemble the Collateral if Administrative

Agent so requests and make it available as Administrative Agent so designates. Administrative Agent or any Lender may enter the premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to Administrative Agent's Lien thereon and pay all expenses incurred. Each Loan Party grants Administrative Agent for the benefit of Lenders a license to enter and occupy any of its premises, without charge, to exercise any of Administrative Agent's or any other Lending Party's rights or remedies;

(v) apply to the Obligations any (A) balances and deposits of any Loan Party that it holds, or (B) amount held by Administrative Agent or Lenders owing to or for the credit or the account of any Loan Party;

(vi) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Administrative Agent is hereby granted a non-exclusive, royalty-free license or other right to use without charge, Loan Parties' or any of their Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, other Intellectual Property, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Administrative Agent's exercise of its rights under this **Section 8.02**, Loan Parties' rights under all licenses and all franchise agreements inure to Administrative Agent for benefit of Lenders;

(vii) place a "hold" on any account maintained with Administrative Agent and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions;

(viii) demand and receive possession of the Books and Records of each Loan Party; and

(ix) exercise all default rights and remedies available to Lending Parties under the Loan Documents or at law or equity, including all default remedies provided under the Uniform Commercial Code (including disposal of the collateral (including all Collateral) pursuant to the terms thereof).

Neither the Loan Parties, the Committee, nor any other party-in-interest shall have the right to contest the enforcement of remedies set forth in the Orders and the Loan Documents on any basis other than an assertion that an Event of Default has not occurred or has been cured within the cure periods expressly set forth in the applicable Loan Documents. The Loan Parties shall cooperate fully with the Administrative Agent and the Lenders in their exercise of rights and remedies, whether against the Collateral or otherwise. The Loan Parties hereby waive any right to seek relief under the Bankruptcy Code, including under Section 105 thereof, to the extent such relief would restrict or impair the rights and remedies of the Administrative Agent and the Lenders set forth in the Orders and in the Loan Documents.

Subject to the Orders, in case any one or more of the covenants and/or agreements set forth in this Agreement or any other Loan Document shall have been breached by any Loan Party, then the Administrative Agent may proceed to protect and enforce the Lenders' rights either by suit in equity and/or by action at law, including an action for damages as a result of any such breach and/or an action for specific performance of any such covenant or agreement contained in this Agreement or such other Loan Document. Without limitation of the foregoing, Borrower agrees that failure to comply with any of the covenants contained herein will cause irreparable harm and that specific performance shall be available in the event of any breach thereof. The Administrative Agent shall be indemnified by Borrower against all liability, loss or damage, together with all reasonable costs and expenses related thereto (including reasonable legal and accounting fees and expenses) in accordance with the terms hereof.

(b) **Power of Attorney.** Each Loan Party hereby irrevocably appoints Administrative Agent as its lawful attorney-in-fact, to: (i) if such Loan Party refuses to, or fails timely to execute and deliver any of the documents required to be delivered by it pursuant to the terms hereof, sign the name of such Loan Party on any of such documents; (ii) at any time that an Event of Default has occurred that has not been waived in writing by Administrative Agent: (A) endorse such Loan Party's name on any checks or other forms of payment or security, sign such Loan Party's name on any invoice or bill of lading for any account or drafts against Account Debtors or sign such Loan Party's name on any notices to Account Debtors; (B) endorse such Loan Party's name on any collection item that may come into Administrative Agent's possession; (C) make, settle, and adjust all claims under

such Loan Party's policies of insurance and make all determinations and decisions with respect to such policies of insurance; (D) take control, in any manner, of any item of payment or proceeds relating to any Collateral; (E) prepare, file, and sign such Loan Party's name to a proof of claim in bankruptcy or similar document against any Account Debtor, or to any notice of lien, assignment, or satisfaction of lien or similar document in connection with any of the Collateral; (F) receive, open and dispose of all mail addressed to such Loan Party, and upon Administrative Agent's commencement of any enforcement action, notify postal authorities to change the address for delivery thereof to such address as Administrative Agent may designate; (G) use the information recorded on or contained in any data processing equipment, computer hardware, and software relating to the Collateral; (H) settle and adjust disputes and claims respecting the Accounts, Chattel Paper or General Intangibles directly with Account Debtors, for amounts and upon terms that Administrative Agent determines to be reasonable, and Administrative Agent may cause to be executed and delivered any documents and releases that Administrative Agent determines to be necessary; (I) cause an Account Debtor's insurers to add Administrative Agent as loss payee under the relevant insurance policy; (J) pay, contest or settle any Lien, charge or adverse claim in, to or upon any or all of the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (K) transfer any Collateral into the name of Administrative Agent for the benefit of Lenders or a third party as the Uniform Commercial Code permits; and (L) do all other acts and things necessary, in Administrative Agent's determination, to fulfill such Loan Party's obligations under this Agreement; and (iii) at any time: (A) send request for verification of Accounts; and (B) file UCC-3 assignments reflecting Administrative Agent as assignee of such Loan Party with respect to any UCC-1 financing statements filed by such Loan Party in connection with Collateral. Each Loan Party hereby appoints Administrative Agent as its lawful attorney-in-fact to sign such Loan Party's name on any documents necessary to perfect or continue the perfection of any security interest or other Lien in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than Unasserted Obligations) have been repaid in full. Administrative Agent's foregoing appointment as the attorney-in-fact for each Loan Party, and all of Administrative Agent's rights and powers, being coupled with an interest, are irrevocable until all Obligations (other than Unasserted Obligations) have been fully paid and performed when due (as applicable).

(c) **[Reserved.]**

(d) **Application of Funds.**

(i) No Loan Party shall have the right to specify the order or the accounts to which Administrative Agent shall allocate or apply any payments required to be made by Borrowers to Administrative Agent for the benefit of the Lending Parties or otherwise received by Administrative Agent on behalf of Lenders under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(ii) Subject to the Orders, all payments, prepayments, and proceeds of collateral (including the Collateral) and any other amounts received on account of the Obligations shall be applied by Administrative Agent until exhausted in the following order:

(A) *first*, to Administrative Agent, to pay all fees, costs, expenses and indemnification payments then due to Administrative Agent under the Loan Documents;

(B) *second, pro rata*, to Lenders according to their respective Percentage Shares, to pay all accrued but unpaid interest (including interest at the Default Rate) on the Delayed Draw Term Loans owing to Lenders;

(C) *third, pro rata*, to Lenders according to their respective Percentage Shares, to pay the Outstanding Amount of the Delayed Draw Term Loans, *pro rata*, until such time as the Outstanding Amount of the Delayed Draw Term Loans has been paid in full; and

(D) *fourth, pro rata*, to Administrative Agent and Lenders, to pay all remaining Credit Outstandings and other Obligations owing to Administrative Agent or any Lenders;

After payment in full of all Obligations (other than Unasserted Obligations), any surplus remaining shall be paid to Borrowers or other Persons legally entitled thereto; if any deficiency exists, Borrowers shall remain liable to Administrative Agent and Lenders for such deficiency. If Administrative Agent or any Lender, in its good faith business judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of any collateral (including the Collateral), Administrative Agent or such Lender, as applicable, shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Administrative Agent or such Lender of cash therefor.

(iii) Unless otherwise expressly provided for herein, all payments made to any Lending Party for the benefit of Lenders (or any of them) on account of the Obligations (other than that portion of the Obligations consisting of the Outstanding Amount of all Credit Outstandings or any fees payable in connection with the retirement, prepayment or termination of all or a portion of the Obligations) shall be treated as interest for U.S. federal income tax purposes.

(e) **Administrative Agent's Liability for Collateral.** So long as Administrative Agent and Lenders comply with reasonable banking practices regarding the safekeeping of any collateral the subject of the Collateral Documents, Administrative Agent and Lenders shall not be liable or responsible for: (i) the safekeeping of all or any such collateral; (ii) any loss or damage to all or any such collateral; (iii) any diminution in the value of all or any such collateral; or (iv) any act or default of any carrier, warehouseman, bailee, or other Person. Loan Parties bear all risk of loss, damage or destruction of any collateral the subject of the Collateral Documents.

(f) **No Waiver.** Administrative Agent's or any Lender's failure, at any time or times, to require strict performance by any Loan Party of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Administrative Agent or such Lender thereafter to demand strict performance and compliance herewith or therewith. Administrative Agent and Lenders have all rights and remedies provided under the Uniform Commercial Code, by law, or in equity. Any amounts paid by Administrative Agent or any Lender on any Loan Party's behalf as provided herein are expenses reimbursable under **Section 10.04** and shall bear interest at the highest interest rate then applicable to any of the Obligations and shall be secured by the collateral the subject of the Collateral Documents. No payments by Administrative Agent or any Lender shall be deemed an agreement to make similar payments in the future or a waiver of any Event of Default by Administrative Agent or any Lender.

ARTICLE IX. ADMINISTRATIVE AGENT

Section 9.01. APPOINTMENT AND AUTHORIZATION OF ADMINISTRATIVE AGENT.

(a) Each Lender hereby irrevocably appoints White Oak to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof and thereof, together with such actions and powers as are reasonably incidental thereto. Each Lender appoints the Administrative Agent to act as trustee in connection with the Collateral Documents. The Administrative Agent accepts such appointment as trustee of any collateral under the Collateral Documents and declares that it holds such collateral on trust for the Lenders on the terms contained in this Agreement and the Collateral Documents. Except for the provisions of **Section 9.06**, the provisions of this **Article IX** are solely for the benefit of Lending Parties, and none of Borrowers or any other Loan Party or any other Person shall have rights as a third party beneficiary of any of such provisions.

(b) Each Lending Party hereby further designates, appoints and transfers to Administrative Agent the respective rights of each other Lending Party to receive, hold, administer and enforce the Liens on the Vessels as trustee mortgagee on behalf of Lending Parties, and to take such action as trustee mortgagee and to exercise such powers and discretion respecting each Vessel under the Orders or by applicable Law, together with such powers and discretion that are reasonably incidental thereto. Administrative Agent, as trustee mortgagee hereby declares that it accepts the trust hereby created for the limited purpose of holding each Lien on the Vessels and exercising remedies with respect thereto and agrees to perform such trust for the sole use and benefit of Lending Parties on the terms set

forth herein. In its capacity as trustee mortgagee, Administrative Agent is entitled to all of the protections and indemnities of Administrative Agent. The institution that serves as Administrative Agent shall also serve as the trustee mortgagee.

Section 9.02. RIGHTS AS A LENDER.

If the Person serving as Administrative Agent hereunder is also a Lender, such Person shall have the same rights and powers in such capacity(ies) as any other Person in such capacity(ies) and may exercise the same as though it were not Administrative Agent. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Loan Parties or any Subsidiary or Affiliate of Loan Parties as if such Person were not Administrative Agent hereunder and without any duty to account therefor to any other Lending Party.

Section 9.03. EXCULPATORY PROVISIONS.

Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, Administrative Agent:

(a) **No Fiduciary Duties.** Shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) **No Obligations Regarding Certain Actions.** 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 Administrative Agent is required to exercise as directed in writing by Required Lenders (or such other number or percentage of Lenders as shall be expressly provided for herein or in any other Loan Documents); *provided* that Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose Administrative Agent to liability or that is contrary to any Loan Document or applicable Laws;

(c) **Disclosure Obligations.** Shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or any of its Affiliates in any capacity; and

(d) **Limitation on Liability.** Shall not be liable for any action taken or not taken by it: (i) with the consent or at the request of Required Lenders (or such other number or percentage of Lenders as shall be necessary, or as Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in **Section 8.02** and **Section 10.01**); or (ii) in the absence of its own gross negligence or willful misconduct. Administrative Agent shall be deemed not to have knowledge of any Default, unless and until a Loan Party, or a Lending Party provides written notice to Administrative Agent describing such Default. Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into: (A) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document; (B) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith; (C) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default; (D) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document; or (E) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

Section 9.04. RELIANCE BY ADMINISTRATIVE AGENT.

Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. Administrative Agent also may rely upon any

statement made to it orally or by telephone and believed by it to have been made by the proper Person and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of the Delayed Draw Term Loans that by its terms must be fulfilled to the satisfaction of a specified Lending Party, Administrative Agent may presume that such condition is satisfactory to such Lending Party, unless Administrative Agent shall have received notice to the contrary from such Lending Party prior to the making of the Delayed Draw Term Loans. Administrative Agent may consult with legal counsel (who may be counsel for any Loan Party), independent accountants and other experts it selects and shall not be liable for any action it takes or does not take in accordance with the advice of any such counsel, accountants or experts.

Section 9.05. DELEGATION OF DUTIES.

Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents it appoints. Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this **Article IX** shall apply to any such sub-agent and to the Related Parties of Administrative Agent and any such sub-agent and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein, as well as activities as Administrative Agent.

Section 9.06. RESIGNATION OF ADMINISTRATIVE AGENT.

Administrative Agent may at any time give notice of its resignation to Lending Parties and Administrative Loan Party. Upon receipt of any such notice of resignation, Required Lenders shall have the right, with, unless an Event of Default exists, the consent of Administrative Loan Party (which consent shall not be unreasonably withheld or delayed), to appoint a successor. If no such successor shall have been so appointed by Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lending Parties, appoint a successor Administrative Agent; *provided* that, if Administrative Agent shall notify Lending Parties and Administrative Loan Party that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (*except* that in the case of any collateral security held by Administrative Agent on behalf of any Lending Party under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through Administrative Agent shall instead be made by or to each Lending Party directly, until such time as Required Lenders appoint a successor Administrative Agent as provided for in this **Section 9.06**. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided in this **Section 9.06**). The fees payable by Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed among Borrowers and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article IX and **Section 10.04** shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Section 9.07. NON-RELIANCE ON ADMINISTRATIVE AGENT AND OTHER LENDERS.

Each Lending Party acknowledges that it has, independently and without reliance upon Administrative Agent, any other Lending Party or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lending Party also acknowledges that it will, independently and without reliance upon Administrative Agent, any other Lending Party or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 9.08. NO OTHER DUTIES, ETC.

Notwithstanding anything to the contrary contained herein, no Person identified herein or on the facing page or signature pages hereof as a “Documentation Administrative Agent,” “Co-Administrative Agent,” “Book Manager,” “Book Runner,” “Arranger,” “Lead Arranger,” “Co-Lead Arranger” or “Co-Arranger,” if any, shall have or be deemed to have any right, power, obligation, liability, responsibility or duty under this Agreement or the other Loan Documents, other than: (a) in such Person’s capacity as: (i) Administrative Agent or a Lender hereunder; and (ii) an Indemnitee hereunder; or (b) under **Section 9.05**.

Section 9.09. [RESERVED]**Section 9.10. GUARANTY MATTERS.**

Each Lending Party hereby: (a) irrevocably authorizes Administrative Agent, at its option and in its discretion, to release any Guarantor from its obligations under a Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder; and (b) agrees that, upon request by Administrative Agent at any time, it will confirm in writing Administrative Agent’s authority to release any such Guarantor pursuant to this **Section 9.10**.

Section 9.11. COLLATERAL AND OTHER MATTERS.

(a) **Directions by Lenders.** Each Lender hereby irrevocably authorizes and directs Administrative Agent: (i) to enter into the Collateral Documents for the benefit of such Person; (ii) without the necessity of any notice to or further consent from any such Person from time to time prior to an Event of Default, to take any action with respect to any Collateral Documents or the collateral the subject thereof that may be necessary to perfect and maintain perfected the Liens upon the collateral granted pursuant to the Collateral Documents; (iii) to release any Lien on any property granted to or held by Administrative Agent under any Loan Document: (A) upon termination of the all Commitments hereunder and the payment in full of all Obligations (other than Unasserted Obligations); (B) that is sold or to be sold as part of or in connection with any Disposition permitted hereunder or under any other Loan Document; (C) subject to Section 10.01, if approved, authorized or ratified in writing by Required Lenders; or (D) in connection with any foreclosure sale or other Disposition of any collateral the subject of any Collateral Document after the occurrence of an Event of Default; and (iv) to subordinate any Lien on any property granted to or held by Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by this Agreement or any other Loan Document to be senior to the Lien of Administrative Agent. Upon request by Administrative Agent at any time, each Lender will confirm in writing Administrative Agent’s authority to release or subordinate its interest in particular types or items of collateral the subject of any Collateral Document pursuant to this Section 9.11.

(b) **Certain Actions by Administrative Agent.** Subject to Section 9.11(a)(iii) and Section 9.11(a)(iv), Administrative Agent shall (and is hereby irrevocably authorized by each Lender to) execute such documents as may be necessary to evidence the release or subordination of Liens granted to Administrative Agent herein or pursuant hereto upon the applicable collateral; provided that: (i) Administrative Agent shall not be required to execute any such document on terms that, in Administrative Agent’s opinion, would expose Administrative Agent to or create any liability or entail any consequence other than the release or subordination of such Liens without recourse or warranty; and (ii) such release or subordination shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of Borrowers or any other Loan Party in respect of) all interests retained by Borrowers or any other Loan Party, including the proceeds of the sale, all of which shall continue to constitute part of the collateral the subject of the Collateral Documents. In the event of any sale or transfer of any collateral the subject of any of the Collateral Documents, or any foreclosure with respect to any of the collateral the subject of any of the Collateral Documents, Administrative Agent shall be authorized to deduct all expenses reasonably incurred by Administrative Agent from the proceeds of any such sale, transfer or foreclosure.

(c) **No Obligations Regarding Certain Actions.** Administrative Agent shall have no obligation whatsoever to any Lending Party or any other Person to assure that all or any of the collateral the subject of the Collateral Documents exists or is owned by Borrowers or any other Loan Party or is cared for, protected or insured or that the Liens granted to Administrative Agent herein or in any of the Collateral Documents or pursuant hereto or

thereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to Administrative Agent in this Section 9.11 or in any of the Collateral Documents, it being understood and agreed that in respect of the collateral the subject of the Collateral Documents, or any act, omission or event related thereto, Administrative Agent may act in any manner it may deem appropriate, in its sole discretion, if Administrative Agent has an interest in the collateral the subject of the Collateral Documents by virtue of being one of the Lending Parties.

(d) **Appointment of Lending Parties as Agents.** Each Lending Party hereby appoints each other such Person as agent for the purpose of perfecting Administrative Agent's or such Person's security interest or other Lien in assets that, in accordance with Article 9 of the Uniform Commercial Code, can be perfected only by possession. Should any such Person (other than Administrative Agent) obtain possession of any collateral the subject of the Collateral Documents, such Person shall notify Administrative Agent thereof, and, promptly upon Administrative Agent's request therefor, shall deliver such collateral to Administrative Agent or in accordance with Administrative Agent's instructions.

Anything contained in any of the Loan Documents to the contrary notwithstanding, the Loan Parties, the Administrative Agent and each Lender hereby agree that (1) no Lender shall have any right individually to realize upon any of the Collateral under any Collateral Document or to enforce the Guaranty, it being understood and agreed that all powers, rights and remedies under the Collateral Documents and the Guaranty may be exercised solely by the Administrative Agent acting as agent for and representative of Lenders in accordance with the terms thereof, and (2) in the event of a foreclosure by the Administrative Agent on any of the Collateral pursuant to a public or private sale or a sale under section 363 of the Bankruptcy Code, the Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and the Administrative Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities unless the Required Lenders shall otherwise agree in writing) shall be entitled (at the direction of the Required Lenders), for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any Collateral payable by the Administrative Agent at such sale.

Section 9.12. CREDIT BIDDING.

(a) The Lending Parties hereby irrevocably authorize the Administrative Agent to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral:

(i) at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Sections 363, 1123 or 1129 of the Bankruptcy Code, or any similar laws in any other jurisdictions to which a Loan Party is subject, or

(ii) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law.

(b) In connection with any such credit bid and purchase, the Obligations owed to the Lending Parties shall be entitled to be, and shall be, credit bid by the Administrative Agent at the direction of the Required Lenders on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase).

(c) In connection with any such credit bid:

(i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles;

(ii) immediately prior to the consummation of the closing of the sale, each of the Lending Parties' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale;

(iii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles as approved by the Required Lenders (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, prior to the distribution of such equity interests to the Lenders including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Required Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in **Section 10.01** of this Agreement);

(iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Lending Parties, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Lending Party or acquisition vehicle to take any further action; and

(v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lending Parties pro rata and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Lending Party or any acquisition vehicle to take any further action.

Notwithstanding that the ratable portion of the Obligations of each Lending Party are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Lending Party shall execute such documents and provide such information regarding the Lending Party (and/or any designee of the Lending Party which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

ARTICLE X. GENERAL PROVISIONS

Section 10.01. AMENDMENTS, ETC.

No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by Borrowers or any other Loan Party therefrom, shall be effective unless in writing signed by Required Lenders and Administrative Agent, or Administrative Agent acting at the written request of Required Lenders, and Borrowers or the applicable Loan Party, as the case may be, with receipt acknowledged by Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that no such amendment, waiver or consent shall:

(a) Unless in writing and signed by Administrative Loan Party and by any such Lender as to whom such amendment, waiver or consent is intended to apply, with receipt acknowledged by Administrative Agent, do any of the following:

(i) increase, or extend the expiry of, the Commitment of any Lender (or reinstate any such Commitment to the extent terminated pursuant to **Section 8.02**);

(ii) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, any fees or other amounts due to any Lender hereunder or under any other Loan Document, including any prepayments specified under **Section 2.03**, or reduce the amount due to any Lender on any such date;

(iii) reduce the principal of, or the rate of interest specified herein on, any or all of the Delayed Draw Term Loans or other amounts payable to any Lender hereunder or under any other Loan Document; or

(b) Unless in writing and signed by all Lenders and Administrative Loan Party, with receipt acknowledged by Administrative Agent, do any of the following:

(i) amend this **Section 10.01**, **Section 2.09** or **Section 8.02(d)** or any provision herein providing for consent or other action by all Lenders;

(ii) release, compromise or subordinate all or any portion of the collateral the subject of the Collateral Documents and securing the Obligations, except as otherwise expressly provided in any of the Collateral Documents, or amend the definition of the obligations secured by any of the Collateral Documents;

(iii) increase the Commitments,

(iv) release, compromise, subordinate or terminate any of the Guaranties except as otherwise expressly provided herein or in any of the Loan Documents;

(v) amend the definition of “**Maturity Date**” contained in **Section 1.01**;

(vi) amend the definition of “**Required Lenders**” contained in **Section 1.01**; or

(vii) amend **Section 10.06(b)(v)**;

provided further that, notwithstanding anything to the contrary contained herein: (1) no amendment, waiver or consent shall, unless in writing and signed by Administrative Agent in addition to such Lenders as are otherwise required by this **Section 10.1**, affect the rights or duties of Administrative Agent under this Agreement or any other Loan Document; (2) no consent of Administrative Loan Party shall be required with respect to any amendment or waiver described in **Section 10.01(b)(i)**, or **Section 10.01(b)(vi)**, if, at the time of such amendment or waiver, an Event of Default exists, (3) any amendment, waiver, or consent with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lending Parties among themselves, and that does not affect the rights or obligations of Loan Parties (or any of them), shall not require consent by or the agreement of Administrative Loan Party, and (4) Administrative Agent and Administrative Loan Party may with Borrowers amend any Loan Document without the consent of any Lender in order to correct technical errors, omissions or inconsistencies within or between the Loan Documents.

Notwithstanding anything to the contrary herein, no Lender who is at the time a Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, *except* that no Commitment of such Lender may be increased or extended without the consent of such Lender.

For the avoidance of doubt, the provisions of this Agreement shall not relieve any Shipowner of or from any obligations it may have under the Loan Documents to which it is a party to the extent that such obligations require different or additional performance than that required under this Agreement.

Section 10.02. NOTICES; ELECTRONIC COMMUNICATIONS.

(a) **Notices Generally.** All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, sent by facsimile transmission or sent by approved electronic communication in accordance with **Section 10.02(b)**, and all notices and

other communications expressly permitted to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Borrowers, Administrative Loan Party, any Guarantor or Administrative Agent, to the address, facsimile number, e-mail address or telephone number specified for such Person on **Schedule 10.02**; and

(ii) if to any Lender, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Detail Form.

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received, and notices sent by facsimile transmission or by means of approved electronic communication 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); *provided* that notices delivered through electronic communications to the extent provided by **Section 10.02(b)** shall be effective as provided in such subsection (b).

(b) Electronic Communications.

(i) Each Lender agrees that notices and other communications to it hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender pursuant to **Article II** if such Lender has notified Administrative Agent that it is incapable of receiving notices under **Article II** by electronic communication; *provided further* that, as of the date hereof, each Lender that is a party hereto confirms that it is capable of receiving notices under **Article II** by electronic communication. In furtherance of the foregoing, each Lender hereby agrees to notify Administrative Agent in writing, on or before the date such Lender becomes a party to this Agreement, of such Lender's e-mail address to which a notice may be sent (and from time to time thereafter to ensure that Administrative Agent has on record an effective e-mail address for such Lender). Each of Administrative Agent and Administrative Loan Party, on behalf of Loan Parties, may, in such Person's discretion, agree to accept notices and other communications to it hereunder by means of electronic communication pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications.

(ii) Unless Administrative Agent otherwise prescribes: (A) notices and other communications sent to an e-mail address 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 e-mail or other written acknowledgement); *provided* that, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient; and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (A) of notification that such notice or communication is available and identifying the website address therefor.

(iii) Each Loan Party hereby acknowledges that: (A) Administrative Agent may make Specified Materials available to Lending Parties by posting some or all of the Specified Materials on an Electronic Platform; (B) the distribution of materials and information through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with any such distribution; (C) the Electronic Platform is provided and used on an "As Is," "As Available" basis; and (D) neither Administrative Agent nor any of its Affiliates warrants the accuracy, completeness, timeliness, sufficiency or sequencing of the Specified Materials posted on the Electronic Platform. Each Loan Party further acknowledges that certain of the Lending Parties (each, a "**Public Lender**") may have personnel who do not wish to receive material non-public information with respect to Loan Parties or their Subsidiaries or Affiliates or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Loan Party hereby agrees that: (1) all Specified Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC," which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (2) by marking Specified Materials "PUBLIC," each Loan Party shall be

deemed to have authorized Lending Parties to treat such Specified Materials as not containing any material non-public information with respect to each Loan Party or its securities for purposes of United States federal and state securities laws (*provided* that, to the extent such Specified Materials constitute Information, they shall be treated as set forth in **Section 10.07**); (3) all Specified Materials marked “PUBLIC” may be made available through a portion of the Electronic Platform designated “Public Investor” (or words to similar effect); and (4) Administrative Agent shall be entitled to treat any Specified Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Electronic Platform not designated “Public Investor” (or words of similar effect).

(iv) Administrative Agent, on behalf of itself and its Affiliates, expressly and specifically disclaims, with respect to the Electronic Platform, delays in posting or delivery, or problems accessing the Specified Materials posted on the Electronic Platform, and any liability for any losses, costs, expenses or liabilities that may be suffered or incurred in connection with the Electronic Platform. 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 Administrative Agent or any of its Affiliates in connection with the Electronic Platform.

(v) Each Lender hereby agrees that notice to it in accordance with this **Section 10.02(b)** specifying that any Specified Materials have been posted to the Electronic Platform shall, for purposes of this Agreement, constitute effective delivery to such Lender of such Specified Materials. Each Lender: (A) acknowledges that the Specified Materials, including information furnished to it by any Loan Party or Administrative Agent pursuant to, or in the course of administering, the Loan Documents, may include material, non-public information concerning Loan Parties and their respective Subsidiaries or Affiliates or their respective securities; and (B) confirms that: (1) it has developed compliance procedures regarding the use of material, non-public information; (2) it will handle such material, non-public information in accordance with such procedures and applicable Laws, include federal and state securities laws; and (3) to the extent it has such a person, it has identified in its Administrative Detail Form a contact person who may receive Specified Materials that may contain material, non-public information in accordance with its compliance procedures and applicable Laws.

(c) **Change of Address, Etc.** Administrative Loan Party, for itself and for Loan Parties, and Administrative Agent may change their respective address(es), facsimile number(s), telephone number(s) or e-mail address(es) for notices and other communications hereunder by notice to the other parties hereto. Each Lender may change its address(es), facsimile number(s), telephone number(s) or e-mail address(es) for notices and other communications hereunder by written notice to Administrative Loan Party and Administrative Agent.

(d) **Reliance by Lending Parties.** Lending Parties shall be entitled to rely and act upon any notices purportedly given by or on behalf of any Loan Party even if: (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein; or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Loan Parties shall indemnify each Indemnitee from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of any Loan Party. All telephonic notices to and other telephonic communications with Administrative Agent may be recorded by Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03. NO WAIVER; CUMULATIVE REMEDIES.

No failure by Administrative Agent or any other Lending Party to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; no single or partial exercise of any right, remedy, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Section 10.04. EXPENSES; INDEMNITY; DAMAGE WAIVER.

(a) **Costs and Expenses.** Borrowers shall pay: (i) subject to clause (ii) of this **Section 10.04(a)**: (A) all reasonable out-of-pocket expenses (including all wire transfer and other bank charges incurred in connection with this Agreement) incurred, without duplication, by Administrative Agent, White Oak, Lenders and their

respective Affiliates (including the reasonable fees, charges and disbursements of counsel for Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of, or consents relating to, the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated); and (ii) all actual and reasonable out-of-pocket expenses incurred by Administrative Agent or any other Lending Party (including the fees, charges and disbursements of any counsel for Administrative Agent and any other Lending Party), and shall pay all fees and time charges for attorneys, who may be employees of Administrative Agent or any other Lending Party, in connection with the enforcement or protection of its rights: (A) in connection with this Agreement and the other Loan Documents, including its rights under this **Section 10.04**; or (B) in connection with the Delayed Draw Term Loans made hereunder, including all such actual and reasonable out-of-pocket expenses incurred during any workout or restructuring (or negotiations in connection with the foregoing) in respect of the Delayed Draw Term Loans or any Commitment.

(b) **Indemnification by Loan Parties.** Subject to **Section 10.04(a)**, Loan Parties shall indemnify each Indemnitee against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys, who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Loan Parties arising out of, in connection with, or as a result of: (i) the execution or delivery of this Agreement, any other Loan Document or any document contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby; (ii) any Term Loan or the use or proposed use of the proceeds thereof; (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by Loan Parties or any Subsidiary thereof or any Environmental Claim or Environmental Liability related in any way to Loan Parties or any Subsidiary thereof; or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by Loan Parties or any Subsidiary thereof, and regardless of whether any Indemnitee is a party thereto; *provided* that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted result from the gross negligence or willful misconduct of such Indemnitee. This **Section 10.04(b)** shall not apply to Taxes other than any Taxes that constitute losses, claims, damages, liabilities or expenses arising from any non-Tax action, claim, litigation, investigation or proceeding.

(c) **Reimbursement by Lenders.** If Borrowers for any reason fail to pay when due any amount that it is required to pay under **Section 10.04(a)** or **Section 10.04(b)** to Administrative Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to Administrative Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (based on its Percentage Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; *provided* that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against Administrative Agent (or any such sub-agent) or any Related Party of any of the foregoing acting for Administrative Agent (or any such sub-agent) in connection with such capacity. The obligations of Lenders under this subsection (c) are subject to the provisions of **Section 2.10(d)**.

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by applicable Laws, no Loan Party shall assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any document contemplated hereby, the transactions contemplated hereby or thereby, any of the Delayed Draw Term Loans or the use of the proceeds thereof. No Indemnitee referred to in **Section 10.04(b)** shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(e) **Payments.** All amounts due under this **Section 10.04** shall be payable not later than three (3) Business Days after demand therefor.

(f) **Survival.** The agreements in this **Section 10.04** shall survive the resignation of Administrative Agent, the termination of the all Commitments hereunder and the payment in full, satisfaction or discharge of all Obligations.

Section 10.05. MARSHALLING; PAYMENTS SET ASIDE.

Neither Administrative Agent nor any other Lending Party shall be under any obligation to marshal any asset in favor of Loan Parties or any other Person or against or in payment of any or all of the Obligations. To the extent that any payment by or on behalf of Loan Parties is made to Administrative Agent or any other Lending Party, or Administrative Agent or any other Lending Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Administrative Agent or any other Lending Party in such Person's discretion) to be repaid to a trustee, receiver or any other party, in connection with any Proceeding under any Bankruptcy Laws or otherwise, then: (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred; and (b) each Lending Party severally agrees to pay to Administrative Agent upon demand its Percentage Share (without duplication) of any amount so recovered from or repaid by Administrative Agent *plus* interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate. The obligations of each Lending Party under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 10.06. SUCCESSORS AND ASSIGNS.

(a) **Successors and Assigns Generally.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, *except* that neither Borrowers nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Administrative Agent and each Lending Party, and no Lender may assign or otherwise transfer any of its rights or obligation hereunder except: (i) in accordance with the provisions of **Section 10.06(b)**; (ii) by way of a participation recorded in a Participant Register in accordance with the provisions of **Section 10.06(d)**; or (iii) by way of pledge or assignment of a Lien subject to the restrictions of **Section 10.06(f)**; and any other attempted assignment or transfer by any party hereto shall be null and void. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in **Section 10.06(d)** and, to the extent expressly contemplated hereby, the Related Parties of each of Administrative Agent and each other Lending Party) any legal or equitable right, remedy or claim under or by reason of this Agreement. Notwithstanding anything to the contrary herein, upon an Event of Default, a Lender may assign or otherwise transfer, any of its rights or obligations hereunder to any Person at its sole discretion without any consent of Borrowers or any other Loan Party.

(b) **Assignments by any Lender.** Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Delayed Draw Term Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) *Minimum Amounts.*

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's (i) Delayed Draw Term Loans at the time owing to it or (ii) Commitments, no minimum amount need be assigned;

(B) in any case not described in the immediately preceding sub-clause (A), the aggregate amount of any Commitments (which, for this purpose, includes the Outstanding

Amount of all Delayed Draw Term Loans) or, if the applicable Commitments are not then in effect, the Outstanding Amount of all Delayed Draw Term Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to Administrative Agent shall not be less than One Million Dollars (\$1,000,000), in the case of any assignment in respect of the Outstanding Amount of the Delayed Draw Term Loans, unless (I) Administrative Agent consents (which consent shall not be unreasonably withheld, conditioned or delayed) and (II) so long as a Default has not occurred and is continuing, Administrative Loan Party consents (which consent shall not be unreasonably withheld, conditioned or delayed); *provided* that Administrative Loan Party shall be deemed to have consented to any such amount unless it shall have objected thereto by written notice to Administrative Agent within five (5) Business Days following the date it receives notice of such amount.

(ii) *[Reserved.]*

(iii) *Required Consents.* No consent shall be required for any assignment other than:

(A) any consent required by required by **Section 10.06(b)(i)(B)**; and

(B) the consent of Administrative Agent (which consent shall not be unreasonably withheld, conditioned or delayed) if such assignment is: (I) an assignment of a Commitment to a Person (irrespective of whether such Person is an Eligible Assignee) who does not then have a Commitment; or (II) an assignment of Delayed Draw Term Loans to a Person that is not an Eligible Assignee.

(iv) *Assignment and Assumption.* The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of Three Thousand Five Hundred Dollars (\$3,500); *provided* that Administrative Agent: (A) may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment; and (B) shall waive such processing and recordation fee in the case of any assignment by a Lender to an Eligible Assignee. The assignee, if it is not a Lender, shall deliver to Administrative Agent an Administrative Detail Form and all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act.

(v) *No Assignment to any Loan Party.* No such assignment shall be made to any Loan Party or any of its Affiliates or Subsidiaries.

(vi) *No Assignment to Natural Persons.* No such assignment shall be made to a natural person.

Subject to acceptance and recording thereof by Administrative Agent pursuant to **Section 10.06(c)**, and receipt by Administrative Agent of all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the USA PATRIOT Act for the assignee, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of the assigning Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lending Party’s rights and obligations under this Agreement, such Lending Party shall cease to be a party hereto) but shall continue to be entitled to the benefits of **Section 2.07**, **Section 2.08** and **Section 10.04** with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, Borrowers (at their expense) shall execute and deliver Notes to the assignee Lending Party. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with **Section 10.06(d)**. Notwithstanding anything to the contrary contained in this Agreement or any of the other Loan Documents: (A) no Lender shall be required to comply with this **Section 10.06(b)** in connection with any

assignment of all or any portion of its rights and other obligations under or relating to the Delayed Draw Term Loans, this Agreement and the other Loan Documents to any Affiliate of such Lender (other than any Loan Party, any Affiliate thereof or a natural person) or any Approved Fund related to such Lender, and such Lender shall have no obligation to disclose any such assignment to any such Person; *provided* that such Lender shall continue to be liable as a “**Lender**” under this Agreement and the other Loan Documents until such time, if at all, that such Lender and such other Person have complied with the provisions of this **Section 10.06(b)** in order for such other Person to become a “**Lender**” hereunder; (B) a Lender may pledge, or grant a Lien in, all or any portion of its rights and other obligations under or relating to the Delayed Draw Term Loans, this Agreement and the other Loan Documents to a financial institution or other funding source (other than any Loan Party, any Affiliate thereof or any natural person) or any trustee or agent therefor in support of obligations owing by such Lender to such Person(s); (C) any Lender which is a fund may pledge, or grant a Lien in, all or any portion of its rights and other obligations under or relating to the Delayed Draw Term Loans, this Agreement and the other Loan Documents to its trustee (except if such trustee is any Loan Party, any Affiliate thereof or a natural person) in support of its obligation to its trustee; and (D) no pledge or grant of a Lien pursuant to the immediately preceding clauses (B) or (C) shall release the transferor Lender from any of its obligations hereunder or under any of the other Loan Documents and such Lender such Lender shall continue to be liable as a “**Lender**” under this Agreement and the other Loan Documents until such time, if at all, that such Lender and such other Person have complied with the provisions of this **Section 10.06(b)** in order for such other Person to become a “**Lender**” hereunder.

(c) **Register.** Administrative Agent, acting solely for this purpose as an on-fiduciary agent of Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a Register. The entries in the Register shall be conclusive, and Borrowers and Lending Parties may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by Borrowers and each Lender at any reasonable time and from time to time upon reasonable prior written notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender wishing to consult with other Lenders in connection therewith may request and receive from Administrative Agent a copy of the Register.

(d) **Participations.** Any Lender may at any time, without the consent of, or notice to, Administrative Loan Party or Administrative Agent, sell participations to any Person (other than a natural Person, any Loan Party or any Loan Party’s Affiliates or Subsidiaries) (each, a “**Participant**”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitments and/or the Delayed Draw Term Loans owing to it); *provided* that (i) such Lender’s obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) Borrowers, Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under **Section 2.08(d)** with respect to any payments made by such Lender to its Participant(s). Any document pursuant to which a Lender sells such a participation shall provide that such Person shall retain the sole right to enforce this Agreement and the other Loan Documents and to approve any amendment, modification or waiver of any provision of this Agreement and the other Loan Documents; *provided* that such document may provide that such Person will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to **Section 10.01** that affects such Participant. Borrowers agree that each Participant shall be entitled to the benefits of **Section 2.07** and **Section 2.08**, (subject to the requirements and limitations therein) (it being understood that the documentation required under **Section 2.08(g)** shall be delivered to the participating Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **Section 10.06(b)**; *provided* that such Participant shall not be entitled to receive any greater payment under **Section 2.07** or **Section 2.08**, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by applicable Laws, each Participant also shall be entitled to the benefits of **Section 10.08** as though it were a Lender; *provided* that such Participant agrees to be subject to **Section 2.09** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant’s interest in the Delayed Draw Term Loan or other obligations under the Loan Documents (the “**Participant Register**”); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant

Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, 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. For the avoidance of doubt, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Certain Pledges.** Any Lender may at any time pledge or assign a Lien in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender owing to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) **Electronic Execution of Assignments.** The words "*execution*," "*signed*," "*signature*," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Laws, including the Federal Electronic Signatures in Global and National Commerce Act or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.07. TREATMENT OF CERTAIN INFORMATION; CONFIDENTIALITY.

Administrative Agent and each other Lending Party each agrees to maintain the confidentiality of the Information, *except* that Information may be disclosed (including by means of the Electronic Platform): (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors, representatives and funding and financing sources (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and agree to keep such Information confidential on the same terms as provided herein); (b) to the extent requested by any Governmental Authority, purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), *provided* that to the extent permitted by applicable Law, Administrative Agent will use reasonably commercial efforts to provide Administrative Loan Party with notice of any such request so received prior to the release thereof, however, Administrative Agent's failure to so provide such notice (or any notice) will not be deemed a violation of any obligation of Administrative Agent to Borrowers hereunder or otherwise expose Administrative Agent to any claim or liability to any Person as a result of such failure; (c) to the extent required by applicable Laws or by any subpoena or similar legal process, *provided* that to the extent permitted by applicable Law, Administrative Agent will use reasonably commercial efforts to provide Administrative Loan Party with notice of any such required disclosure prior to the release thereof, however, Administrative Agent's failure to so provide such notice (or any notice) will not be deemed a violation of any obligation of Administrative Agent to Borrowers hereunder or otherwise expose Administrative Agent to any claim or liability to any Person as a result of such failure; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any Proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder; (f) to "Gold Sheets" or other similar bank trade publications; *provided* that such information consist solely of deal terms and other information customarily found in such publications; (g) unless an Event of Default has occurred and is continuing, subject to an agreement containing provisions substantially the same as those of this **Section 10.07** to: (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement; or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Loan Party; (h) with the consent of Borrowers; or (i) to the extent such Information: (i) becomes publicly available other than as a result of a breach of this **Section 10.07**; or (ii) becomes available to Administrative Agent, any Lending Party or any of their respective Affiliates on a non-confidential basis from a source other than any Loan Party and not in contravention of this **Section 10.07**. For purposes of this **Section 10.07**, "*Information*" means all information (including financial information) received from any Loan Party relating to such Loan Party or its business, other than any such information that is available to Administrative Agent or any other Lending Party on a nonconfidential basis, and not in contravention of this **Section 10.07**, prior to disclosure by such Loan Party. Any Person required to maintain the confidentiality of Information as provided in this **Section 10.07**: (A) shall be considered to have complied with its

obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information; and (B) shall not disclose any financial information concerning any Loan Party or its business (including any information based on any such financial information) or use any such financial information for commercial purposes without the prior written consent of the applicable Loan Party. Notwithstanding the foregoing, each Loan Party authorizes each Lending Party to make appropriate announcements of the financial arrangements entered into among Loan Parties, Administrative Agent, and Lenders, including announcements which are commonly known as “tombstones,” in such publications and to such selected parties as each Lending Party may in its sole and absolute discretion deem appropriate.

Section 10.08. RIGHT OF SETOFF.

Notwithstanding anything in Section 362 of the Bankruptcy Code, but subject to the Orders, if an Event of Default shall have occurred and be continuing, each of Lending Parties and their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Laws, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lending Party to or for the credit or the account of Borrowers or any other Loan Party against any and all of the Obligations to such Lending Party or such Affiliate, irrespective of whether or not such Lending Party shall have made any demand under this Agreement or any other Loan Document and although such obligations of Borrowers or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lending Party different from the branch or office holding such deposit or obligated on such obligations. The rights of each Lending Party and its Affiliates under this **Section 10.08** are in addition to other rights and remedies (including other rights of setoff) that such Lending Party or its Affiliates may have. Each Lending Party agrees to notify Administrative Loan Party and Administrative Agent promptly after any such setoff and application; *provided* that the failure to give such notice shall not affect the validity of such setoff and application. Notwithstanding the foregoing, no Lending Party shall exercise, or attempt to exercise, any right of set-off, banker's lien, or the like, against any deposit account or property of Borrowers or any other Loan Party held or maintained by such Lending Party without the prior written consent of Administrative Agent.

Section 10.09. INTEREST RATE LIMITATION.

Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the Maximum Rate. If Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Delayed Draw Term Loans or, if it exceeds such unpaid principal, refunded to Borrowers. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Laws: (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 10.10. COUNTERPARTS; INTEGRATION; EFFECTIVENESS.

This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire agreement among the parties relating to the subject matter hereof and supersede any and all previous documents, agreements and understandings, oral or written, relating to the subject matter hereof. Subject to the limitations provided in **Section 4.01**, this Agreement shall become effective when it shall have been executed and delivered by Administrative Agent and when Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in portable document format shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 10.11. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by Administrative Agent and each Lender, regardless of any investigation made by Administrative Agent or any Lender or on their behalf and notwithstanding that Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of the making of any Term Loan, and shall continue in full force and effect as long as any Term Loans or any other Obligations (other than Unasserted Obligations) have not been paid in full.

Section 10.12. SEVERABILITY.

If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 10.13. PATRIOT ACT NOTICE.

Each Lending Party that is subject to the Patriot Act and Administrative Agent (for itself and not on behalf of any Lending Party) hereby notify Loan Parties that, pursuant to the requirements of the Patriot Act, they are each required to obtain, verify and record information that identifies Loan Parties, which information includes the name and address of Loan Parties and other information that will allow such Lending Party or Administrative Agent, as applicable, to identify Loan Parties in accordance with the Patriot Act.

Section 10.14. GUARANTY.

(a) **Guaranty.** Each Guarantor party hereto unconditionally and irrevocably guarantees to Administrative Agent and the other Lending Parties the full and prompt payment when due (whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise) and performance of the Obligations (the “*Guaranteed Obligations*”). The Guaranteed Obligations include interest that, but for a Proceeding under any Bankruptcy Laws, would have accrued on such Guaranteed Obligations, whether or not a claim is allowed against Borrowers for such interest in any such Proceeding.

(b) **Separate Obligation.** Each Guarantor party hereto acknowledges and agrees that: (i) the Guaranteed Obligations are separate and distinct from any Debt arising under or in connection with any other document, including under any provision of this Agreement other than this **Section 10.14**, executed at any time by such Guarantor in favor of Administrative Agent or any other Lending Party; and (ii) such Guarantor shall pay and perform all of the Guaranteed Obligations as required under this **Section 10.14**, and Administrative Agent and the other Lending Parties may enforce any and all of their respective rights and remedies hereunder, without regard to any other document, including any provision of this Agreement other than this **Section 10.14**, at any time executed by such Guarantor in favor of Administrative Agent or any other Lending Party, irrespective of whether any such other document, or any provision thereof or hereof, shall for any reason become unenforceable or any of the Debt thereunder shall have been discharged, whether by performance, avoidance or otherwise. Each Guarantor acknowledges that, in providing benefits to Borrowers, Lending Parties are relying upon the enforceability of this **Section 10.14** and the Guaranteed Obligations as separate and distinct Debt of such Guarantor, and each Guarantor agrees that Lending Parties would be denied the full benefit of their bargain if at any time this **Section 10.14** or the Guaranteed Obligations were treated any differently. The fact that the guaranty is set forth in this Agreement rather than in a separate guaranty document is for the convenience of Borrowers and Guarantors and shall in no way impair or adversely affect the rights or benefits of Lending Parties under this **Section 10.14**. Each Guarantor agrees to execute and deliver a separate document, immediately upon request at any time of Administrative Agent or any other Lending Party, evidencing such Guarantor’s obligations under this **Section 10.14**. Upon the occurrence of any Event of Default, a separate action or actions may be brought against such Guarantor, whether or not Borrowers, any

other Guarantor or any other Person is joined therein or a separate action or actions are brought against Borrowers, any such other Guarantor or any such other Person.

(c) **Limitation of Guaranty.** To the extent that any court of competent jurisdiction shall impose by final judgment under applicable Laws (including sections 544 and 548 of the Bankruptcy Code) any limitations on the amount of any Guarantor's liability with respect to the Guaranteed Obligations that Administrative Agent or any other Lending Party can enforce under this **Section 10.14**, Administrative Agent and the other Lending Parties by their acceptance hereof accept such limitation on the amount of such Guarantor's liability hereunder to the extent needed to make this **Section 10.14** fully enforceable and non-avoidable.

(d) **Liability of Guarantors.** The liability of any Guarantor under this **Section 10.14** shall be irrevocable, absolute, independent and unconditional, and shall not be affected by any circumstance that might constitute a discharge of a surety or Guarantor other than the indefeasible payment and performance in full of all Guaranteed Obligations (other than Unasserted Obligations). In furtherance of the foregoing and without limiting the generality thereof, each Guarantor agrees as follows:

(i) such Guarantor's liability hereunder shall be the immediate, direct, and primary obligation of such Guarantor and shall not be contingent upon Administrative Agent's or any Lending Party's exercise or enforcement of any remedy it may have against Borrowers or any other Person, or against any collateral or other security for any Guaranteed Obligations;

(ii) this Guaranty is a guaranty of payment when due and not merely of collectability;

(iii) Administrative Agent and the other Lending Parties may enforce this **Section 10.14** upon the occurrence of an Event of Default notwithstanding the existence of any dispute among Administrative Agent and the other Lending Parties, on the one hand, and Borrowers or any other Person, on the other hand, with respect to the existence of such Event of Default;

(iv) such Guarantor's payment of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge such Guarantor's liability for any portion of the Guaranteed Obligations remaining unsatisfied; and

(v) such Guarantor's liability with respect to the Guaranteed Obligations shall remain in full force and effect without regard to, and shall not be impaired or affected by, nor shall such Guarantor be exonerated or discharged by, any of the following events:

(A) [Reserved];

(B) any limitation, discharge, or cessation of the liability of Borrowers or any other Person for any Guaranteed Obligations due to any Law, or any invalidity or unenforceability in whole or in part of any of the Guaranteed Obligations or the Loan Documents;

(C) any merger, acquisition, consolidation or change in structure of Borrowers, any Subsidiary thereof or any other Guarantor or Person, or any sale, lease, transfer or other Disposition of any or all of the assets or shares of Borrowers or any other Person;

(D) any assignment or other transfer, in whole or in part, of Administrative Agent's or any Lending Party's interests in and rights under this Agreement (including this Section 10.14) or the other Loan Documents;

(E) any claim, defense, counterclaim or setoff, other than that of prior performance, that Borrowers, such Guarantor, any other Guarantor or any other Person may have or assert, including any defense of incapacity or lack of corporate or other authority to execute any of the Loan Documents;

(F) Administrative Agent's or any other Lending Party's amendment, modification, renewal, extension, cancellation or surrender of any Loan Document or any Guaranteed Obligations;

(G) Administrative Agent's or any Lending Party's exercise or non-exercise of any power, right or remedy with respect to any Guaranteed Obligations or any collateral;

(H) Administrative Agent's or any Lending Party's vote, claim, distribution, election, acceptance, action or inaction in any Proceeding under any Bankruptcy Laws; or

(I) any other guaranty, whether by such Guarantor or any other Person, of all or any part of the Guaranteed Obligations or any other indebtedness, obligations or liabilities of Borrowers to Administrative Agent or any other Lending Party.

(e) **Consents of Guarantors.** Each Guarantor hereby unconditionally consents and agrees that, without notice to or further assent from such Guarantor:

(i) the principal amount of the Guaranteed Obligations may be increased or decreased and additional indebtedness or obligations of Borrowers under the Loan Documents may be incurred and the time, manner, place or terms of any payment under any Loan Document may be extended or changed, by one or more amendments, modifications, renewals or extensions of any Loan Document or otherwise;

(ii) the time for Borrowers' (or any other Person's) performance of or compliance with any term, covenant or agreement on its part to be performed or observed under any Loan Document may be extended, or such performance or compliance waived, or failure in or departure from such performance or compliance consented to, all in such manner and upon such terms as Administrative Agent and the other Lending Parties (as applicable under the relevant Loan Documents) may deem proper;

(iii) Administrative Agent and the other Lending Parties may request and accept other guaranties and may take and hold security as collateral for the Guaranteed Obligations, and may, from time to time, in whole or in part, exchange, sell, surrender, release, subordinate, modify, waive, rescind, compromise or extend such other guaranties or security and may permit or consent to any such action or the result of any such action, and may apply such security and direct the order or manner of sale thereof; and

(iv) Administrative Agent or the other Lending Parties may exercise, or waive or otherwise refrain from exercising, any other right, remedy, power or privilege even if the exercise thereof affects or eliminates any right of subrogation or any other right of such Guarantor against Borrowers.

(f) **Guarantor's Waivers.** Each Guarantor waives and agrees not to assert:

(i) any right to require Administrative Agent or any other Lending Party to proceed against Borrowers, any other Guarantor or any other Person, or to pursue any other right, remedy, power or privilege of Administrative Agent or any other Lending Party whatsoever;

(ii) the defense of the statute of limitations in any action hereunder or for the collection or performance of the Guaranteed Obligations;

(iii) any defense arising by reason of any lack of corporate or other authority or any other defense of Borrowers, such Guarantor or any other Person;

(iv) any defense based upon Administrative Agent's or any Lending Party's errors or omissions in the administration of the Guaranteed Obligations;

(v) any rights to set-offs and counterclaims;

(vi) without limiting the generality of the foregoing, to the fullest extent permitted by Laws, any defenses or benefits that may be derived from or afforded by applicable Laws limiting the liability of or exonerating guarantors or sureties, or that may conflict with the terms of this Section 10.14; and

(vii) any and all notice of the acceptance of this Guaranty, and any and all notice of the creation, renewal, modification, extension or accrual of the Guaranteed Obligations, or the reliance by Administrative Agent and the other Lending Parties upon this Guaranty, or the exercise of any right, power or privilege hereunder. The Guaranteed Obligations shall conclusively be deemed to have been created, contracted, incurred and permitted to exist in reliance upon this Guaranty. Each Guarantor waives promptness, diligence, presentment, protest, demand for payment, notice of default, dishonor or nonpayment and all other notices to or upon Borrowers, each Guarantor or any other Person with respect to the Guaranteed Obligations.

(g) **Financial Condition of Borrowers.** No Guarantor shall have any right to require Administrative Agent or any other Lending Party to obtain or disclose any information with respect to: the financial condition or character of Borrowers or the ability of Borrowers to pay and perform the Guaranteed Obligations; the Guaranteed Obligations; any collateral or other security for any or all of the Guaranteed Obligations; the existence or nonexistence of any other guarantees of all or any part of the Guaranteed Obligations; any action or inaction on the part of Administrative Agent or any other Lending Party or any other Person; or any other matter, fact or occurrence whatsoever. Each Guarantor hereby acknowledges that it has undertaken its own independent investigation of the financial condition of Borrowers and all other matters pertaining to this Guaranty and further acknowledges that it is not relying in any manner upon any representation or statement of Administrative Agent or any other Lending Party with respect thereto.

(h) **Subrogation.** Until the Guaranteed Obligations (other than Unasserted Obligations) shall be paid in full and all the Commitments hereunder shall be terminated, each Guarantor shall not have, and shall not directly or indirectly exercise: (i) any rights that it may acquire by way of subrogation under this **Section 10.14**, by any payment hereunder or otherwise; (ii) any rights of contribution, indemnification, reimbursement or similar suretyship claims arising out of this **Section 10.14**; or (iii) any other right that it might otherwise have or acquire (in any way whatsoever) that could entitle it at any time to share or participate in any right, remedy or security of Administrative Agent or any other Lending Party as against any Borrower or other Guarantors or any other Person, whether in connection with this **Section 10.14**, any of the other Loan Documents or otherwise. If any amount shall be paid to any Guarantor on account of the foregoing rights at any time when all the Guaranteed Obligations (other than Unasserted Obligations) shall not have been paid in full, such amount shall be held in trust for the benefit of Administrative Agent and the other Lending Parties and shall forthwith be paid to Administrative Agent to be credited and applied to the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Loan Documents.

(i) **Subordination.** All payments on account of all indebtedness, liabilities and other obligations of Borrowers to any Guarantor, whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined (the "Guarantor Subordinated Debt") shall be subject, subordinate and junior in right of payment and exercise of remedies, to the extent and in the manner set forth herein, to the prior payment in full in cash or cash equivalents of the Guaranteed Obligations. As long as any of the Guaranteed Obligations (other than Unasserted Obligations) shall remain outstanding and unpaid, each Guarantor shall not accept or receive any payment or distribution by or on behalf of Borrowers or any other Guarantor, directly or indirectly, or assets of Borrowers or any other Guarantor, of any kind or character, whether in cash, property or securities, including on account of the purchase, redemption or other acquisition of Guarantor Subordinated Debt, as a result of any collection, sale or other Disposition of collateral, or by setoff, exchange or in any other manner, for or on account of the Guarantor Subordinated Debt ("Guarantor Subordinated Debt Payments"), except that, so long as an Event of Default does not then exist, any Guarantor shall be entitled to accept and receive payments on its Guarantor Subordinated Debt, in accordance with past business practices of such Guarantor and Borrowers (or any other applicable Guarantor) and not in contravention of any Laws or the terms of the Loan Documents. If any Guarantor Subordinated Debt Payments shall be received in contravention of this **Section 10.14**, such Guarantor Subordinated Debt Payments shall be held in trust for the benefit of Administrative Agent and the other Lending Parties and shall be paid over or delivered to Administrative Agent for application to the payment in full in cash or cash equivalents of all Guaranteed Obligations remaining unpaid to the extent

necessary to give effect to this **Section 10.14** after giving effect to any concurrent payments or distributions to Administrative Agent and the other Lending Parties in respect of the Guaranteed Obligations.

(j) **Continuing Guaranty.** This Guaranty is a continuing guaranty and agreement of subordination and shall continue in effect and be binding upon each Guarantor until termination of all the Commitments hereunder and payment and performance in full of the Guaranteed Obligations, including Guaranteed Obligations which may exist continuously or which may arise from time to time under successive transactions, and each Guarantor expressly acknowledges that this Guaranty shall remain in full force and effect notwithstanding that there may be periods in which no Guaranteed Obligations exist. This Guaranty shall continue in effect and be binding upon each Guarantor until actual receipt by Administrative Agent of written notice from such Guarantor of its intention to discontinue this Guaranty as to future transactions (which notice shall not be effective until 11:00 a.m. on the day that is five (5) Business Days following such receipt); provided that no revocation or termination of this Guaranty shall affect in any way any rights of Administrative Agent, or any Lending Party hereunder with respect to any Guaranteed Obligations arising or outstanding on the date of receipt of such notice, including any subsequent continuation, extension, or renewal thereof, or change in the terms or conditions thereof, or any Guaranteed Obligations made or created after such date to the extent made or created pursuant to a legally binding commitment of any Lending Party in existence as of the date of such revocation (collectively, “*Existing Guaranteed Obligations*”), and the sole effect of such notice shall be to exclude from this Guaranty Guaranteed Obligations thereafter arising which are unconnected to any Existing Guaranteed Obligations.

(k) **Reinstatement.** This Guaranty shall continue to be effective or shall be reinstated and revived, as the case may be, if, for any reason, any payment of the Guaranteed Obligations by or on behalf of Borrowers (or receipt of any proceeds of collateral) shall be rescinded, invalidated, declared to be fraudulent or preferential, set aside, voided or otherwise required to be repaid to Borrowers, its estate, trustee, receiver or any other Person (including under any Bankruptcy Laws), or must otherwise be restored by Administrative Agent or any other Lending Party, whether as a result of Proceedings under any Bankruptcy Laws or otherwise. All losses, damages, costs and expenses that Administrative Agent, or any Lending Party may suffer or incur as a result of any voided or otherwise set aside payments shall be specifically covered by the indemnity in favor of Administrative Agent and the other Lending Parties contained in **Section 10.04**.

(l) **Substantial Benefits.** The Credit Extensions provided to or for the benefit of Borrowers hereunder by Lending Parties have been and are to be contemporaneously used for the benefit of Borrowers and each Guarantor. It is the position, intent and expectation of the parties that Borrowers and each Guarantor have derived and will derive significant and substantial benefits from the Credit Extensions to be made available by Lending Parties under the Loan Documents. Each Guarantor has received at least “reasonably equivalent value” (as such phrase is used in Section 548 of the Bankruptcy Code and in comparable provisions of other applicable Laws) and more than sufficient consideration to support its obligations hereunder in respect of the Guaranteed Obligations.

(m) **Knowing and Explicit Waivers.** Each Guarantor acknowledges that it either has obtained the advice of legal counsel or has had the opportunity to obtain such advice in connection with the terms and provisions of this Section 10.14. Each Guarantor acknowledges and agrees that each of the waivers and consents set forth herein is made with full knowledge of its significance and consequences, that all such waivers and consents herein are explicit and knowing and that each Guarantor expects such waivers and consents to be fully enforceable. If, while any Guarantor Subordinated Debt is outstanding, any Proceeding under any Bankruptcy Laws is commenced by or against Borrowers or their property, Administrative Agent, when so instructed by Required Lenders, is hereby irrevocably authorized and empowered (in the name of Lending Parties or in the name of any Guarantor or otherwise), but shall have no obligation, to demand, sue for, collect and receive every payment or distribution in respect of all Guarantor Subordinated Debt and give acquittances therefor and to file claims and proofs of claim and take such other action (including voting the Guarantor Subordinated Debt) as it may deem necessary or advisable for the exercise or enforcement of any of the rights or interests of Administrative Agent and the other Lending Parties; and each Guarantor shall promptly take such action as Administrative Agent (on instruction from Required Lenders) may reasonably request: (i) to collect the Guarantor Subordinated Debt for the account of the Lending Parties and to file appropriate claims or proofs of claim in respect of the Guarantor Subordinated Debt; (ii) to execute and deliver to Administrative Agent such powers of attorney, assignments and other instruments as it may request to enable it to enforce any and all claims with respect to the Guarantor Subordinated Debt; and (iii) to collect and receive any and all Guarantor Subordinated Debt Payments.

Section 10.15. TIME OF THE ESSENCE.

Time is of the essence of the Loan Documents.

Section 10.16. GOVERNING LAW; JURISDICTION; ETC.

(a) **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS, OTHER THAN NEW YORK GENERAL OBLIGATIONS LAW 5-1401 AND 5-1402.

(b) **SUBMISSION TO JURISDICTION.** EACH LOAN PARTY HEREUNDER HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT AND, TO THE EXTENT THE BANKRUPTCY COURT DECLINES OR IS OTHERWISE UNABLE TO EXERCISE JURISDICTION, THE COURTS OF THE STATE OF NEW YORK SITTING IN THE CITY AND COUNTY OF NEW YORK AND OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT TO WHICH EACH IS A PARTY, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE COURTS OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURTS. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ANY OF ITS PROPERTIES IN THE COURTS OF ANY OTHER JURISDICTION. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO CONSTITUTE A LENDER'S OR A PARTICIPANT'S CONSENT TO JURISDICTION OF THE BANKRUPTCY COURT FOR ANY PURPOSES OTHER THAN THE ENFORCEMENT OF THIS AGREEMENT AND THE ORDERS. NOTHING CONTAINED HEREIN SHALL BE DEEMED CONSENT TO JURISDICTION BEFORE ANY BANKRUPTCY COURT IN THE CASES.

(c) **WAIVER OF VENUE.** EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN SUBSECTION (B) OF THIS SECTION 10.16. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH OF THE PARTIES HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAWS.

Section 10.17. WAIVER OF RIGHT TO JURY TRIAL.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM. EACH OF THE PARTIES HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY

AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 10.18. 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

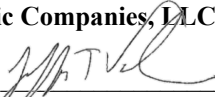
(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority

[SIGNATURE PAGES FOLLOW]

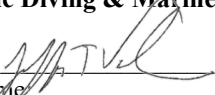
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first written above.

BORROWERS:

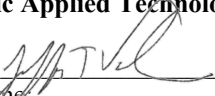
Epic Companies, LLC

By: 
Name: Jeffrey T. Varsalone
Title: Chief Restructuring Officer

Epic Diving & Marine Services, LLC

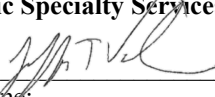
By: 
Name: Jeffrey T. Varsalone
Title: Chief Restructuring Officer

Epic Applied Technologies, LLC

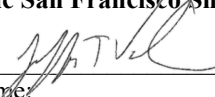
By: 
Name: Jeffrey T. Varsalone
Title: Chief Restructuring Officer

GUARANTORS:

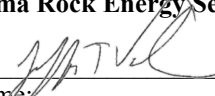
Epic Specialty Services, LLC

By: 
Name: Jeffrey T. Varsalone
Title: Chief Restructuring Officer

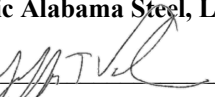
Epic San Francisco Shipyard, LLC

By: 
Name: Jeffrey T. Varsalone
Title: Chief Restructuring Officer

Zuma Rock Energy Services, LLC

By: 
Name: Jeffrey T. Varsalone
Title: Chief Restructuring Officer

Epic Alabama Steel, LLC

By: 
Name: Jeffrey T. Varsalone
Title: Chief Restructuring Officer

Administrative Agent:**White Oak Global Advisors, LLC**

DocuSigned by:

Barbara McKee

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By: _____

Name: Barbara J. S. McKeeTitle: Managing Partner**Lenders:**

WHITE OAK GLOBAL ADVISORS, LLC, not in its individual capacity but as attorney-in-fact for certain of the Lenders identified on Schedule 2

DocuSigned by:

Barbara McKee

EEB77776350D4B0...

By: _____

Name: Barbara J. S. McKeeTitle: Managing Partner

WHITE OAK PARTNERS, LLC, not in its individual capacity but as General Partner and/or Manager for certain of the Lenders identified on Schedule 2

DocuSigned by:

Barbara McKee

EEB77776350D4B0...

By: _____

Name: Barbara J. S. McKeeTitle: Managing Partner

WHITE OAK PARTNERS 2, LLC, not in its individual capacity but as General Partner and/or Manager for certain of the Lenders identified on Schedule 2

DocuSigned by:

Barbara McKee

EEB77776350D4B0...

By: _____

Name: Barbara J. S. McKeeTitle: Managing Partner

SCHEDULE 1.01-A

[RESERVED]

SCHEDULE 1.01-B**Certain Material Contracts****Material Contracts – Customer**

<i>Item</i>	<i>Document</i>	<i>Effective Date</i>	<i>EPIC Entity</i>	<i>Contracting Party</i>
1.	Platform Removal Contract	4/7/2014, amended 3/8/2018	EPIC Applied Technologies, LLC (f/k/a/ TETRA Applied Technologies, LLC) (“Contractor”)	Fieldwood Energy LLC
2.	Master Service Agreement	3/28/2018	EPIC Companies, LLC. on behalf of itself and its affiliates EPIC Applied Technologies, LLC (f/k/a TETRA Applied Technologies, LLC) and EPIC Diving & Marine Services, LLC (“Contractor”)	Northstar Offshore Ventures, LLC
3.	Master Service Agreement	10/24/2014, amended 8/1/2017, adopted 3/6/2018	EPIC Companies, LLC. on behalf of itself and its affiliates EPIC Applied Technologies, LLC (f/k/a TETRA Applied Technologies, LLC), EPIC Diving & Marine Services, LLC and TSB Offshore, Inc. (“Contractor”)	Stone Energy Corporation
4.	Master Service Contract	5/1/2018	EPIC Companies, LLC, on behalf of itself and its affiliates Epic Applied Technologies, LLC, Epic Diving & Marine Services, LLC and EOT Cutting Services (“Contractor”)	Talos Energy LLC
5.	General Services Contract	1/1/2018	EPIC Diving & Marine Services, LLC (“Contractor”)	Williams Field Services - Gulf Coast Company, LP

Material Contracts – Vendor

<i>Item</i>	<i>Document</i>	<i>Effective Date</i>	<i>EPIC Entity</i>	<i>Contracting Party</i>
1.	Master Towing Services Agreement	Adopted 3/28/2018	EPIC Applied Technologies, LLC (f/k/a TETRA Applied Technologies, LLC) and EPIC Diving & Marine Services, LLC	Crosby Tugs, LLC
2.	Commercial Contract for Towing Services	Adopted 3/28/2018	EPIC Companies, LLC	Crosby Tugs, LLC
3.	Master Catering Services Agreement	2/10/2017, adopted 3/28/2018	EPIC Companies, LLC. on behalf of itself and its affiliates	Taylor's International Services, Inc.

SCHEDULE 1.01-C**Real Property**

<i>Loan Party</i>	<i>Address</i>	<i>Owned/Leased</i>
Epic Applied Technologies, LLC	309 Dickson Rd Houma, LA 70363 Terrebonne Parish	Owned
Epic Applied Technologies, LLC	137 A.J. Estay Rd. Golden Meadow, LA 70357 Lafourche Parish	Leased
Epic Diving & Marine Services, LLC	10656 Hwy 23 Belle Chasse, LA 70037 Plaquemines Parish	Leased
Epic Applied Technologies, LLC	216 Millstone Broussard, LA 70518 Lafayette Parish	Leased
Epic Applied Technologies, LLC	Bunker Space Numbers 28 & 29 2075 Bayou Blue Road Houma, LA 70360 Terrebonne Parish	Leased
Epic Companies, LLC	115 Menard Road Houma, LA 70363 Terrebonne Parish	Leased

SCHEDULE 2.01(a)**Lenders; Percentage Shares**

On and as of the Effective Date, the commitments of Lenders are as follows:

<i>Lender¹</i>	<i>Delayed Draw Term Loan Commitment</i>	<i>Term Loan Amount</i>	<i>Percentage Share</i>
SMA48AS	\$ -	\$ -	0%
SMA21NDTX	\$ -	\$ -	0%
SMA21OC	\$ -	\$ -	0%
SMA31TEAM	\$ -	\$ -	0%
WOFIC2	\$9,500,000.00	\$9,500,000.00	100.00%
PINN	\$ -	\$ -	0%
SUMTP2	\$ -	\$ -	0%
SUMTPF	\$ -	\$ -	0%
SUMTT	\$ -	\$ -	0%
SUMTR	\$ -	\$ -	0%
SUMET	\$ -	\$ -	0%
SUMER	\$ -	\$ -	0%
TOTAL	\$9,500,000.00	\$9,500,000.00	100.00%

¹ The Lenders specified in this **Schedule 2.01(a)** by code names are identified by their respective legal names in the books and records of White Oak Global Advisors, LLC.

SCHEDULE 2.01(b)**Maximum Outstanding Principal Balance of Delayed Drawn Term Loans**

<i>Lender¹</i>	<i>Maximum Outstanding Principal Balance of Delayed Draw Term Loans</i>	<i>Pro Rata Share</i>
SMA48AS	\$ -	0%
SMA21NDTX	\$ -	0%
SMA21OC	\$ -	0%
SMA31TEAM	\$ -	0%
WOFIC2	\$6,000,000.00	100%
PINN	\$ -	0%
SUMTP2	\$ -	0%
SUMTPF	\$ -	0%
SUMTT	\$ -	0%
SUMTR	\$ -	0%
SUMET	\$ -	0%
SUMER	\$ -	0%
TOTAL	\$6,000,000	100.00%

¹ The Lenders specified in this **Schedule 2.01(b)** by code names are identified by their respective legal names in the books and records of White Oak Global Advisors, LLC.

SCHEDULE 5.05**Certain Litigation**

ITEM NO.	Matter	Plaintiff	Defendant	Type of Case	Case Number	Court Venue
1.	Proserv Operations, Inc. v. Ranger Offshore, Inc., Epic Companies LLC.	Proserv Operations, Inc.	Ranger Offshore, Inc., Epic Companies LLC.	Breach of Contract (Ranger), Fraudulent Transfer (Ranger, Epic)	2018-69571	125th Judicial District Court, Harris County, Texas
2.	Dan Bunkering (America), Inc. v. Epic Hedron, In rem	Dan Bunkering (America), Inc.	Epic Hedron, In rem	Arrest of the Epic Hedron	2019-cv-00413	United States District Court for the Southern District of Alabama
3.	Dan Bunkering (America), Inc. v. Epic Arapaho, In rem	Dan Bunkering (America), Inc.	Epic Arapaho, In rem	Arrest of the Epic Arapaho	2019-cv-11897	United States District Court for the Eastern District of Louisiana
4.	Garber Bros. Inc. v. D/B Arapaho et al/ Epic Companies, LLC	Garber Bros. Inc.	D/B Arapaho; et al/Epic Companies LLC	Arrest of the Epic Arapaho	2019-cv-11786	United States District Court for the Eastern District of Louisiana
5.	Dan Bunkering (America), Inc. v. Epic Explorer, In rem	Dan Bunkering (America), Inc.	Epic Explorer, In rem	Arrest of the Epic Explorer	2019-cv-11741	United States District Court for the Eastern District of Louisiana

SCHEDULE 5.16

Subsidiaries; Investments; Equity Interests in Loan Parties

EQUITY INTERESTS HELD BY PERSONS IN LOAN PARTIES:

Orinoco Natural Resources, LLC owns 50% of limited liability company interests in Epic Companies, LLC
Oakridge Energy Partners, LLC owns 50% of limited liability company interests in Epic Companies, LLC

EQUITY INTERESTS HELD BY LOAN PARTIES IN PERSONS:

Epic Companies, LLC owns 100% of the shares or limited liability company interests in the following entities:

Epic Applied Technologies, LLC	100%
Epic Diving & Marine Services, LLC	100%
Epic Specialty Services, LLC	100%
Zuma Rock Energy Services, LLC	100%
Epic San Francisco Shipyard, LLC	100%
Epic Alabama Steel, LLC	100%
King Aire, Inc.	100%

SCHEDULE OF OTHER INVESTMENTS

Epic Companies, LLC owns securities credited to its securities account at Wellington Shields & Co. LLC and described in the Control Account between such securities intermediary, Epic Companies, LLC and Administrative Agent.

EMPLOYEE LOANS

None.

LOAN RECEIVABLE – OTHER

Loan from Epic Companies, LLC to Meritech Resources, LLC, made March 1, 2018, the principal amount of \$1.2 million.

SCHEDULE 5.19

Certain Labor Issues

Short Form Agreement, dated October 29, 2015, among the United Brotherhood Carpenters & Joiners of America, New England Regional Counsel, as the Union, and Epic Diving & Marine Services, LLC, as the Contractor/Employer.

SCHEDULE 5.21

**Schedule of Permits
(List of Required Permits Not Currently Held by the Loan Parties)**

NONE.

SCHEDULE 5.27**Locations of M&E**

<i>Location</i>	<i>Equipment Maintained</i>
10456 Highway 23 Belle Chase, LA 70037	Diving Equipment
216 Millstone Road Broussard, LA 70518	Cutting Equipment
309 Dixon Road Houma, LA 70363	Plugging and Abandonment Equipment
Port Fourchon 137 A.J. Estay Road Golden Meadow, LA	Incidental equipment for dock-related purposes.
115 Menard Road Houma, Louisiana 70363	Diving Equipment purchased from Ranger Offshore, Inc.
6072 Candice Lane Lake Charles, LA 70615	Equipment purchased from Wright's Well Control Service, LLC
660 Dunlap Drive Mobile, AL 36602 Mobile County	Vessel fabrication, repair, maintenance and scrapping equipment

SCHEDULE 5.28

**Budget
(see attached)**

In re Epic Companies LLC et al.
Chapter 11 Cash Collateral / DIP Budget

Week Ending	Week 1 Forecast 8/30/2019	Week 2 Forecast 9/6/2019	Week 3 Forecast 9/13/2019	Week 4 Forecast 9/20/2019	Week 5 Forecast 9/27/2019	Week 6 Forecast 10/4/2019	Week 7 Forecast 10/11/2019	Week 8 Forecast 10/18/2019	Week 9 Forecast 10/25/2019	Week 10 Forecast 11/1/2019	Week 11 Forecast 11/8/2019	Week 12 Forecast 11/15/2019	Week 13 Forecast 11/22/2019	13 Week Forecast Total	Accrued Expenses Forecast Total
Beginning Cash Balance	\$ 167,469	\$ 157,029	\$ 146,296	\$ 135,453	\$ 125,029	\$ 113,611	\$ 101,662	\$ 89,946	\$ 77,395	\$ 65,094	\$ 51,547	\$ 38,142	\$ 25,141		
Operating Expenses:															
Payroll and Related	\$ 234,789	\$ -	\$ 166,050	\$ -	\$ 88,232	\$ -	\$ 88,232	\$ -	\$ 88,232	\$ -	\$ 88,232	\$ -	\$ 88,232	\$ 842,000	\$ 44,116
Contractors	\$ 14,750	\$ 14,750	\$ 14,750	\$ 14,750	\$ 14,750	\$ 14,750	\$ 14,750	\$ 14,750	\$ 14,750	\$ 14,750	\$ 14,750	\$ 14,750	\$ 14,750	\$ 191,750	\$ -
Rents	\$ -	\$ 104,548	\$ -	\$ -	\$ -	\$ 104,548	\$ -	\$ -	\$ -	\$ 62,625	\$ -	\$ -	\$ -	\$ 271,720	\$ -
IT Expenses	\$ 1,050	\$ 1,050	\$ 9,400	\$ 1,050	\$ 1,050	\$ 1,050	\$ 1,050	\$ 9,400	\$ 1,050	\$ 1,050	\$ 1,050	\$ 9,400	\$ 3,050	\$ 40,700	\$ -
Supplies and Utilities	\$ 250	\$ 10,599	\$ 1,350	\$ 250	\$ 250	\$ 250	\$ 9,199	\$ 250	\$ 250	\$ 250	\$ 9,199	\$ 250	\$ 250	\$ 32,596	\$ -
Misc. Vessel Operating Expenses	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 7,500	\$ 97,500	\$ -
Insurance	\$ 669,479	\$ 37,000	\$ -	\$ -	\$ -	\$ 168,000	\$ -	\$ -	\$ -	\$ 419,479	\$ -	\$ -	\$ -	\$ 1,293,959	\$ -
Utility Deposit	\$ 4,559	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 4,559	\$ -
Taxes	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Ordinary Course Professionals	\$ -	\$ -	\$ -	\$ -	\$ 50,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 50,000	\$ -
Other	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 65,000	\$ -
Pre-Petition Maritime Lien - Hedron	\$ -	\$ -	\$ -	\$ -	\$ 597,297	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 597,297	\$ -
Total Operating Expenses	\$ 937,378	\$ 180,446	\$ 204,050	\$ 28,550	\$ 764,079	\$ 301,098	\$ 125,731	\$ 36,900	\$ 116,782	\$ 510,654	\$ 125,731	\$ 36,900	\$ 118,782	\$ 3,487,082	\$ 44,116
Bankruptcy Expenses:															
Debtors' Counsel	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 644,000	\$ -	\$ -	\$ -	\$ -	\$ 552,000	\$ 1,196,000	\$ -
CRO	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 975,000	\$ -
Noticing Agent	\$ -	\$ 48,000	\$ -	\$ -	\$ -	\$ 132,000	\$ -	\$ -	\$ -	\$ 96,000	\$ -	\$ -	\$ -	\$ 276,000	\$ 96,000
UCC Counsel	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 93,333	\$ -	\$ -	\$ -	\$ 93,333	\$ 156,667
UCC Financial Advisor	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 80,000	\$ 9,000	\$ -	\$ -	\$ 89,000	\$ -
Lender Counsel	\$ -	\$ 225,000	\$ -	\$ -	\$ -	\$ 250,000	\$ -	\$ -	\$ -	\$ 275,000	\$ -	\$ -	\$ -	\$ 750,000	\$ 75,000
Asset Sale Expenses	\$ -	\$ -	\$ 100,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,000	\$ -
US Trustee Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 38,213	\$ -	\$ -	\$ 38,213	\$ 31,833
KEIP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Bankruptcy Expenses	\$ 75,000	\$ 348,000	\$ 175,000	\$ 75,000	\$ 75,000	\$ 457,000	\$ 75,000	\$ 719,000	\$ 75,000	\$ 619,333	\$ 122,213	\$ 75,000	\$ 627,000	\$ 3,517,547	\$ 359,500
Disbursements Net of Cash	\$ (1,012,378)	\$ (528,446)	\$ (379,050)	\$ (103,550)	\$ (839,079)	\$ (758,098)	\$ (200,731)	\$ (755,900)	\$ (191,782)	\$ (1,129,988)	\$ (247,944)	\$ (111,900)	\$ (745,782)	\$ (7,004,629)	
Initial DIP Borrowings (Paydown)	\$ 1,012,378	\$ 528,446	\$ 379,050	\$ 103,550	\$ 839,079	\$ 758,098	\$ 200,731	\$ 755,900	\$ 191,782	\$ 1,129,988	\$ 247,944	\$ 111,900	\$ 745,782	\$ 7,004,629	
Cash Receipts:															
Existing AR Collections	\$ 321,879	\$ 321,879	\$ 321,879	\$ 321,879	\$ 321,879	\$ 321,879	\$ 321,879	\$ 321,879	\$ 321,879	\$ 321,879	\$ 321,879	\$ 321,879	\$ 321,879	\$ 4,184,422	
Lease Income	\$ -	\$ 54,000	\$ -	\$ -	\$ -	\$ 159,925	\$ -	\$ -	\$ -	\$ 159,925	\$ -	\$ -	\$ -	\$ 373,850	
Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Total Receipts	\$ 321,879	\$ 375,879	\$ 321,879	\$ 321,879	\$ 321,879	\$ 481,804	\$ 321,879	\$ 321,879	\$ 321,879	\$ 481,804	\$ 321,879	\$ 321,879	\$ 321,879	\$ 4,558,272	
Net Cash Flow	\$ (523,030)	\$ 4,461	\$ 89,125	\$ 353,781	\$ (392,171)	\$ (162,682)	\$ 222,810	\$ (344,075)	\$ 207,491	\$ (583,090)	\$ 125,481	\$ 248,120	\$ (398,763)		
DIP Borrowing (Paydown)	\$ 690,499	\$ 152,568	\$ 57,171	\$ (218,329)	\$ 517,201	\$ 276,294	\$ (121,148)	\$ 434,021	\$ (130,096)	\$ 648,184	\$ (73,934)	\$ (209,979)	\$ 423,904	\$ 2,446,356	
Total DIP Balance	\$ 690,499	\$ 843,067	\$ 900,238	\$ 681,910	\$ 1,199,110	\$ 1,475,404	\$ 1,354,257	\$ 1,788,278	\$ 1,658,182	\$ 2,306,366	\$ 2,232,431	\$ 2,022,453	\$ 2,446,356		
DIP Interest	\$ (1,328)	\$ (1,621)	\$ (1,731)	\$ (1,311)	\$ (2,306)	\$ (2,837)	\$ (2,604)	\$ (3,439)	\$ (3,189)	\$ (4,435)	\$ (4,293)	\$ (3,889)	\$ (4,705)	\$ (37,690)	
Adequate Protection Interest	\$ (9,112)	\$ (9,112)	\$ (9,112)	\$ (9,112)	\$ (9,112)	\$ (9,112)	\$ (9,112)	\$ (9,112)	\$ (9,112)	\$ (9,112)	\$ (9,112)	\$ (9,112)	\$ (9,112)	\$ (118,455)	
Ending Cash Balance	\$ 157,029	\$ 146,296	\$ 135,453	\$ 125,029	\$ 113,611	\$ 101,662	\$ 89,946	\$ 77,395	\$ 65,094	\$ 51,547	\$ 38,142	\$ 25,141	\$ 11,324	\$ 11,324	
Pre-Petition Protective Advance Balance	\$ 4,738,215														
Total Protective Advance Balance	\$ 4,738,215	\$ 4,738,215	\$ 4,738,215	\$ 4,738,215	\$ 4,738,215	\$ 4,738,215	\$ 4,738,215	\$ 4,738,215	\$ 4,738,215	\$ 4,738,215	\$ 4,738,215	\$ 4,738,215	\$ 4,738,215	\$ 4,738,215	

10%
Cash Rate

SCHEDULE 6.12**Collateral Accounts and Excluded Accounts¹****Operating Accounts:**

These bank accounts are in the name of Epic Companies, LLC

<i>Account Number</i>	<i>Bank</i>	<i>Use</i>
488061534205	Bank of America, N.A.	DACA executed for this account
4312-6991	Wellington Shields	DACA executed for this account
4670141093	Capital One Bank	DACA executed for this account
359681521183	KeyBank	DACA executed for this account.
488061548563	Bank of America, N.A.	Disbursement account; not subject to a DACA
002419801571	Bank of America, N.A.	Disbursement account; not subject to a DACA
<i>Excluded Accounts:</i>		
None.		

¹ To be updated.

SCHEDULE 6.21

POST- CLOSING DELIVERIES

None

SCHEDULE 7.01

Certain Permitted Liens

Liens securing the Permitted Debt described on Schedule 7.03

SCHEDULE 7.03

Certain Permitted Debt

1. Debt incurred under the Pre-Petition Loan Agreement
2. Debt incurred under the Junior Loan Agreement

SCHEDULE 10.02

Administrative Agent's Office; Certain Addresses for Notices

If to Loan Parties:

Epic Applied Technologies, LLC, as Administrative Loan Party
1080 Eldridge Parkway, Suite 1300
Houston, Texas 77077
Attention: Kelton Tonn, General Counsel
Email: ktonn@epiccompanies.com

with a copy to (which shall not constitute notice):

Orinoco Natural Resources, LLC
192 Summerfield Court, Suite 201
Email Address: tom.clarke@kissito.org
Attention: Thomas M. Clarke
Email Address: jbell@erpfuels.com
Attention: Jennifer Bell

with a copy to (which shall not constitute notice):

Oakridge Energy Partners, LLC
c/o KEWA Financial Inc.
150 York Street, Suite 410
Toronto, Ontario MSH 355
Email: dw@kewafinancial.com
Attention: David A. Wiley
Email: ss@kewafinancial.com
Attn: Shannon Scott, Executive Assistant

with a copy to (which shall not constitute notice):

Porter Hedges LLP
1000 Main Street, 36th Floor
Houston, Texas 77002
Attention: John Higgins, Esq.
Email: jhiggins@porterhedges.com

If to Administrative Agent:

White Oak Global Advisors, LLC
3 Embarcadero Center, Suite 550
San Francisco, CA 94111
Facsimile No.: 415-644-4199
Email Address: generalcounsel@whiteoaksf.com

with a copy to (which shall not constitute notice):

SRS Acquiom Inc.
150 South 5th Street
Suite 2600
Minneapolis, MN 55402
Email Address: srswoagency@srsacquiom.com
Attention: Agency Services – White Oak Global Advisors

with a copy to (which shall not constitute notice):

Paul Hastings LLP
515 South Flower Street, 25th Floor
Los Angeles, CA 90071
Attention: Peter Burke, Esq.
Email: peterburke@paulhastings.com

EXHIBIT A

[FORM OF ASSIGNMENT AND ASSUMPTION]

ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “*Assignment and Assumption*”) is dated as of the Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the “*Assignor*”) and the Assignee identified in item 2 below (the “*Assignee*”). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement identified below (as amended, the “*Loan Agreement*”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit, guarantees, and swingline loans included in such facilities), and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as an “*Assigned Interest*”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: [_____].
2. Assignee: [_____].
3. Borrowers: Epic Diving & Marine Services, LLC, a Delaware limited liability company, Epic Applied Technologies, LLC, a Delaware limited liability company, together with any other Persons that become a “Borrower” under the Loan Agreement.
4. Administrative Agent: WHITE OAK GLOBAL ADVISORS, LLC, as administrative agent under the Loan Agreement.
5. Loan Agreement: The Senior Secured Super-Priority Priming Debtor-In Possession Loan and Security Agreement dated as of August 28, 2019 among Borrowers, the Affiliates of Borrowers from time to time party thereto as Guarantors, the entities from time to time party thereto as Lenders, and Administrative Agent.

6. Assigned Interests:

Assignor	Assignee	Aggregate Amount of Loans for all Lenders	Amount of Loans Assigned	Percentage Assigned of Loans
[]	[]	\$[]	\$[]	[]%

Effective Date: _____, 20__

[SIGNATURE PAGE FOLLOWS]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR:

By: _____
Title:

ASSIGNEE:

By: _____
Title:

[ADMINISTRATIVE LOAN PARTY:

By: _____
Title:]¹

[Consented to and Accepted:

WHITE OAK GLOBAL ADVISORS, LLC, as
Administrative Agent

By: _____
Title:]²

¹ To the extent required by Section 10.06(b)(iii) of the Loan Agreement.

² To the extent required by Section 10.06(b)(iii) of the Loan Agreement.

ANNEX 1

The Senior Secured Super-Priority Priming Debtor-In Possession Loan and Security Agreement, dated as of August 28, 2019 (as amended, restated, modified and/or supplemented from time to time, the “*Loan Agreement*”), among Epic Diving & Marine Services, LLC a Delaware limited liability company, and Epic Applied Technologies, LLC, a Delaware limited liability company (together with any other Persons that become a “*Borrower*” thereunder, each a “*Borrower*”, and collectively, jointly and severally, the “*Borrowers*”), the Affiliates of Borrowers from time to time party thereto as Guarantors, the entities from time to time party thereto as Lenders, and WHITE OAK GLOBAL ADVISORS, LLC, a Delaware limited liability company, as administrative agent (“*Administrative Agent*”) for such Lenders.

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is not a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of Borrowers, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document, or the performance or observance by Borrowers, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2 Assignee. The Assignee (a) represents and warrants that (i) it is an Eligible Assignee, (ii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, it meets all the requirements to be an assignee under **Section 10.06** of the Loan Agreement (subject to such consents, if any, as may be required thereunder), (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Loan Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to **Section 6.01** thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, and (vi) it has, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest; and (b) agrees that (i) it will, independently and without reliance on Administrative Agent, the Assignor 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 the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

1.3 Payments. From and after the Effective Date, Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, Administrative Agent shall

make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to the Assignee.

2. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of law other than New York General Obligations Law 5-1401 and 5-1402.

EXHIBIT B
INTERIM ORDER

(See attached)

Exhibit 2

Budget

In Re: Epic Companies LLC et al.
Chapter 11 Cash Collateral / DIP Budget

Week Ending	Week 1 Actual 9/27/2019	Week 2 Budget 10/4/2019	Week 3 Budget 10/11/2019	Week 4 Budget 10/18/2019	Week 5 Budget 10/25/2019	Week 6 Budget 11/1/2019	Week 7 Budget 11/8/2019	Week 8 Budget 11/15/2019	Week 9 Budget 11/22/2019	9-Week Budget Total
Beginning Cash Balance	\$ 981,342	\$ 656,620	\$ 607,376	\$ 594,164	\$ 579,075	\$ 568,174	\$ 555,710	\$ 542,802	\$ 529,651	
Operating Expenses:										
Payroll and Related	\$ 47,981	\$ -	\$ 56,731	\$ -	\$ 56,731	\$ -	\$ 56,731	\$ -	\$ 56,731	\$ 274,904
Contractors	\$ 16,750	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 11,500	\$ 108,750
Rents	\$ -	\$ 107,548	\$ -	\$ -	\$ -	\$ 89,891	\$ -	\$ -	\$ -	\$ 197,439
IT Expenses	\$ -	\$ 1,050	\$ 9,400	\$ 1,050	\$ 1,050	\$ 1,050	\$ 1,050	\$ 9,400	\$ 1,050	\$ 25,100
Supplies and Utilities	\$ -	\$ 10,599	\$ 8,250	\$ 250	\$ 250	\$ 250	\$ 10,599	\$ 250	\$ 250	\$ 30,698
Insurance	\$ 112,500	\$ -	\$ -	\$ -	\$ -	\$ 419,479	\$ -	\$ -	\$ -	\$ 531,979
Taxes	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Ordinary Course Professionals	\$ -	\$ -	\$ -	\$ -	\$ 50,000	\$ -	\$ -	\$ -	\$ -	\$ 50,000
Other	\$ 3,850	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 43,850
Pre-Petition Maritime Lien - Hedron	\$ -	\$ -	\$ -	\$ -	\$ 597,297	\$ -	\$ -	\$ -	\$ -	\$ 597,297
Total Operating Expenses	\$ 181,081	\$ 135,696	\$ 90,881	\$ 17,800	\$ 721,828	\$ 527,170	\$ 84,880	\$ 26,150	\$ 74,531	\$ 1,860,016
Bankruptcy Expenses:										
Debtors' Counsel	\$ -	\$ -	\$ -	\$ 644,000	\$ -	\$ -	\$ -	\$ -	\$ 552,000	\$ 1,196,000
CRO	\$ 143,641	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 75,000	\$ 743,641
Noticing Agent	\$ -	\$ 132,000	\$ 48,000	\$ -	\$ -	\$ 96,000	\$ -	\$ -	\$ 96,000	\$ 372,000
UCC Counsel	\$ -	\$ -	\$ -	\$ 214,667	\$ -	\$ -	\$ -	\$ -	\$ 184,000	\$ 398,667
UCC FA	\$ -	\$ 75,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 25,000	\$ 250,000
Lender Counsel	\$ -	\$ 250,000	\$ 225,000	\$ -	\$ -	\$ 275,000	\$ -	\$ -	\$ 125,000	\$ 875,000
Asset Sale Expenses ^[1]	\$ -	\$ -	\$ 100,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 100,000
US Trustee Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 45,835	\$ -	\$ -	\$ 45,835
KEIP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Bankruptcy Expenses^[2]	\$ 143,641	\$ 532,000	\$ 473,000	\$ 958,667	\$ 100,000	\$ 471,000	\$ 145,835	\$ 100,000	\$ 1,057,000	\$ 3,981,143
Total Disbursements	\$ (324,722)	\$ (667,696)	\$ (563,881)	\$ (976,467)	\$ (821,828)	\$ (998,170)	\$ (230,714)	\$ (126,150)	\$ (1,131,531)	\$ (5,841,159)
Initial DIP Borrowings (Paydown)	\$ -	\$ 667,696	\$ 563,881	\$ 976,467	\$ 821,828	\$ 998,170	\$ 230,714	\$ 126,150	\$ 1,825,418	\$ 6,210,324
Cash Receipts:										
Existing AR Collections	\$ -	\$ -	\$ -	\$ -	\$ 3,000,000	\$ -	\$ -	\$ -	\$ -	\$ 3,000,000
Lease Income	\$ -	\$ 184,925	\$ -	\$ -	\$ -	\$ 184,925	\$ -	\$ -	\$ 92,463	\$ 462,313
Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Receipts	\$ -	\$ 184,925	\$ -	\$ -	\$ 3,000,000	\$ 184,925	\$ -	\$ -	\$ 92,463	\$ 3,462,313
Operating Cash Flow	\$ (324,722)	\$ (482,771)	\$ (563,881)	\$ (976,467)	\$ 2,178,172	\$ (813,245)	\$ (230,714)	\$ (126,150)	\$ (1,039,068)	\$ (2,378,847)
Net DIP Borrowing (Paydown)	\$ -	\$ 482,771	\$ 563,881	\$ 976,467	\$ (2,178,172)	\$ 813,245	\$ 230,714	\$ 126,150	\$ 1,732,955	\$ 2,748,011
Total DIP Balance^[3]	\$ 1,426,135	\$ 1,908,906	\$ 2,472,787	\$ 3,449,253	\$ 1,271,081	\$ 2,084,327	\$ 2,315,041	\$ 2,441,191	\$ 4,174,146	\$ 4,174,146
DIP Balance Interest^[4]	\$ -	\$ (8,123)	\$ (4,755)	\$ (6,633)	\$ (2,444)	\$ (4,008)	\$ (4,452)	\$ (4,695)	\$ (8,027)	\$ (43,138)
Adequate Protection Interest^[4]	\$ -	\$ (41,121)	\$ (8,456)	\$ (8,456)	\$ (8,456)	\$ (8,456)	\$ (8,456)	\$ (8,456)	\$ (8,456)	\$ (100,314)
Ending Cash Balance	\$ 656,620	\$ 607,376	\$ 594,164	\$ 579,075	\$ 568,174	\$ 555,710	\$ 542,802	\$ 529,651	\$ 1,207,054	\$ 1,207,054
Restricted Cash Balance (Cash Sweep)^[5]	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175
Total Ending Cash Balance	\$ 787,796	\$ 738,551	\$ 725,339	\$ 710,250	\$ 699,350	\$ 686,885	\$ 673,977	\$ 660,826	\$ 1,338,230	\$ 1,338,230
Pre-Petition Protective Advance Balance	\$ 4,397,195									
Total Protective Advance Balance	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195

[1] Asset Sales Expenses refers to expected payments to firms performing asset appraisal and marketing.

[2] Budget assumes any accrued bankruptcy expenses are paid in week 9.

[3] Total DIP Balance values do not include accrued interest.

[4] DIP and Protective Advance interest payments for week 2 include interest accrued through 9/27/2019.

[5] Restricted Cash Balance refers to cash currently in the lockbox account or to be swept by White Oak.

In Re: Epic Companies LLC et al.

Chapter 11 Cash Collateral / Wind Down Budget

Week Ending	Week 1 Budget 11/29/2019	Week 2 Budget 12/6/2019	Week 3 Budget 12/13/2019	Week 4 Budget 12/20/2019	Week 5 Budget 12/27/2019	Week 6 Budget 1/3/2020	Week 7 Budget 1/10/2020	Week 8 Budget 1/17/2020	8-Week Budget Total
Beginning Cash Balance	\$ 1,207,054	\$ 1,187,054	\$ 1,138,790	\$ 1,118,790	\$ 880,525	\$ 860,525	\$ 812,261	\$ 792,261	
Operating Expenses:									
Payroll and Related	\$ -	\$ 28,265	\$ -	\$ 28,265	\$ -	\$ 28,265	\$ -	\$ 28,265	\$ 113,058
Contractors	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Rents	\$ -	\$ -	\$ -	\$ 10,000	\$ -	\$ -	\$ -	\$ 10,000	\$ 20,000
IT Expenses	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Supplies and Utilities	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,250	\$ 10,000
Insurance	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Taxes	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Ordinary Course Professionals	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Pre-Petition Maritime Lien - Hedron	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Operating Expenses	\$ 1,250	\$ 29,515	\$ 1,250	\$ 39,515	\$ 1,250	\$ 29,515	\$ 1,250	\$ 39,515	\$ 143,058
Bankruptcy Expenses:									
Debtors' Counsel	\$ -	\$ -	\$ -	\$ 100,000	\$ -	\$ -	\$ -	\$ 100,000	\$ 200,000
CRO	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 150,000
Noticing Agent	\$ -	\$ -	\$ -	\$ 40,000	\$ -	\$ -	\$ -	\$ 40,000	\$ 80,000
UCC Counsel	\$ -	\$ -	\$ -	\$ 30,000	\$ -	\$ -	\$ -	\$ 30,000	\$ 60,000
UCC FA	\$ -	\$ -	\$ -	\$ 10,000	\$ -	\$ -	\$ -	\$ 10,000	\$ 20,000
Lender Counsel	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Asset Sale Expenses ^[1]	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
US Trustee Fees	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40,828	\$ 40,828
KEIP	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Bankruptcy Expenses^[2]	\$ 18,750	\$ 18,750	\$ 18,750	\$ 198,750	\$ 18,750	\$ 18,750	\$ 18,750	\$ 239,578	\$ 550,828
Total Disbursements	\$ (20,000)	\$ (48,265)	\$ (20,000)	\$ (238,265)	\$ (20,000)	\$ (48,265)	\$ (20,000)	\$ (279,093)	\$ (693,887)
Initial DIP Borrowings (Paydown)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Cash Receipts:									
Existing AR Collections	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Lease Income	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Receipts	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Operating Cash Flow	\$ (20,000)	\$ (48,265)	\$ (20,000)	\$ (238,265)	\$ (20,000)	\$ (48,265)	\$ (20,000)	\$ (279,093)	\$ (693,887)
Net DIP Borrowing (Paydown)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total DIP Balance^[3]	\$ 4,174,146	\$ 4,174,146	\$ 4,174,146	\$ 4,174,146	\$ 4,174,146	\$ 4,174,146	\$ 4,174,146	\$ 4,174,146	\$ 4,174,146
DIP Balance Interest^[4]	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Adequate Protection Interest^[4]	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Ending Cash Balance	\$ 1,187,054	\$ 1,138,790	\$ 1,118,790	\$ 880,525	\$ 860,525	\$ 812,261	\$ 792,261	\$ 513,168	\$ 513,168
Restricted Cash Balance (Cash Sweep)^[5]	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175	\$ 131,175
Total Ending Cash Balance	\$ 1,318,230	\$ 1,269,965	\$ 1,249,965	\$ 1,011,700	\$ 991,700	\$ 943,436	\$ 923,436	\$ 644,343	\$ 644,343
Pre-Petition Protective Advance Balance									
Total Protective Advance Balance	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195	\$ 4,397,195

[1] Asset Sales Expenses refers to expected payments to firms performing asset appraisal and marketing.

[2] Budget assumes any accrued bankruptcy expenses are paid in week 9.

[3] Total DIP Balance values do not include accrued interest.

[4] DIP and Protective Advance interest payments for week 2 include interest accrued through 9/27/2019.

[5] Restricted Cash Balance refers to cash currently in the lockbox account or to be swept by White Oak.

Exhibit 3

Control Agreements

1. Deposit Account Control Agreement, dated as of June 12, 2019, by and among Epic Maritime Asset Holdings, LLC, White Oak Global Advisors, LLC, and Capital One, N.A.
2. Deposit Account Control Agreement, dated as of February 19, 2019, by and among Epic Companies, LLC, White Oak Global Advisors, LLC, and Capital One, N.A.
3. Deposit Account Control Agreement, dated as of October 9, 2018, by and among Epic Companies, LLC, White Oak Global Advisors, LLC, and Bank of America, N.A.
4. Securities Account Control Agreement, dated as of October 12, 2018, by and among Epic Companies, LLC, White Oak Global Advisors, LLC, and Wellington Shields & Company, LLC
5. Deposit Account Control Agreement, dated August 12, 2018, by and among Epic Companies, LLC, White Oak Global Advisors, LLC, Cortland Capital Market Services LLC, and KeyBank National Association