

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(GREENBELT DIVISION)**

In re: \* Chapter 11  
**CREATIVE HAIRDRESSERS, INC., et al.**<sup>1</sup>, \* Case Nos. 20-14583, 20-14584-TJC  
\* (Joint Administration Requested)  
Debtors. \*

\* \* \* \* \*

**LINE FILING FINAL ORDER (I) AUTHORIZING THE DEBTORS TO  
OBTAIN POSTPETITION SECURED FINANCING, (II) AUTHORIZING  
USE OF CASH COLLATERAL, (III) GRANTING ADEQUATE PROTECTION  
TO PREPETITION SECURED PARTIES, (IV) SCHEDULING A FINAL  
HEARING, AND (V) GRANTING RELATED RELIEF**

Creative Hairdressers, Inc. and its affiliated debtor (collectively, the “Debtors”), by and through their *proposed* undersigned counsel, hereby file this proposed *Final Order (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 23], along with a comparison copy to the interim order which was entered on April 28, 2020 [Docket No. 79].

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<sup>1</sup> The Debtors in these chapter 11 cases are: (i) Creative Hairdressers, Inc. and (ii) Ratner Companies, L.C.

Dated: May 11, 2020

/s/ Joel I. Sher

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*Proposed Counsel for Debtors and Debtors in Possession*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 11th day of May 2020, I reviewed the Court's CM/ECF system and it reports that an electronic copy of the *Line filing Proposed Final Financing Order* will be served electronically by the Court's CM/ECF system on the following:

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I HEREBY FURTHER CERTIFY that on the 11th day of May, 2020, that an electronic copy of *Line filing Proposed Final Financing Order* will be served via electronic mail on the following:

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c/o Richard A. Chesley, Esquire  
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*Counsel for HC Salon Holdings, Inc.*

AGLKDR, LLC, a secured creditor  
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*Counsel for secured creditor*

/s/ Joel I. Sher

Joel I. Sher

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(GREENBELT DIVISION)**

In re: \* Chapter 11  
**CREATIVE HAIRDRESSERS, INC.,** \* Case Nos. 20-14583, 20-14584-TJC  
*et al.*<sup>1</sup>, \* (Jointly Administration Requested)  
Debtors. \*

\* \* \* \* \*

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION SECURED FINANCING, (II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING RELATED RELIEF**

This matter coming before the Court upon the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the “Motion”) of Creative Hairdressers Inc. (“CHI”) as borrower “Borrower”,<sup>2</sup> and Debtor Ratner Companies, L.C. as guarantor (the “Guarantor” and together with the Borrower, the “Debtors”), pursuant to

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<sup>1</sup> The Debtors in these chapter 11 cases are: (i) Creative Hairdressers, Inc. and (ii) Ratner Companies, L.C.

<sup>2</sup> Capitalized terms used in this Final Order but not defined herein shall have the meanings ascribed to such terms in the DIP Facility Documents.

Bankruptcy Code sections 105, 361, 362, 363, 364 and 507, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Rule 2002-1, 4001-5 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Maryland (the “Local Rules”), seeking entry of an interim order (the “Interim Order”) and a final order (this “Final Order”) *inter alia*:

- (i) authorizing the Borrower to enter into that certain Senior Debtor-in-Possession Credit Agreement, in the form of the agreement attached as **Exhibit A** hereto (as amended, supplemented or otherwise modified from time to time, the “DIP Facility Agreement”), among the Borrower, Guarantor, and HC Salon Holdings, Inc. (the “DIP Lender”), and authorizing the Borrower and the Guarantor to enter into all related documents, orders and agreements (together with the DIP Facility Agreement, the “DIP Facility Documents”);
- (ii) authorizing the Borrower to obtain a senior secured super priority multiple draw term loan facility (as described herein, the “DIP Facility”), and the Guarantor to guaranty the obligations of the Borrower in connection with the DIP Facility, which shall consist of a super priority term loan facility with an aggregate principal amount of up to \$[40,675,235.66 ]and such other financial accommodations, allocated as follows:
  - (a) *New Money Loans.* A super priority priming new money multi draw term loan facility in the principal amount of \$[5,000,000.00] (the “New Money Commitments” and the term loans made thereunder, the “New Money Loans”), which amount includes the New Money Loans made during the period (the “Interim Period”) beginning on the date of entry of the Interim Order and including the earliest to occur of (i) the date of the entry of the Final Order by this Court and (y) the Termination Date (as defined below);
  - (b) *Roll-Up Loans.* The balance of obligations and amounts outstanding (the “Prepetition Loans”) under that certain Third Amended and Restated Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time and together with all schedules and exhibits attached thereto, all agreements, documents, certificates, instruments and/or amendments executed by and/or delivered by or to any party thereto in connection therewith, the “Prepetition Credit Agreement” and the “Prepetition Facility”) to HC Salon Holdings, Inc. (in its capacity as lender under the Prepetition Facility, the “Prepetition Lender”) as successor-in-interest in respect of the term loans and revolving loans owning to the Prepetition Lender under the Prepetition Facility have been rolled-up into Roll-Up Loans on the date of the entry of the Interim Order, in each case, in accordance with the terms of the DIP Facility

Agreement and the Interim Order and, as later applicable, this Final Order;

- (c) *Interim Facility*. During the Interim Period (as defined below) the maximum amount available to be drawn was limited to \$3,500,000.00 of the New Money Commitments plus the Roll-Up Loans (the “Interim Facility”), subject to compliance with the terms, conditions and covenants described in the DIP Facility Documents and in accordance with the Approved Budget (as defined in the DIP Facility Agreement and attached as **Exhibit B** hereto);
- (iii) authorizing and directing the Debtors to use the proceeds of the DIP Facility as expressly provided in the DIP Facility Documents and solely in accordance with the Approved Budget;
- (iv) authorizing the Debtors to execute and deliver the DIP Facility Agreement and the other DIP Facility Documents and to perform such other acts as may be necessary or desirable in connection with the DIP Facility Documents;
- (v) in accordance with the relative priorities as set forth more fully below, and subject to the Carve-Out (as defined below), the following:
  - (a) pursuant to section 364(c)(1) of the Bankruptcy Code, authorizing the Debtors to grant the DIP Lender superpriority allowed administrative expense claim status in the Cases and any Successor Case (as defined herein) in respect of all obligations, joint and several, owing under the DIP Facility Documents to the DIP Lender (including without limitation all “Obligations,” as defined therein, the “DIP Obligations”);
  - (b) pursuant to section 364(c)(2) of the Bankruptcy Code, authorizing the Debtors to grant to the DIP Lender automatically perfected senior security interests in and liens on all of the DIP Collateral (as defined herein), in each case subject to the priorities set forth herein;
  - (c) pursuant to section 364(d) of the Bankruptcy Code, authorizing the Debtors to grant a senior first-priority priming lien on and security interest in all of the DIP Collateral, in each case subject to the priorities set forth herein;
- (vi) authorization for the DIP Lender to terminate (a) the funding commitments under the DIP Facility Agreement, and (b) the Debtors’ sale, use or lease of Cash Collateral (as defined below), each upon the occurrence and continuance of an “Event of Default” (as defined in the DIP Facility Agreement) on terms specified herein and in the DIP Facility Agreement;
- (vii) granting liens, to the DIP Lender, on the proceeds (“Avoidance Action Proceeds”) of the Debtors’ claims and causes of action arising under

sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law relating to any Designated Contract as defined in the Asset Purchase dated April 23, 2020, or any trade vendor that the purchaser of the Debtors' assets will conduct business with following the closing of the sale of the Debtors' business (each, an "Avoidance Action");

- (viii) authorizing the Debtors to use, among other things, solely in accordance with the Approved Budget, any cash collateral (as that term is defined in section 363(a) of the Bankruptcy Code, the "Cash Collateral") in which the Prepetition Secured Parties (as defined below) may have an interest and the granting of adequate protection to the Prepetition Secured Parties with respect to any post-petition diminution in value of their interests in the Prepetition Collateral (as defined below) arising from, *inter alia*, the Debtors' sale, use, or lease of the Prepetition Collateral (including the Cash Collateral) and the priming of the liens of the Prepetition Secured Parties by the DIP Liens (as defined below);
- (ix) authorizing the waiver of the Debtors' right to assert (a) any claims to surcharge against the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code, (b) any "equities of the case" claims under section 552(b) of the Bankruptcy Code, and (c) the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral;
- (x) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility Documents, the Interim Order, and this Final Order;
- (xi) the waiver of any applicable stay (including under Rule 6004 of the Bankruptcy Rules) and the provision of immediate effectiveness of the Interim Order, and this Final Order;
- (xii) pursuant to Bankruptcy Rule 4001, that an interim hearing (the "Interim Hearing") on the Motion be held before this Court to consider entry of the Interim Order to (a)(I) authorize the Borrower to borrow or under the DIP Facility Documents, on an interim basis, in amount not to exceed an amount equal to \$3,500,000.00 plus the amount of Roll-Up Loans authorized on an interim basis and (II) authorize the Prepetition Lender to be deemed to have made Roll-Up Loans hereunder with the proceeds thereof being applied to the Prepetition Obligations in respect of such Prepetition Lender's then-outstanding Prepetition Loans, subject to the terms and conditions set forth herein; (b) authorize the Debtors' use of Cash Collateral; and (c) grant the liens, priority claims and adequate protection described herein;
- (xiii) pursuant to Bankruptcy Rule 4001, that the Court consider entry of the Interim Order, authorizing that during the Interim Period, and subject to the



terms and conditions contained in the DIP Facility Documents, (i) an amount not to exceed an amount equal to \$3,500,000.00 plus the amount of Roll-Up Loans authorized on an interim basis, be made available, and (ii) the DIP Lender shall be deemed to have made Roll-Up Loans hereunder with the proceeds thereof being applied to the Prepetition Obligations in respect of the DIP Lender's then-outstanding Prepetition Loans, subject to the terms and conditions set forth herein;

- (xiv) scheduling a final hearing (the "Final Hearing," and together with the Interim Hearing, the "Hearings") to consider entry of the Final Order, and in connection therewith, giving and prescribing the manner of notice of the Final Hearing on this Motion; and
- (xv) granting the Debtors such other and further relief as is just and proper;

and the Court having considered the Motion, the exhibits attached thereto, the DIP Facility Documents, and the evidence submitted or adduced and the arguments of counsel made at the Hearings; and *Declaration of Ryan Horvath in Support of Debtors' First Day Motions*; and notice of the Hearings having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), 9014, Local Rule, 4001-5, and the Interim Order, as applicable; and the Hearings to consider the relief requested in the Motion having been held and concluded; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the requested relief is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and is essential for the continued operation of the Debtors' business; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

A. Petition Date. On April 23, 2020, each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of

Maryland (Greenbelt Division) (the “Court”) commencing the Cases. The Cases are jointly administered for procedural purposes only.

B. Debtor in Possession. The Debtors are continuing in the management and operation of 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.

C. Jurisdiction and Venue. The Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief sought herein are sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 and the applicable Local Rules.

D. Committee Formation. On May 1, 2020, the Office of the United States Trustee for the District of Maryland (the “U.S. Trustee”) appointed a committee of unsecured creditors (the “Statutory Committee”) in the Cases.

E. Debtors’ Stipulations. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 34 herein, the Debtors admit, stipulate, acknowledge and agree that (collectively, paragraphs E(i) through E(x) below are referred to herein as the “Debtors’ Stipulations”):

(i) Prepetition Documents. As of the Petition Date, the Debtors were parties to the Prepetition Credit Agreement (together with all related documents, guaranties and agreements, as the same may be amended, waived, supplemented or modified from time to time, the “Prepetition Documents”).

(ii) *Prepetition Lien Obligations.* As of the Petition Date, the aggregate amount owed by the Debtors under the Prepetition Facility, without defense, counterclaim or offset of any kind in respect of a Prepetition Document was not less than \$35,675,235.66 outstanding under Prepetition Facility, made available to the Borrower pursuant to that certain Prepetition Credit Agreement (together with any amounts paid or incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Debtors' obligations pursuant to the Prepetition Documents, the "Prepetition Lien Obligations").

(iii) *Prepetition Collateral and Prepetition Liens.* As more fully set forth in the Prepetition Credit Agreement, prior to the Petition Date, the Debtors granted first-priority security interests in and liens (collectively, the "Prepetition Liens") on substantially all of the property of the Debtors (collectively, the "Prepetition Collateral") to the Prepetition Lender.

(iv) *Prepetition Secured Indebtedness and Prepetition Liens.* The Debtors acknowledge and agree that:

- a. the Prepetition Lien Obligations constitute legal, valid, binding and non-avoidable obligations of the Debtors;
- b. the Prepetition Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable and properly perfected;
- c. as of the Petition Date, the Prepetition Liens have priority over any and all other liens, if any, on the Prepetition Collateral; and

d. as of the Petition Date, the value of the Prepetition Collateral securing the Prepetition Lien Obligations exceeds such Prepetition Lien Obligations.

(v) *No Offsets or Claims.* The Debtors acknowledge and agree that:

a. no offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to, and no entitlements to equitable relief with respect to any of the Prepetition Liens or the Prepetition Lien Obligations exist, and no portion of the Prepetition Liens or the Prepetition Lien Obligations is subject to any challenge or defense, including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (whether equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law;

b. the Debtors and their estates have no claims, objections, challenges, and/or causes of action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code and applicable non-bankruptcy law, against any of the Prepetition Secured Parties or any of their affiliates, agents, attorneys, advisors, professionals, officers, directors or employees arising out of, based upon or related to the Prepetition Lien Obligations or the documents evidencing the same;

(vi) *Cash Collateral.* The Debtors represent that all of the Debtors' cash, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral and is Prepetition Collateral of the Prepetition Secured Parties.

(vii) *Interim Borrowings.* Pursuant to the Interim Order, the Court authorized among other things (i) the Debtor to (a) execute and deliver the DIP Loan Documents and to incur and perform the DIP Obligations pursuant to the terms and conditions of the DIP Loan Documents and the Interim Order; (b) borrow up to \$[39,175,235.66] under the DIP Facility during the Interim Period upon the entry of the Interim Order and satisfaction of other conditions set forth in the DIP Loan Documents and (c) make the Roll-Up Payment, and (ii) the granting of adequate protection to the Prepetition Secured

Parties. On April 28, 2020, the Closing Date under the DIP Loan Agreement occurred and the Debtors were authorized to borrow at the terms and conditions set forth in the DIP Loan Documents and in the Interim Order.

F. *Findings Regarding Post-Petition Financing and the Use of Cash Collateral.*

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

(ii) *Request for Post-Petition Financing and Use of Cash Collateral.*

The Debtors seek authority to enter into the DIP Facility Agreement. The DIP Lender shall have no obligation to make loans or advances under the DIP Facility except to the extent required under the DIP Facility Agreement and no obligation to waive any conditions required thereunder. The Debtors also seek authority to use Cash Collateral on the terms described herein, and in accordance with the Approved Budget, to administer their Cases and fund their operations.

(iii) *Need for Post-Petition Financing and Use of Cash Collateral.* The Debtors' need to use Cash Collateral and to obtain credit as set forth in the DIP Facility Agreement is immediate and critical in order to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, maintain business relationships, pay employees, protect the value of their assets and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, creditors and equity holders, and the possibility for maximizing the value of their businesses. The Debtors do not have sufficient available sources of working capital and financing to operate their business or to maintain their properties in the ordinary course of business without the DIP

Facility and continued use of Cash Collateral. Consummation of the financing contemplated by the DIP Facility Documents and the use of the Prepetition Collateral, including without limitation, the Cash Collateral, pursuant to the terms of this Final Order therefore are in the best interests of the Debtors' estates.

(iv) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangements, and capital structure, the Debtors are unable to reasonably obtain post-petition financing from sources other than the DIP Lender on terms more favorable than those set forth in the DIP Facility Documents. The Debtors have been unable to reasonably obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain secured credit from other sources: (a) having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) secured only by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Further, the Prepetition Secured Parties have not consented to the priming of their prepetition liens by lenders (except to the extent provided herein and under the DIP Facility Documents). Financing on a post-petition basis is not otherwise available without granting the DIP Lender: (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein, (2) superpriority claims, and (3) the other protections set forth in the Interim Order and this Final Order.

(v) *Use of Proceeds.*

- a. As a condition to entry into the DIP Facility Agreement, the extensions of credit under the DIP Facility and the authorization to

use Cash Collateral, the DIP Lender requires, and the Debtors have agreed, that proceeds of the DIP Facility and Cash Collateral shall be used in accordance with the terms of the DIP Facility Documents, including the Approved Budget, which shall be subject to (x) such variances as may be permitted by the DIP Facility Agreement (including without limitation the Permitted Variance), (y) the Interim Order (or this Final Order as applicable), and (z) the Carve-Out.

- b. The Debtors shall not directly or indirectly pay any expense or other disbursement other than those set forth in the Approved Budget (other than the post-Trigger Date portion of the Carve-Out) outside of the Permitted Variance or otherwise permitted or directed by an order of the Court.
- c. The proceeds of the DIP Facility and Cash Collateral shall be used solely as provided in the DIP Facility Agreement, including, to the extent provided therein, (i) to exchange the Prepetition Loans for Roll-Up Loans (which may be provided on an interim basis) (the “Roll-Up”) (ii) to provide working capital from time to time to the extent set forth in the Approved Budget; (iii) for other general corporate purposes of the Debtors to the extent set forth in the Approved Budget; (iv) subject to the Approved Budget (other than with respect to the post-Trigger Date portion of the Carve-Out) or any order governing the compensation of professionals retained in these Cases, for payment of costs and administration of the Cases; and (v) for the payment of such other prepetition obligations in accordance with “first day” orders, which orders shall be in form and substance reasonably satisfactory to the DIP Lender and approved by the Court, in each case in a manner consistent with the Approved Budget, the DIP Facility Agreement, and the terms and conditions contained herein.

(vi) *Willingness to Provide Financing.* The DIP Lender has indicated a willingness to provide financing to the Debtors subject to and conditioned upon the entry of the Interim Order and this Final Order, including findings that such financing is essential to the Debtors’ estates, that the DIP Lender is extending credit to the Debtors as set forth in the DIP Facility Agreement in good faith, and that the DIP Lender’s claims, superpriority claims, security interests, liens, rights, and other protections will have the protections provided in section 364(e) of the Bankruptcy Code and will not be affected by any

subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of the Interim Order, this Final Order or any other order. As a condition to the entry into the DIP Facility Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the Debtors and the DIP Lender have agreed that proceeds of DIP Collateral and all payments and collections received by the Debtors shall be applied solely as set forth in the DIP Facility Documents.

(vii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. The extension of credit under the DIP Facility and the DIP Facility Documents is fair, reasonable, and the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, are supported by reasonably equivalent value and consideration, and were entered into at arm's-length, under no duress, and without undue influence, negligence or violation of public policy or law. The DIP Facility Documents, the DIP Facility and the provisions regarding the use of Cash Collateral were negotiated in good faith and at arm's length among the Debtors and the DIP Lender, under no duress, and without undue influence, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining the requisite approvals of the DIP Facility, and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens (as defined below), any challenges or objections to the DIP Facility or the use of Cash Collateral, and all documents related to any and all transactions contemplated by the foregoing. Use of Cash Collateral and any credit to be extended as set forth in the DIP Facility Documents shall be deemed to have been so allowed, advanced, made, used or extended in good faith, and for valid business purposes and uses, within the meaning of



section 364(e) of the Bankruptcy Code, and the DIP Lender is therefore entitled to the protections and benefits of section 364(e) of the Bankruptcy Code and this Final Order.

(viii) *Priming of Prepetition Liens.* The priming of the Prepetition Liens on the Prepetition Collateral by the DIP Liens will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors. The Prepetition Secured Parties consent to such priming liens, subject to receipt of adequate protection of their respective interests in the Prepetition Collateral as set forth herein. The Prepetition Secured Parties have acted in good faith in consenting to the (i) Debtors' use of the Prepetition Collateral, including, without limitation, the Cash Collateral, pursuant to the terms of this Final Order, (ii) priming of their Prepetition Liens by the DIP Liens on all Prepetition Collateral, and (iii) entry of this Final Order and the granting of the relief set forth herein, and their reliance on the assurances referred to herein is in good faith.

(ix) *Adequate Protection.* The Prepetition Secured Parties are entitled to and shall receive, adequate protection in the form of (I) solely to the extent any portion of the Prepetition Lien Obligations remain outstanding, ongoing payment of interest and other amounts due under the Prepetition Documents, pursuant to the terms thereof and notwithstanding the stay resulting from the filing of these chapter 11 cases, through the indefeasible payment of the Prepetition Obligations, including, without limitation, fees and expenses of counsel to the Prepetition Secured Parties; (II) current cash reimbursement of actual and documented fees and expenses and other disbursements of the DIP Lender, including, without limitation, the reasonable documented fees and expenses of DLA Piper LLP (US) whether incurred before or after the Petition Date; and (III) subject to the priorities

set forth in paragraphs 14 and 15 below, the Senior Adequate Protection Lien and the Senior Adequate Protection Superpriority Claim (each as defined below). This Court concludes that the adequate protection provided to the Prepetition Secured Parties hereunder for any post-petition diminution in value of the Prepetition Liens on the Prepetition Collateral due to, *inter alia*, the Debtors' sale, use or lease of the Prepetition Collateral, including the Cash Collateral, the imposition of the automatic stay, and the priming of the Prepetition Liens by the DIP Liens, is authorized by sections 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code.

(x) *Sections 506(c) and 552(b)*. In light of (i) the agreement of the DIP Lender and the Prepetition Secured Parties to subordinate their liens and superpriority claims, as applicable, to the Carve-Out, and (ii) the Prepetition Secured Parties' agreement to consent to the use of Cash Collateral and to subordinate their Adequate Protection Superpriority Claims and Adequate Protection Liens to the Carve-Out, the DIP Liens and the DIP Superpriority Claim, and (iii) the Approved Budget covering all administrative costs projected by the Debtors, the DIP Lender and the Prepetition Secured Parties are entitled to a waiver of (a) the provisions of section 506(c) of the Bankruptcy Code, (b) any "equities of the case" claims under section 552(b) of the Bankruptcy Code, and (c) the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral.

(xi) *Notice of Final Hearing*. Notice of the Final Hearing and Final Order has been provided in accordance with the Interim Order and no further notice shall be required.

(xii) *Immediate Entry*. The Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Bankruptcy Rule

4001-2(b). The authorization granted herein on a final basis to use the Prepetition Collateral, including without limitation, the Cash Collateral, to enter into the DIP Facility Documents, and to borrow under the DIP Facility is necessary to avoid immediate and irreparable harm to the Debtors and their estates. This Court concludes that the entry of this Final Order is in the best interests of the Debtors and their estates and creditors because it will, among other things, allow the Debtors to maximize the value of their assets.

(xiii) *Notice*. Notice of the Final Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including: (a) the U.S. Trustee; (b) the Securities and Exchange Commission; (c) the Internal Revenue Service; (d) the parties included on the Debtors' consolidated list of twenty largest unsecured creditors; (e) counsel to the DIP Lender; (f) any party that has filed prior to such date a request for notices under Bankruptcy Rule 2002 with the Court; and (g) proposed counsel for the Statutory Committee in accordance with the terms of the Interim Order. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested therein, and the Final Hearing constitutes appropriate notice thereof and complies with Bankruptcy Rules 4001(b) and (c) and the Local Rules, and no further notice of the relief granted herein is necessary or required.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Motion Approved. The Motion is granted on a final basis in accordance with the terms of this Final Order.

2. Use of Prepetition Collateral Approved. Subject to the terms of the DIP Facility Documents, this Final Order, and the Approved Budget, the Debtors are hereby authorized to use the Prepetition Collateral (including Cash Collateral).

3. Objections Overruled. All objections to and reservations of rights with respect to the Motion and to the entry of this Final Order to the extent not withdrawn or resolved are hereby overruled on the merits in their entirety.

**DIP Facility Authorization**

4. Authorization of the DIP Facility Documents. The Debtors are hereby authorized to execute, issue, deliver, enter into, and adopt, as the case may be, the DIP Facility Agreement and the other DIP Facility Documents to be delivered pursuant hereto or thereto or in connection herewith or therewith. The Borrower is hereby authorized to borrow money under the DIP Facility Documents, and request extensions of credit under the DIP Facility in accordance with the terms of this Final Order and the DIP Facility Documents.

5. Roll-Up Loans.

(a) The DIP Lender is hereby deemed to have made Roll-Up Loans hereunder during the Interim Period with the proceeds thereof being applied to the Prepetition Obligations and the Prepetition Lender's then-outstanding Prepetition Loans.

(b) The Court reserves the right to unwind, after notice and hearing, the post-petition protection provided to the Prepetition Lenders or the pay-down of the Roll-Up, whichever is applicable in the event that there is a timely and successful Challenge to the Prepetition Lenders'

claims or liens, or a determination that the pre-petition debt was undersecured as of the Petition Date and the Roll-Up Loans contemplated herein unduly advantaged the Prepetition Lender.<sup>3</sup>

6. Authorized Action. 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 that may be necessary or required for performance by the Debtors under the DIP Facility Documents and the creation and perfection of the DIP Liens described in, provided for and perfected by this Final Order and the DIP Facility Documents. Subject to paragraph 16, the Debtors are hereby authorized to pay, in accordance with this Final Order and the DIP Facility Documents, the principal, interest, fees, expenses and other amounts described in the DIP Facility Documents as such become due and without need to obtain further Court approval, including, without limitation, origination fees, collateral monitoring fees, commitment fees, maintenance fees, success fees, letter of credit fees, and the fees and disbursements of the DIP Lender's attorneys, advisers, accountants and other consultants. All fees shall have been fully earned upon entry of the Interim Order and payable in accordance with the DIP Facility Documents.

7. Validity of DIP Obligations. The DIP Facility Documents shall represent valid and binding obligations of the Debtors, enforceable against the Debtors and their estates in accordance with their terms, and subject to the terms of this Final Order. The DIP Facility Documents, the Interim Order and this Final Order constitute and evidence the validity and binding effect of the

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<sup>3</sup> In accordance with Local Rule 4001-5(a)(4), which provides that "A proposed order approving cross-collateralization or a rollup shall include language that reserves the right of the court to unwind, after notice and hearing, the post-petition protection provided to the pre-petition lender or the pay down of the pre-petition debt, whichever is applicable, in the event that there is a timely and successful challenge to the validity, enforceability, extent or priority of the pre-petition lender's claims or liens, or a determination that the pre-petition debt was undersecured as of the petition date, and the cross-collateralization or rollup unduly advantaged the lender."

DIP Obligations of the Debtors, which DIP Obligations shall be enforceable, jointly and severally, against the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases (each, a “Successor Case”). No obligation, payment, transfer, or grant of a security or other interest to the DIP Lender under the DIP Facility 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. The DIP Obligations include all loans and any other indebtedness or obligations, contingent or absolute, now existing or hereafter arising, which may from time to time be or become owing by the Debtors to the DIP Lender under the DIP Facility Documents, including without limitation all principal, interest, costs, fees, expenses and other amounts owed pursuant to the DIP Facility Documents.

8. No Obligation to Extend Credit. The DIP Lender shall have no obligation to make loans or advances under the DIP Facility until the conditions precedent to the closing and the making of such extensions of credit under the DIP Facility Documents have been satisfied in full or waived.

9. Use of DIP Facility Proceeds. From and after the Petition Date, the Debtors are authorized to use extensions of credit under the DIP Facility only for the purposes specifically set forth in this Final Order, the Interim Order, the DIP Facility Documents and in compliance with the Approved Budget. The Debtors are authorized, subject to the satisfaction of the conditions set forth in the DIP Facility Documents, to use proceeds of the DIP Collateral and the Prepetition Collateral, subject to the Carve-Out, and to draw upon the DIP Facility (a) to exchange the

Prepetition Loans for Roll-Up Loans; (b) to pay fees, costs and expenses incurred in connection with the transactions contemplated by the DIP Facility Agreement; (c) to pay other administration costs incurred in connection with the Cases consistent with the Approved Budget; (d) to pay for other working capital and general corporate purposes of Loan Parties consistent with the Approved Budget and the “first day” orders entered by the Court; and (e) after delivery of a Carve-Out Trigger Notice, to fund a reserve to pay the Carve-Out. The Roll-Up shall be subject to the Permitted Prior Prepetition Liens set forth in the DIP Facility Agreement and the Carve-Out, the reservation of rights of the Court in paragraph 5 of the Interim Order and this Final Order, and upon expiration of the Challenge Period (as defined below) without a Challenge Proceeding (as defined below) having been brought, or the final resolution of a Challenge Proceeding brought in compliance with the provisions of this Final Order (where such Challenge Proceeding did not have the effect of successfully impairing any of the Prepetition Obligations or Prepetition Liens), the Debtors’ Roll-Up of the Prepetition Facility shall be deemed to be indefeasible, final and not subject to any challenge (excluding the Court’s reservation of rights in paragraph 5 of this Final Order), including without limitation any Challenge Proceeding. Notwithstanding the foregoing, in the event that a Challenge Proceeding is initiated within the Challenge Period, only that portion of the Prepetition Obligations that are challenged shall be excluded from the Debtors’ Roll-Up of the Prepetition Facility (the “Roll-Up Exclusion Amount”), and further provided that, upon the settlement or final adjudication of any such Challenge Proceeding, the Roll-Up Exclusion Amount shall, subject to the Carve-Out become part of the Roll-Up of the Prepetition Facility to the extent that such Roll-Up Exclusion Amount is found or agreed to be secured by Prepetition Liens.

10. DIP Superpriority Claim. Subject to the Challenge Period with respect to the Roll-Up and subject to the Carve-Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the

DIP Obligations shall constitute allowed claims against the Debtors, jointly and severally, with priority over any and all administrative expenses, including, without limitation, any administrative expense claims on account of any postpetition Intercompany Transactions (as defined below), diminution claims (including all Adequate Protection Superpriority 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, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 552(b), 726, 1113, or 1114 of the Bankruptcy Code (the “DIP Superpriority Claims”), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and post-petition property of the Debtors and their estates and all proceeds thereof, subject only to liens secured thereby and the Carve-Out.

**DIP Liens and Collateral.**

11. Effective immediately upon entry of the Interim Order, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and without the necessity of the execution by the Debtors (or recordation or other filing or notice) of security agreements, control agreements, pledge agreements, financing statements, mortgages, schedules or other similar documents, or the possession or control by a DIP Secured Party of any DIP Collateral, the DIP Lender, continuing valid, binding, enforceable, non-avoidable, priming and automatically and properly perfected, *nunc pro tunc* to the Petition Date, post-petition security interests in and liens (collectively, the “DIP Liens”) on any and all property owned and hereafter acquired assets and real and personal property of the Debtors (the “DIP Collateral”), including, without limitation, the following (a) all Prepetition Collateral; (b) all accounts, chattel paper, deposit accounts (including any deposit



accounts subject to a control agreement, equipment, general intangibles, instruments, inventory, and investment property and support obligations); (c) commercial tort claims; (d) all books and records pertaining to the other property described in this paragraph; (e) all property of such Debtor held by any secured party, including all property of every description, in the custody of or in transit to such secured party for any purpose, including safekeeping, collection or pledge, for the account of such Debtor or as to which such Debtor may have any right or power, including but not limited to cash; (f) all other goods (including but not limited to fixtures) and personal property of such Debtor, whether tangible or intangible and wherever located; (g) Avoidance Actions and the proceeds of any Avoidance Actions; and (h) to the extent not covered by the foregoing, all other assets or property of the Debtors, whether tangible, intangible, real, personal or mixed, and all proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing, and in each case to the extent of any Debtor's respective interest therein.

12. Upon the indefeasible and irrevocable repayment of the Prepetition Lien Obligations the Prepetition Liens shall be deemed continuing liens for the benefit of and are deemed assigned the DIP Lender to secure the DIP Obligations. All of the following agreements and other items related to the Prepetition Liens remain in full force and effect and shall inure to the DIP Lender and the Prepetition Secured Parties: any blocked account agreements, deposit account control agreements, securities account agreements, credit card acknowledgments or notifications, credit card agreements, landlord agreements, collateral access agreements, warehouse agreements, bailee agreements, customs broker agreements, carrier, consolidator or

freight forwarder agreements or filings with the United States Patent and Trademark Office or the Library of Congress with respect to the recordation of an interest in intellectual property that were issued or filed by the Prepetition Secured Parties on any Debtor's assets (real or personal) in connection with the Prepetition Lien Obligations. Each of the security documents under the Prepetition Credit Agreement shall secure the DIP Obligations *mutatis mutandis*. Any liens, claims or interests subordinated to the Prepetition Liens as of the Petition Date and the Carve-Out shall likewise be deemed subordinate to the DIP Liens and the Carve-Out.

13. DIP Lien Priority.

(a) *DIP Liens.* The DIP Liens shall be junior only to the (i) Permitted Prior Senior Prepetition Liens as set forth in the DIP Facility Agreement, and the (ii) Carve-Out (as applicable), and shall otherwise be senior in priority and superior to the Prepetition Liens, the Permitted Prior Junior Prepetition Liens, the Adequate Protection Liens, and Adequate Protection Superpriority Claims (each as defined herein) and any other security, mortgage, collateral interest, lien or claim on or to any of the DIP Collateral, or (iii) the Banks security interests, liens, indemnities and rights of setoff preserved in the Cash Management Order [Dkt. No. 77]. Notwithstanding anything to the contrary contained herein, with respect to non-residential real property leases, the DIP Collateral shall not include such non-residential real property leases and no liens or encumbrances shall be granted or extended to such leases under this Final Order, but rather the DIP Collateral and any liens granted under this Final Order shall include only the economic value of, proceeds of sale or other disposition of, and any other proceeds or products of such leasehold interests.

(b) *Treatment of DIP Liens.* Other than as set forth herein, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest hereafter granted in the Cases

or any Successor Case. The DIP Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Case, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Cases or any Successor Case. Except during the Challenge Period with respect to the Roll-Up, the DIP Liens shall not be subject to challenge under sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the Debtors' estates pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

### **Adequate Protection**

#### 14. Adequate Protection Liens.

(a) *Prepetition Secured Parties – Senior Adequate Protection Lien.* Pursuant to sections 361, 363(e) and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral, including Cash Collateral, against any diminution in value resulting from the Debtors' use, sale or lease (or other decline in value) of such collateral, the imposition of the automatic stay, the priming of the Prepetition Liens and the subordination to the Carve-Out (collectively, "Diminution in Value"), the Debtors hereby grant to the Prepetition Secured Parties, a valid and perfected replacement and additional security interest in, and lien on (the "Senior Adequate Protection Lien") all DIP Collateral. The Senior Adequate Protection Lien is and shall be valid, binding, enforceable and fully perfected *nunc pro tunc* to the Petition Date (without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements, or other agreements) and shall (i) be subject and subordinate only to the DIP Liens, the Permitted Prior Senior Prepetition Liens set forth in the DIP Facility Agreement, and the Carve-Out; and (ii) otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(b) *Treatment of Adequate Protection Liens.* Other than as set forth herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Case. The Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Case, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Cases or any Successor Case.

15. Adequate Protection Superpriority Claim.

(a) *Superpriority Claim of Prepetition Secured Lenders.* As further adequate protection of the interests of the Prepetition Secured Parties, is hereby granted an allowed administrative claim against the Debtors' estates under section 503(b) of the Bankruptcy Code with superpriority pursuant to section 507(a) and (b) of the Bankruptcy Code (the "Senior Adequate Protection Superpriority Claim") to the extent that the Senior Adequate Protection Lien is insufficient to protect the Prepetition Secured Parties' interests in the Prepetition Collateral.

(b) *Priority of Senior Adequate Protection Superpriority Claim.* Except as set forth herein, the Senior Adequate Protection Superpriority Claim shall have priority over all administrative expense claims and priority general unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 507(a), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code (including, without limitation, any administrative expense claims on account of any postpetition Intercompany Transactions); *provided, however*, that the Senior Adequate

Protection Superpriority Claim shall be junior to (i) the DIP Superpriority Claim and (ii) the Carve-Out.

16. Costs, Fees, Expenses, and Indemnification.

(a) *DIP Lender.* The Debtors are authorized and directed to pay any and all reasonable out-of-pocket expenses of DIP Lender in connection with the DIP Facility and these Cases, whether incurred before or after the Petition Date and whether or not the transactions contemplated hereby are consummated or such fees and expenses are set forth in the Approved Budget, including, without limitation, fees and expenses, subject to the Carve-Out, incurred in connection with (i) the preparation, negotiation and execution of the DIP Facility Documents; (ii) the syndication and funding of the DIP Facility; (iii) the creation, perfection or protection of the liens under the DIP Facility Documents (including all search, filing and recording fees); and (iv) the on-going administration of the DIP Facility Documents (including the preparation, negotiation and execution of any amendments, consents, waivers, assignments, restatements or supplements thereto) and the Cases; (v) the enforcement of the DIP Facility Documents; and (vi) any refinancing or restructuring of the DIP Facility in the nature of a “work-out”; and (vii) any legal proceeding relating to or arising out of the DIP Facility or the other transactions contemplated by the DIP Facility Documents, including the Cases. Payment of all such professional fees and expenses shall not be subject to allowance by the Court. Notwithstanding the foregoing, at the same time such invoices are delivered to the Debtors, the professionals for the DIP Lender shall deliver a copy of their respective invoices to counsel for the Statutory Committee and the U.S. Trustee. The invoices for such fees and expenses shall contain time records and sufficient information for the Statutory Committee and the U.S. Trustee to review each for reasonableness, but shall not be required to comply with any particular format and shall not be subject to

application or allowance by the Court. Any objections raised by the Debtors, the U.S. Trustee or any Statutory Committee with respect to such invoices within fourteen (14) calendar days of receipt thereof will be resolved by the Court (absent prior consensual resolution thereof). Pending such resolution, the undisputed portion of any such invoice shall be promptly paid by the Debtors. Such fees and expenses shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever.

(b) *Indemnification of DIP Lender.* The DIP Lender shall have no liability to any third party relating to the DIP Facility Agreement and Debtors' use of the financing provided thereunder, and shall not be deemed to be in control of the operations of Debtors, or to be acting as a "responsible person" or managing agent with respect to the operation or management of Debtors. Debtors shall indemnify and hold harmless the DIP Lender and their respective affiliates and officers, directors, employees, agents and advisors from and against all losses, liabilities, claims, damages or other expenses arising out of or relating to the DIP Facility Agreement and Debtors' use of the financing provided thereunder; *provided, however* that the Debtors shall not be liable for any indemnification to the DIP Lender to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results solely from that of the DIP Lenders' gross negligence, willful misconduct or self-dealing as finally determined by a court of competent jurisdiction. This indemnification shall survive and continue for the benefit of all such persons or entities.

(c) *Prepetition Secured Parties.* As additional adequate protection of the Prepetition Secured Parties' security interests in the Prepetition Collateral, the Debtors are authorized to provide adequate protection in the form of (i) solely to the extent any portion of the Prepetition Lien Obligations remain outstanding after giving effect to the Roll-Up, ongoing

payment of interest and other amounts due under the Prepetition Lien Documents; (ii) current cash reimbursement of actual and documented fees and expenses and other disbursements of the DIP Lender whether or not incurred before or after the Petition Date or set forth in the Approved Budget; and (iii) continued maintenance and insurance of the Prepetition Collateral and the DIP Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Documents, the DIP Facility Agreement and this Final Order. Payment of professional fees and expenses of the DIP Lender shall not be subject to allowance by the Court. Notwithstanding the foregoing, at the same time such invoices are delivered to the Debtors, the professionals for the DIP Lender shall deliver a copy of their respective invoices to counsel for any Statutory Committee and the U.S. Trustee. The invoices for such fees and expenses shall contain time records and sufficient information for the Statutory Committee and the U.S. Trustee to review each for reasonableness, but shall not be required to comply with any particular format and shall not be subject to application or allowance by the Court. Any objections raised by the Debtors, the U.S. Trustee or any Statutory Committee with respect to such invoices within fourteen (14) calendar days of receipt thereof will be resolved by the Court (absent prior consensual resolution thereof). Pending such resolution, the undisputed portion of any such invoice shall be promptly paid by the Debtors. Such fees and expenses shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever.

#### **Provisions Common to DIP Financing and Use of Cash Collateral Authorizations**

17. Carve-Out.

(a) *Carve-Out.* The liens and claims of the DIP Lender shall be subject to (a) the payment of fees under 28 U.S.C. § 1930, (b) the payment of any fees and expenses owing to the clerk of the Court or any agent thereof, (c)(i) the payment of unpaid and outstanding reasonable fees and disbursements of attorneys and other professionals retained by the Company and any

statutory committees appointed in the chapter 11 cases under sections 327 or 1103(a) of the Bankruptcy Code (the “Professionals”) actually incurred from the Petition Date through the occurrence of an Event of Default or other Termination or Maturity Date, whether allowed prior to or after delivery by the DIP Lender of a Carve-Out Trigger Notice, solely to the extent allowed and payable under sections 326, 328, 330 and 331 of the Bankruptcy Code (but excluding success, completion, or other transaction fees) and any interim procedures order, but subject in all respects to the Budget, on a line by-line and professional-by-professional basis, and (ii) allowed professional fees of retained professionals of the Debtors in an aggregate amount of \$50,000 and allowed professional fees of retained professionals of any statutory committees in an amount not to exceed \$50,000, in each case incurred after the first day following delivery by the DIP Lender of the Carve-Out Trigger Notice, to the extent allowed at any time (the “Post- Trigger Carve-Out”). The foregoing provisions (a), (b), and (c), shall be collectively referred to as the “Carve-Out”. “Carve Out Trigger Notice” shall mean a written notice delivered by the DIP Lender to lead restructuring counsel to the Debtors, the U.S. Trustee, and counsel to the Committee (if any), stating that (a) the Post-Trigger Carve-Out has been invoked due to the occurrence of and during the continuation of an Event of Default under the DIP Loan Agreement, and (b) acceleration of the DIP Obligations under the DIP Agreement has occurred.

(b) *No Direct Obligation to Pay Allowed Fees; No Waiver of Right to Object to Fees.* Other than the funding of the Carve-Out with the proceeds of the DIP Facility as provided herein and in the DIP Facility Documents and the other DIP Lender shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with these Cases, any Successor Cases, or otherwise. Nothing in this Final Order or otherwise shall be construed: (i) to obligate the DIP Lender, in any way, to pay compensation to,



or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement, other than the Carve-Out; (ii) to increase the Carve-Out if incurred or Allowed Fees are higher in fact than the fees and disbursements of Professional Person set forth in the Approved Budget after the occurrence of the Trigger Date; (iii) as consent to the allowance of any fees and expenses of Professional Persons; or (iv) to affect the rights of the DIP Lender, the Prepetition Secured Parties or any other party-in-interest to object to the allowance and payment of such fees and expenses.

(c) *Payment of Carve-Out on or after the Triggering Event Date.* Any payment or reimbursement made on or after the occurrence of the Trigger Date in respect of any Allowed Fees (whether out of the Carve-Out Escrow Account or otherwise) 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 otherwise be entitled to the protections granted under this Final Order, the DIP Facility Documents, the Bankruptcy Code, and applicable law.

(d) *Payment of Compensation.* Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Professional Persons or shall affect the right of the DIP Lender and the Prepetition Secured Parties to object to the allowance and payment of such fees and expenses. So long as no Termination Event has occurred and is continuing, the Debtors shall be permitted to pay fees and expenses allowed and payable by order (that has not been vacated or stayed, unless the stay has been vacated) under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable, solely to the extent set forth in the Approved Budget and not to exceed the amounts set forth in the Approved Budget, *provided* that any such payment shall be subject to entry of a final order of the Court on final application for

allowance of fees and expenses to be filed for each Case Professional (including ordinary course professionals).

18. Modification of DIP Facility Documents. The Debtors are hereby authorized, subject to the DIP Facility Agreement, to implement, in accordance with the terms of the respective DIP Facility Documents, any non-material modifications of the respective DIP Facility Documents without further order of this Court, or any other modifications to the respective DIP Facility Documents. To the extent that such modification or amendment is material, such material modification or amendment shall only be permitted pursuant to an order of this Court on notice pursuant to Local Rule 2002-1(b) and a hearing. Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions of the DIP Facility Agreement shall be effective unless set forth in writing, signed on behalf of the Debtors.

19. Use of Proceeds; Budget Maintenance. The proceeds of the DIP Facility and Cash Collateral shall be used solely in accordance with the terms of the DIP Facility Documents, including the Approved Budget (subject to the Permitted Variance and the Carve-Out), the Interim Order and this Final Order. The Approved Budget shall be updated, modified or supplemented (with the consent of and/or at the request of the DIP Lender) from time to time, solely in accordance with the DIP Facility Agreement.

20. Modification of Automatic Stay. The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to (a) permit the Debtors to grant the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens and the Adequate Protection Superpriority Claims, and (b) authorize the Debtors to pay, and the DIP Lender, the Prepetition Secured Parties to retain and apply, payments made in accordance with this Final Order.

21. Right to Credit Bid. Subject to Section 363(k) of the Bankruptcy Code, the DIP Lender shall have the right to “credit bid” up to the full allowed amount of its claims in connection with any sale of all or any portion of the DIP Collateral, including, without limitation, sale occurring pursuant to section 363 of the Bankruptcy Code or included as part of a restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii) of the Bankruptcy Code or a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

22. Automatic Perfection of DIP Liens and Adequate Protection Liens.

(a) This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, taking possession of or control over, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, customs broker agreement or freight forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Lender or the Prepetition Secured Parties to the priorities granted herein.

(b) Notwithstanding the foregoing the Prepetition Secured Parties each 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 of or control over, or take any other action, as they may elect, in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the Prepetition Secured Party chooses 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 it 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 this Final Order.

(c) The Debtors are authorized to execute and deliver promptly upon demand to the Prepetition Secured Parties all such financing statements, mortgages, control agreements, notices and other documents as the Prepetition Secured Parties may reasonably request. The Debtors are authorized to, and shall, execute and deliver to the Prepetition Secured Parties such agreements, financing statements, mortgages, instruments and other documents as the Prepetition Secured Parties may reasonably request to evidence, confirm, validate, or perfect the DIP Liens or the Adequate Protection Liens; and the failure by the Debtors to execute any documentation relating to the DIP Liens or the Adequate Protection Liens shall in no way affect the validity, enforceability, nonavoidability, perfection, or priority of such liens.

(d) The Prepetition Secured Parties, each in its discretion, may file a photocopy of this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, and accordingly, each officer is authorized to accept and record the photocopy of this Final Order, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

(e) Subject to entry of the Final Order and section 1146(a) of the Bankruptcy Code, except as otherwise provided herein, any provision of any lease or other license, contract or other agreement that requires the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other Prepetition Collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Subject to entry of the

Final Order, any such provision shall have no force and effect with respect to the granting of post-petition liens on such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor in favor of the Prepetition Secured Parties in accordance with the terms of this Final Order.

23. Other Automatic Perfection Matters. To the extent that any Prepetition Lender is the secured party under any account control agreements listed as loss payee under any of the Debtors' insurance policies, or is the secured party under the Prepetition Credit Agreement behalf of the DIP Lender, is also deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies, and the secured party under the Prepetition Credit Agreement, and shall have all rights and powers in each case attendant to that position (including, without limitation, rights of enforcement), and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Final Order and the DIP Facility Documents.

24. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in the Cases or any Successor Case, shall obtain credit or incur debt in breach of the DIP Facility Documents at any time prior to the repayment in full of all DIP Obligations and all Prepetition Obligations, including subsequent to the confirmation of any plan of reorganization or liquidation with respect to the Debtors and the Debtors' estates, then all cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Lender to be applied in accordance with this Final Order and the DIP Facility Documents.

25. Maintenance of DIP Collateral/Cash Management. Until the payment in full in cash of all DIP Obligations, and the termination of the obligation of the DIP Lender to extend

credit under the DIP Facility, the Debtors are authorized to (a) maintain and insure the DIP Collateral in amounts, for the risks, and by the entities as required under the DIP Facility Documents and (b) maintain their cash management system as in effect as of the Petition Date, (i) subject to the DIP Facility Documents; (ii) subject to the Cash Management Order, as may be modified, with the prior written consent of the DIP Lender, by any order that may be entered by this Court and (iii) in a manner which, in any event, shall be reasonably satisfactory to the DIP Lender. The Debtors shall immediately notify the DIP Lender of any changes in the cash management system existing as of the Petition Date.

26. Application of Proceeds of Collateral, Payments and Collections. After repayment in full in cash of all DIP Obligations any remaining proceeds of the DIP Collateral shall be applied to the Debtors' remaining outstanding and unpaid obligations, in a manner consistent with the Bankruptcy Code and, except as may be otherwise ordered in one or more orders of this Court, in accordance with the rights and priorities set forth in this Final Order.

27. Termination Event. The occurrence of an Event of Default under the DIP Facility Agreement is referred to herein as a "Termination Event."

28. Rights and Remedies Following Termination Event.

(a) *Termination.* Immediately upon the occurrence and during the continuation of a Termination Event, the DIP Lender, with no further action of this Court, may notify the Debtors in writing that a Termination Event has occurred and is continuing (such notice, a "Termination Notice" and the date of any such notice, as further defined in the DIP Facility Agreement, the "Termination Notice Date").

(b) *Notice of Termination.* Any Termination Notice shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to any Statutory Committee (if

one has been formed, or if one has not been formed, the Debtors' consolidated twenty largest creditors), and the U.S. Trustee,. The Remedies Notice Period shall commence on the Termination Notice Date and shall expire five (5) business days after the Termination Notice Date (the "Remedies Notice Period", and the date of the expiration of the Remedies Notice Period, the "Termination Date").

(c) Without limiting the rights and remedies of the other DIP Lender under the DIP Facility Agreement, the DIP Lender, may immediately (I) upon the occurrence of and during the continuation of a Termination Event following the issuance of a Termination Notice or (II) the Termination Date, *inter alia*, (A) declare (x) subject to the Remedies Notice Period, all obligations owing under the DIP Facility Documents to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Debtors, (y) the termination, reduction or restriction of any further commitment to extend credit to the Borrower to the extent any such commitment remains, and (z) terminate the DIP Facility and the DIP Facility Documents as to any future liability or obligation of, any DIP Lender, or any other DIP Secured Party, but without affecting any of the liens or the obligations (any of the actions set forth in the foregoing (x), (y) and (z), a "Termination"); (B) unless the Court orders otherwise during the Remedies Notice Period, declare a termination, reduction or restriction on the ability of the Borrower to use any Cash Collateral and exercise all other rights and remedies provided in the DIP Facility Documents and applicable law.

(d) During the Remedies Notice Period, any party in interest shall be entitled to seek an emergency hearing with this Court for the purpose of contesting a Termination, including whether a Termination Event has occurred and/or is continuing. During the Remedies Notice Period, the Debtors may continue to use the DIP Collateral, including Cash Collateral, in the

ordinary course of business and consistent with the most recent Approved Budget (subject to the Permitted Variance, and to fund the Carve-Out Escrow Amount), but may not enter into any transactions or arrangements (including, without limitation, the incurrence of indebtedness or liens, investments, restricted payments, asset sales, or transactions with non-Debtor affiliates) that are not in the ordinary course of business or otherwise in furtherance of the administration of the Cases.

29. Good Faith.

(a) *Good Faith Under Section 364 of the Bankruptcy Code; No Modification or Stay of this Final Order.* The DIP Lender have acted in good faith in connection with this Final Order and their reliance on this Final Order is in good faith. Based on the findings set forth in this Final Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of the Court, or any other court, the DIP Lender are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of the DIP Obligations, or any lien, claim or priority authorized or created hereby, *provided* that this Final Order was not stayed by court order after due notice had been given to the DIP Lender at the time such obligations were incurred or the liens, claims or priorities were authorized and/or created. Any liens or claims granted to the DIP Lender hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Final Order shall be governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges and benefits granted herein, *provided* that the Interim Order was not stayed by court order after



due notice had been given to the DIP Lender at the time the obligations were incurred or the liens, claims or priorities were authorized and/or created.

(b) *Prepetition Secured Parties.* The Prepetition Secured Parties have acted in good faith in connection with this Final Order and their reliance on this Final Order is in good faith.

30. Proofs of Claim. Any order entered by the Court establishing a bar date for any claims (including without limitation administrative claims) in any of the Cases or any Successor Case shall not apply to any DIP Lender or the Prepetition Secured Parties. The DIP Lender and the Prepetition Secured Parties shall not be required to file proofs of claim or requests for approval of administrative expenses authorized by this Final Order in any of the Cases or any Successor Case, and the provisions of this Final Order, and, upon the entry thereof, the Final Order, relating to the amount of the DIP Obligations, the Prepetition Lien Obligations, the Adequate Protection Superpriority Claims, the Adequate Protection Liens, the Prepetition Liens, the DIP Liens and the DIP Superpriority Claim shall constitute a timely filed proof of claim and/or administrative expense request. For the avoidance of doubt, the books and records of the Prepetition Lenders shall be deemed conclusive as to the amount of the claims of each such party.

31. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Lender under the DIP Facility Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Lender, the Prepetition Secured Parties, reasonable access to the Debtors' premises, knowledgeable officers of the Debtors, and their books and records in accordance with the DIP Facility Documents, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. Notwithstanding the foregoing, the rights of the DIP Lender to enter onto

the Debtors' leased premises shall be limited to (a) any such rights agreed in writing by the applicable landlord pursuant to any separate agreement by and between such landlord and Lender, (b) the rights the DIP Lender has under applicable non-bankruptcy law, if any, and (c) such rights as may be granted or ordered by the Court following notice to the applicable landlords of the leased premises and an opportunity for such landlords to respond and be heard.

32. Intercompany Obligations. To the extent any Debtor owes any obligation or indebtedness to any other Debtor or any subsidiary or affiliate of any Debtor (the "Intercompany Obligations"), such Intercompany Obligations shall be subordinated to the DIP Obligations and the Prepetition Obligations, and the guarantees (if any) thereof, until the DIP Obligations and the Prepetition Obligations are indefeasibly repaid in full. For avoidance of all doubt, any Intercompany Obligations shall be subordinated to the Adequate Protection Superpriority Claims.

33. Prohibited Use of DIP Facility, DIP Collateral, Cash Collateral, Carve-Out, Etc. Without the prior written consent of the DIP Lender, the DIP Facility, the DIP Collateral, and the Cash Collateral may not be used:

- a. for the payment of interest and principal with respect to the Prepetition Indebtedness (as defined in the DIP Facility Agreement) of the Borrower or any other Loan Party (as defined in the DIP Facility Agreement), except for: (i) the Carve-Out; (ii) prepetition employee wages, benefits and related employee taxes as of the Petition Date as authorized by the Court; (iii) prepetition sales, use and real property taxes as authorized by the Court; (iv) prepetition amounts due in respect of insurance financings, premiums and brokerage fees as authorized by the Court; (v) payment of fees and expenses (including fees and expenses of professionals) of the DIP Lender; (vi) other "first day" interim and final orders permitting payment of prepetition claims as authorized by the Court; (vii) cure amounts reasonably acceptable to the DIP Lender under leases and executory contracts assumed with approval of the Court; (viii) the Prepetition Obligations solely to the extent of current cash interest and expenses; and (ix) other Prepetition Indebtedness to the extent authorized by the Court and set forth in the Approved Budget;
- b. subject to this Final Order in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation

of any type adverse to (i)(x) the rights, remedies, claims or defenses of DIP Lender under the DIP Facility Agreement, the other DIP Facility Documents, this Final Order including preventing, hindering or otherwise delaying the exercise of any rights, remedies, claims or defenses by the DIP Lender under the DIP Facility Agreement, the other DIP Facility Documents, this Final Order or (y) the rights, remedies, claims or defenses of the Prepetition Secured Parties under the Prepetition Credit Agreement including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Statutory Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration or similar relief (A) invalidating, setting aside, avoiding or subordinating, in whole or in part, the DIP Obligations, DIP Liens, the Prepetition Obligations, Prepetition Liens (as set forth in the DIP Facility Agreement), (B) for monetary, injunctive or other affirmative relief against the DIP Lender or the Prepetition Secured Parties or their respective collateral; or (C) preventing, hindering or otherwise delaying the exercise by the DIP Lender or the Prepetition Secured Parties of any rights and remedies under this Final Order, the DIP Facility Documents, the Prepetition Credit Agreement or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Court or otherwise) by the DIP Lender, the Prepetition Secured Parties upon any of their respective collateral;

- c. to make any distribution under a plan of reorganization in any Case;
- d. to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body, without prior written consent of the DIP Lender, unless otherwise set forth in the Approved Budget, or unless otherwise ordered by the Court;
- e. to pay any fees or similar amounts to any person who has proposed or may propose to purchase interests of the Debtors (including so-called “Topping Fees,” “Exit Fees” and other similar amounts) without prior written consent by the DIP Lender, unless otherwise set forth in accordance with the Approved Budget;
- f. to object to, contest, or interfere with, in any way, the DIP Lender’ or the Prepetition Secured Parties’ enforcement or realization upon any of the Prepetition Collateral or DIP Collateral once a Termination Event has occurred, except as provided for in this Final Order, or seek to prevent the DIP Lender or the Prepetition Secured Parties from credit bidding in connection with any proposed plan of reorganization or liquidation or any proposed transaction pursuant to section 363 of the Bankruptcy Code;

- g. to use or seek to use Cash Collateral while the DIP Obligations, the Prepetition Lien Obligations and/or any of the DIP Lender' commitments under the DIP Facility Documents remain outstanding, without the consent of the DIP Lender, other than during the Remedies Notice Period;
- h. to use or seek to use any insurance or tax refund proceeds constituting DIP Collateral other than solely in accordance with the Approved Budget and the DIP Facility Documents;
- i. to incur indebtedness other than in accordance with the Approved Budget or the DIP Facility Documents without the prior consent of the DIP Lender;
- j. to object to or challenge in any way the claims, liens, or interests held by or on behalf of the DIP Lender or the Prepetition Secured Parties *provided, however,* that, if a Statutory Committee is appointed, not more than \$25,000 in the aggregate of proceeds of the Carve Out, any Cash Collateral, or any proceeds of the DIP Facility or the DIP Collateral may be used by such Statutory Committee solely for purposes of investigating such claims, liens, or interests of the Prepetition Secured Parties;
- k. to assert, commence, prosecute or support any claims or causes of action whatsoever, including, without limitation, any Avoidance Action, against the DIP Lender or the Prepetition Secured Parties;
- l. to prosecute an objection to, contest in any manner, or raise any defenses to, the validity, extent, amount, perfection, priority, or enforceability of, or seek equitable relief from, any of the DIP Obligations, the DIP Liens, the Prepetition Obligations, the Prepetition Liens, any other rights or interests of the DIP Lender or the Prepetition Secured Parties;
- m. to sell or otherwise dispose of the DIP Collateral other than as contemplated by the DIP Facility Documents; or
- n. for any purpose otherwise limited by the DIP Facility Agreement.

34. Reservation of Certain Third-Party Rights and Bar of Challenges and Claims. The stipulations and admissions contained in this Final Order, including the Debtors' Stipulations, shall be binding on the Debtors in all circumstances. The Debtors' Stipulations shall be binding on the Debtors' estates and each other party in interest, including, without limitation, any Statutory Committee, unless, and solely to the extent that (a) any such party in interest, including any Statutory Committee, with standing and requisite authority, has timely commenced an adversary proceeding (subject to the limitations set forth in paragraph 35 hereof) against the Prepetition

Secured Parties in connection with any matter related to the Prepetition Credit Agreement or the Collateral (a “Challenge Proceeding”) by no later than on or before each of (i) a period of 75 days after the entry of the Interim Order, for parties other than a Statutory Committee, and (ii) 60 days after the date of formation of a Statutory Committee, if a Committee has been appointed (the “Challenge Period”) (for the avoidance of doubt, if a Committee is appointed after the period in sub-clause (i) has expired the Challenge Period shall have run). The Challenge Period may only be extended with the written consent of the Prepetition Secured Parties, or by order of the Court. Upon the expiration of the Challenge Period (the “Challenge Period Termination Date”), without the filing of a Challenge Proceeding:

- a. any and all such Challenge Proceedings and objections by any party (including, without limitation, any Statutory Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed in the Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case), shall be deemed to be forever waived, released and barred,
- b. all matters not subject to the Challenge Proceedings, including, without limitation, all findings, the Debtors’ Stipulations, all waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to the Prepetition Secured Parties’ claims, liens, and interests shall be of full force and effect and forever binding upon the Debtors, the Debtors’ estates and all creditors, interest holders, and other parties in interest in the Cases and any Successor Case;
- c. any and all prepetition claims or causes of action against the Prepetition Secured Parties relating in any way to the Debtors or the Prepetition Credit Agreement shall be forever waived and released by the Debtors, the Debtors’ estates, all creditors, interest holders and other parties in interest in the Cases and any Successor Case;
- d. to the extent not theretofore repaid, the Prepetition Lien Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, reduction, defense or avoidance, for all purposes in these Cases and any subsequent chapter 7 case;
- e. the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected, not

subject to defense, counterclaim, recharacterization, subordination or avoidance; and

- f. the obligations under the Prepetition Lien Documents shall not be subject to any other or further challenge by the Debtors, any Statutory 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).

35. If any Challenge Proceeding is timely commenced, the admissions and stipulations contained in this Final Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive (as provided in this paragraph) on the Debtors, any committee, and any other person or entity, except as to any such findings and admissions that were expressly and successfully challenged (pursuant to a final order) in such Challenge Proceeding. Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Statutory 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 Lien on the Prepetition Collateral. For the avoidance of doubt, any trustee appointed or elected in these Cases shall, until the expiration of the periods provided herein for asserting claims and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph 35 (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtors' estates), be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations, stipulations and waivers of the Debtors in this Final Order.

36. No Third Party Rights. Except as explicitly provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

37. Limitations on Charging Expenses. Upon entry of the Final Order, no costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the DIP Lender or the DIP Collateral or the Prepetition Secured Parties or the Prepetition Liens pursuant to sections 105 or 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 each of the DIP Secured Party, and/or any Prepetition Secured Party that is adversely affected thereby, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders. Notwithstanding anything in the DIP Facility or this Order to the contrary, upon a final order of this Court a professional person employed by the Debtors pursuant to section 327 of the Bankruptcy Code may surcharge and be paid from the DIP Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code and any amounts so allowed by final order of this Court shall not be subject to the DIP Superpriority Claims granted herein.

38. Section 552(b). The “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Lender or the Prepetition Secured Parties, with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral or the DIP Collateral.

39. No Marshaling/Applications of Proceeds. Upon entry of the Final Order, neither the DIP Lender nor the Prepetition Secured Parties shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral.

40. Discharge Waiver. The Debtors expressly stipulate, and the Court finds and adjudicates that, none of the DIP Obligations, the DIP Superpriority Claims or the DIP Liens shall be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been paid

in full in cash on or before the effective date of a confirmed plan of reorganization. Except as otherwise agreed to by the DIP Lender, the Debtors shall not propose or support any plan or sale of all or substantially all of the Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the payment in full, in cash of all DIP Obligations.

41. Rights Preserved. Other than as expressly set forth in this Final Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Lender and the Prepetition Secured Parties are preserved. Nothing contained herein shall be deemed to be a finding by this Court or an acknowledgement by the Prepetition Secured Parties that the adequate protection granted herein does in fact adequately protect the Prepetition Secured Parties against any post-petition diminution in value of the Prepetition Collateral.

42. Release. Subject to paragraphs 34 and 35 and as further set forth in the DIP Facility Documents, the Debtors, on behalf of themselves and their estates (including any successor trustee or other estate representative in these Cases or any Successor Case) and any party acting by, through, or under any of the Debtors or any of their estates, hereby stipulate and agree that they forever and irrevocably (a) release, discharge, waive, and acquit any other, current or future DIP Lender, and the former, current, and future Prepetition Secured Parties, and each of their respective participants and each of their respective affiliates, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, successors, assigns and predecessors in interest (collectively, and in each case in their capacities as such, the "Released Parties"), from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs,



expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Facility, the DIP Facility Documents, the Prepetition Credit Agreement, or the transactions and relationships contemplated hereunder or thereunder, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, perfection, or avoidability of the liens or secured claims of the Prepetition Secured Parties, and the DIP Lender, and (b) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and nonavoidability of the Prepetition Obligations, the Prepetition Liens, the DIP Obligations, and the DIP Liens. For the avoidance of doubt, the foregoing release shall not constitute a release of any rights arising under the DIP Facility Documents.

43. No Waiver by Failure to Seek Relief. The failure or delay of the DIP Lender or the Prepetition Secured Parties to seek relief or otherwise exercise their respective rights and remedies under this Final Order, the Prepetition Credit Agreement, the DIP Facility Agreement, the DIP Facility Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Lender or the Prepetition Secured Parties.

44. Binding Effect of Final Order. Immediately upon entry by the Court (notwithstanding any applicable law or rule to the contrary) and Closing, the terms and provisions of this Final Order, including the liens granted herein shall, *nunc pro tunc* to the Petition Date,

become valid and binding upon and inure to the benefit of the Debtors, the DIP Lender, the Prepetition Secured Parties, all other creditors of the Debtors, any Statutory Committee or any other court appointed committee appointed in the Cases, the U.S. Trustee and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Cases, any Successor Case, or upon dismissal of the Cases or any Successor Case.

45. No Modification of Interim Order. The Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Lender, (i) any modification, stay, vacatur or amendment to this Final Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in sections 503(b), 507(a) or 507(b) of the Bankruptcy Code) in the Cases or any Successor Case, equal or superior to the Senior Adequate Protection Superpriority Claims, other than the Carve-Out and the DIP Superpriority Claim; (b) without the prior written consent of the DIP Lender, (i) any order allowing use of Cash Collateral other than the Interim Order and this Final Order; and (ii) any lien on any of the DIP Collateral with priority equal or superior to the Senior Adequate Protection Lien (other than the DIP Lien); and (c) without the prior written consent of the DIP Lender, any lien on any of the Prepetition Collateral with priority equal to or superior to the Junior Adequate Protection Lien (other than the DIP Lien, the Permitted Prior Liens, the Carve-Out, the Senior Adequate Protection Lien, the Prepetition Senior Liens. The Debtors irrevocably waive any right to seek any material amendment, modification or extension of this Final Order without the prior written consent, as provided in the foregoing, of the

DIP Lender no such consent shall be implied by any other action, inaction or acquiescence of the Prepetition Secured Parties or the DIP Lender.

46. Final Order Controls. This Final Order shall constitute this Court's findings of fact and conclusions of law based upon the record of these Chapter 11 Cases at the Final Hearing and shall upon its entry by this Court take effect and be fully enforceable *nunc pro tunc* to the Petition Date. There shall be no stay of execution or effectiveness of this Final Order, notwithstanding anything to the contrary in the Bankruptcy Rules or other applicable law; any applicable stay is hereby waived. In the event of any inconsistency between the terms and conditions of the DIP Facility Documents or this Final Order, the provisions of this Final Order shall govern and control.

47. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in the Cases; (b) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing the Cases or any Successor Case; or (d) pursuant to which the Court abstains from hearing the Cases or any Successor Case. The terms and provisions of this Final Order, including the claims, liens, security interests and other protections granted to the Prepetition Secured Parties and the DIP Lender pursuant to this Final Order and/or the Prepetition Credit Agreement (other than as modified hereby), notwithstanding the entry of any such order, shall continue in the Cases, in any Successor Case, or following dismissal of the Cases or any Successor Case, and shall maintain their priority as provided by this Final Order until all DIP Obligations and all Prepetition Obligations have been paid in full.

48. Cooperation Among the Parties. Except in the event not reasonably practicable, the Debtors shall provide copies of all substantive motions, applications, other pleadings, and proposed forms of order with respect thereto (all of which shall be in form and substance

reasonably acceptable to the DIP Lender) to the DIP Lender not less than five business days prior to the filing of any such substantive motions, applications, other pleadings, and proposed forms of order with respect thereto with the Court.

49. Preservation of Rights Granted Under this Final Order.

(a) Except as expressly provided herein or in the DIP Facility Documents, no claim or lien having a priority senior to or *pari passu* with that granted by this Final Order to the DIP Lender shall be granted while any portion of the DIP Obligations remains outstanding, and the DIP 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.

(b) Unless all DIP Obligations and the Prepetition Obligations shall have been indefeasibly paid in full, the Debtors shall not seek, and it shall constitute an Event of Default under the DIP Facility Agreement if any of the Debtors seek, or if there is entered (i) any stay, vacatur, rescission or modification of the Interim Order or this Final Order without the prior written consent of the DIP Lender and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Lender (ii) an order converting these Cases to cases under chapter 7 of the Bankruptcy Code or dismissing any of these Cases, or (iii) unless otherwise approved by the DIP Lender, an order granting a change of venue with respect to these Cases or any related adversary proceeding. If an order dismissing any of these Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, (x) the Adequate Protection Superpriority Claims and other administrative claims granted under the Interim Order and 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 the Interim Order and this Final Order until all DIP Obligations and all Prepetition Obligations shall have been paid and satisfied in full (and that such DIP Superpriority Claims, Adequate Protection Superpriority Claims, the other administrative claims granted under the Interim Order and 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, to the extent it has jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

(c) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect (i) the validity, priority or enforceability of any DIP Obligations or the Adequate Protection incurred prior to the actual receipt of written notice by the DIP Lender, of the effective date of such reversal, stay, modification or vacatur, or (ii) the validity, priority, or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of Collateral (including, without limitation, Cash Collateral), any DIP Obligations, or any Adequate Protection incurred by the Debtors to the other DIP Lender and/or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Lender and/or the Prepetition Lender, as the case may be, of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Final Order, and the DIP Lender and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Final Order, and pursuant to the DIP Facility Documents with respect to all such uses of the DIP Collateral (including, without limitation, the Cash Collateral), all DIP Obligations, and all Adequate Protection.

(d) Nothing contained in this Final Order shall limit the Debtor's fiduciary duties.

50. Retention of Jurisdiction. The Court shall retain jurisdiction to enforce this Interim Order according to its terms to the fullest extent permitted by applicable law.

cc: Joel I. Sher, Esquire  
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**END OF ORDER**

EXHIBIT A

**SENIOR DEBTOR-IN-POSSESSION  
CREDIT AGREEMENT**

**Among**

**CREATIVE HAIRDRESSERS, INC.,  
A Virginia Corporation**

**“As Borrower”**

**And**

**HC SALON HOLDINGS, INC.,  
A Delaware Corporation**

**“As Agent”**

**And**

**AND VARIOUS OTHER FINANCIAL INSTITUTIONS  
NOW OR HEREAFTER PARTY HERETO**

**“As Lenders”**

**Dated: To Be Effective As Of April [ ], 2020**



**TABLE OF CONTENTS**

	<b><u>Page No.</u></b>
Article 1	CERTAIN DEFINITIONS; RULES OF CONSTRUCTION ..... 2
Section 1.01.	Certain Definitions..... 2
Section 1.02.	Terms Generally ..... 31
Section 1.03.	Accounting Principles..... 31
Article 2	CREDIT FACILITIES ..... 31
Section 2.01.	NM Term Loans ..... 31
2.01.1.	Additional NM Lenders ..... 32
Section 2.02.	Roll-Up Loans ..... 32
Section 2.03.	Prepayments..... 33
2.03.1.	Mandatory Prepayments ..... 33
2.03.2.	Voluntary Prepayments..... 33
Section 2.04.	Interest Terms Applicable To The Loans ..... 34
2.04.1.	Adjusted Base Rate for Roll-Up Loans ..... 34
2.04.2.	LIBOR Borrowing Option for Roll-Up Loans..... 34
2.04.3.	Calculation Of Interest ..... 35
2.04.4.	Default Interest ..... 35
2.04.5.	Maximum Rate Of Interest ..... 36
Section 2.05.	Late Payment Charges ..... 36
Section 2.06.	Pro Rata Treatment And Payments..... 36
2.06.1.	Distribution of Payments to Lenders ..... 36
2.06.2.	Funding Of Loans ..... 36
2.06.3.	Ratable Sharing ..... 37
2.06.4.	Sharing Of Setoffs ..... 37
Section 2.07.	Application Of Payments ..... 37
Section 2.08.	Increased Costs ..... 38
2.08.1.	Increased Costs Generally ..... 38
2.08.2.	Capital Requirements..... 38
2.08.3.	Certificate for Reimbursement..... 38
2.08.4.	Delay In Requests ..... 38
Section 2.09.	Taxes..... 39
2.09.1.	Payments Free of Taxes ..... 39
2.09.2.	Payment of Other Taxes by the Borrower ..... 39
2.09.3.	Indemnification by the Borrower..... 39
2.09.4.	Indemnification by the Lenders ..... 39
2.09.5.	Evidence of Payments..... 39
2.09.6.	Status of Lenders ..... 40
2.09.7.	Treatment of Certain Refunds..... 41
2.09.8.	Survival..... 42
Section 2.10.	Mitigation Obligations; Replacement of Lenders..... 42
2.10.1.	Designation of a Different Lending Office..... 42
2.10.2.	Replacement of Lenders ..... 42
Section 2.11.	Fees..... 43
Section 2.12.	Payments..... 43
Section 2.13.	Advancements..... 43
Section 2.14.	Defaulting Lenders ..... 44
2.14.1.	Defaulting Lender Adjustments ..... 44
2.14.2.	Defaulting Lender Cure ..... 44
Section 2.15.	Reserved ..... 44
Section 2.16.	Notes..... 44

**TABLE OF CONTENTS**

	<b><u>Page No.</u></b>
Section 2.17.	Payment ..... 45
Section 2.18.	Security and Priorities..... 45
Article 3	REPRESENTATIONS AND WARRANTIES ..... 46
Section 3.01.	Organization and Qualification..... 46
Section 3.02.	Capitalization and Ownership..... 46
Section 3.03.	Subsidiaries..... 46
Section 3.04.	Power and Authority..... 47
Section 3.05.	Validity and Binding Effect..... 47
Section 3.06.	No Conflict ..... 47
Section 3.07.	Litigation ..... 47
Section 3.08.	Financial Statements; Financial Projections ..... 48
3.08.1.	Financial Statements ..... 48
3.08.2.	Books and Records ..... 48
3.08.3.	Absence of Material Liability ..... 48
3.08.4.	Financial Projections..... 48
Section 3.09.	Margin Stock ..... 48
Section 3.10.	Full Disclosure..... 48
Section 3.11.	Tax Returns and Payments ..... 49
Section 3.12.	Consents and Approvals ..... 49
Section 3.13.	No Event of Default; Compliance with Instruments..... 49
Section 3.14.	Compliance with Laws ..... 49
Section 3.15.	Investment Company Act ..... 49
Section 3.16.	ERISA Compliance ..... 50
3.16.1.	Plans and Contributions ..... 50
3.16.2.	Pending Claims ..... 50
3.16.3.	ERISA Events ..... 50
Section 3.17.	Title to Properties ..... 50
Section 3.18.	Insurance..... 50
Section 3.19.	Employment Matters ..... 50
Section 3.20.	[Reserved]..... 51
Section 3.21.	Material Contracts; Burdensome Restrictions ..... 51
Section 3.22.	Patents, Trademarks, Copyrights, Licenses, Etc..... 51
Section 3.23.	Liens ..... 51
Section 3.24.	Margin Regulations ..... 51
Section 3.25.	Environmental Compliance ..... 51
Section 3.26.	Anti-Money Laundering/International Trade Law Compliance ..... 51
Section 3.27.	Use of Proceeds ..... 52
Section 3.28.	Securities Collateral Documents..... 52
Article 4	CONDITIONS PRECEDENT ..... 52
Section 4.01.	Conditions to Closing ..... 52
4.01.1.	Closing Submissions..... 52
4.01.2.	Collateral Agreement..... 53
4.01.3.	Deposit Account; Securities Account ..... 53
4.01.4.	Officers' Certificate..... 53
4.01.5.	Intercreditor and Subordination Agreement ..... 54
4.01.6.	Petition Date ..... 54
4.01.7.	Interim Financing Order ..... 54
4.01.8.	Approved Budget..... 54

**TABLE OF CONTENTS**

	<b><u>Page No.</u></b>
4.01.9.	Approvals..... 54
4.01.10.	Fees ..... 55
4.01.11.	Credit Party Expenses ..... 55
4.01.12.	Closing Date ..... 55
Section 4.02.	Conditions to Advances of Proceeds of Loans After Closing Date ..... 55
4.02.1.	Representations and Warranties..... 55
4.02.2.	Absence of Defaults and Events of Default..... 55
4.02.3.	No Material Adverse Changes ..... 55
4.02.4.	Case Milestones ..... 55
4.02.5.	Compliance with Orders ..... 55
Section 4.03.	Conditions to Borrowings of NM Term Loans in excess of the Interim NM Availability Amount ..... 55
4.03.2.	Final Order..... 56
4.03.3.	Fees and Expenses ..... 56
4.03.4.	Signed Final Order..... 56
Article 5	AFFIRMATIVE COVENANTS ..... 56
Section 5.01.	Payment and Performance ..... 56
Section 5.02.	Insurance..... 56
Section 5.03.	Collection of Accounts; Sale of Inventory ..... 57
Section 5.04.	Notice of Litigation and Proceedings ..... 57
Section 5.05.	Payment of Liabilities to Third Persons ..... 57
Section 5.06.	Notice of Change of Business Location ..... 57
Section 5.07.	Payment of Taxes ..... 57
Section 5.08.	Reporting Requirements ..... 58
5.08.1.	Monthly Reporting..... 58
5.08.2.	Quarterly Financial Statements..... 58
5.08.3.	Annual Financial Statements ..... 58
5.08.4.	Management Letters ..... 59
5.08.5.	Compliance Certificate ..... 59
5.08.6.	Reports To Other Creditors..... 59
5.08.7.	Management Changes..... 59
5.08.8.	Projections ..... 59
5.08.9.	Notice of Defaults and Events of Default ..... 59
5.08.10.	Notice of Litigation..... 59
5.08.11.	Joint Venture Notices..... 59
5.08.12.	[Reserved]..... 59
5.08.13.	Quarterly Reports..... 59
5.08.14.	Reportable Anti-Terrorism Compliance Event..... 60
5.08.15.	Capital Stock..... 60
5.08.16.	[Reserved]..... 60
5.08.17.	[Reserved]..... 60
5.08.18.	General Information..... 60
Section 5.09.	Preservation of Existence, Etc ..... 60
Section 5.10.	Maintenance of Assets and Properties ..... 60
Section 5.11.	Compliance with Laws ..... 60
Section 5.12.	Inspection Rights ..... 60
Section 5.13.	Environmental Matters and Indemnification ..... 61
Section 5.14.	Additional Subsidiaries..... 61
5.14.1.	Domestic Subsidiaries..... 61

**TABLE OF CONTENTS**

	<b><u>Page No.</u></b>
5.14.2.	Foreign Subsidiaries ..... 61
5.14.3.	Requirements For All Additional Subsidiaries ..... 61
Section 5.15.	Additional Pledgors ..... 61
Section 5.16.	Additional Capital Stock..... 62
Section 5.17.	Use of Proceeds ..... 62
Section 5.18.	Approved Budget; Additional Reporting..... 62
Section 5.19.	Financial Advisor..... 63
Section 5.20.	Case Milestones ..... 63
Section 5.21.	Certain Other Bankruptcy Matters..... 64
Article 6	NEGATIVE COVENANTS ..... 64
Section 6.01.	Liens ..... 64
Section 6.02.	Investments And Loans ..... 65
Section 6.03.	Indebtedness ..... 65
Section 6.04.	Fundamental Changes..... 65
Section 6.05.	Dispositions ..... 66
Section 6.06.	Restricted Payments..... 66
Section 6.07.	Change in Nature of Business..... 66
Section 6.08.	Transactions With Affiliates ..... 66
Section 6.09.	Burdensome Agreements; Negative Pledges ..... 66
Section 6.10.	Use of Proceeds ..... 66
Section 6.11.	Additional Bankruptcy Matters ..... 67
Section 6.12.	Other Superpriority Claims..... 67
Article 7	EVENTS OF DEFAULT..... 67
Section 7.01.	Failure To Pay..... 67
Section 7.02.	Violation Of Covenants ..... 67
Section 7.03.	Representation Or Warranty ..... 67
Section 7.04.	Cross Default ..... 68
Section 7.05.	Judgments ..... 68
Section 7.06.	Levy By Judgment Creditor..... 68
Section 7.07.	[Reserved]..... 68
Section 7.08.	[Reserved]..... 68
Section 7.09.	Attempt To Terminate Or Limit Guaranties ..... 68
Section 7.10.	[Reserved]..... 68
Section 7.11.	Injunction..... 68
Section 7.12.	Change In Control..... 68
Section 7.13.	[Reserved]..... 69
Section 7.14.	Material Adverse Change ..... 69
Section 7.15.	Stock Pledge ..... 69
Section 7.16.	Securities Collateral Documents..... 69
Section 7.17.	Bankruptcy..... 69
Article 8	RIGHTS AND REMEDIES OF CREDIT PARTIES ON THE OCCURRENCE OF AN EVENT OF DEFAULT ..... 72
Section 8.01.	Credit Parties' Specific Rights And Remedies ..... 72
Section 8.02.	Automatic Acceleration ..... 72
Section 8.03.	Consent To Appointment of Receiver ..... 72
Section 8.04.	Remedies Cumulative..... 73
Section 8.05.	Application Of Funds ..... 73

**TABLE OF CONTENTS**

	<b><u>Page No.</u></b>
Article 9	THE AGENT ..... 73
Section 9.01.	Appointment ..... 73
Section 9.02.	Exculpatory Provisions ..... 74
9.02.1.	No Fiduciary, Discretionary, Or Implied Duties ..... 74
9.02.2.	No Liability for Certain Actions ..... 74
9.02.3.	Knowledge ..... 74
9.02.4.	No Duty To Inquire ..... 74
Section 9.03.	Reliance by Agent ..... 74
Section 9.04.	Delegation of Duties ..... 75
Section 9.05.	Resignation Of Agent ..... 75
Section 9.06.	Non-Reliance On Agent And Other Lenders ..... 76
Section 9.07.	Agent May Hold Collateral For Lenders And Others ..... 76
Section 9.08.	The Agent in Its Individual Capacity ..... 76
Section 9.09.	Agent May File Proofs Of Claim ..... 76
Section 9.10.	Collateral And Guaranty Matters ..... 77
Section 9.11.	No Reliance on Agent's Customer Identification Program ..... 77
Section 9.12.	No Other Duties, Etc. .... 77
Section 9.13.	No Advisory or Fiduciary Responsibility ..... 77
Article 10	MISCELLANEOUS ..... 78
Section 10.01.	Notices ..... 78
Section 10.02.	Course of Conduct ..... 79
Section 10.03.	Waivers and Amendments ..... 79
Section 10.04.	Expenses ..... 80
Section 10.05.	Indemnity ..... 80
Section 10.06.	Reimbursement by Lenders ..... 81
Section 10.07.	Waiver of Claims ..... 81
Section 10.08.	Assignments by Lenders ..... 81
Section 10.09.	Successors and Assigns Generally ..... 82
Section 10.10.	Certain Additional Payments ..... 82
Section 10.11.	Register ..... 83
Section 10.12.	Procedures for Implementing Lender Assignments ..... 83
Section 10.13.	Participations ..... 83
Section 10.14.	Pledges ..... 84
Section 10.15.	[Reserved] ..... 84
Section 10.16.	Survival ..... 84
Section 10.17.	Counterparts and Integration ..... 84
Section 10.18.	Electronic Execution ..... 85
Section 10.19.	Severability ..... 85
Section 10.20.	Right of Setoff ..... 85
Section 10.21.	Governing Law ..... 86
Section 10.22.	Jurisdiction ..... 86
Section 10.23.	Venue ..... 86
Section 10.24.	Service of Process ..... 86
Section 10.25.	WAIVER OF JURY TRIAL ..... 86
Section 10.26.	Time ..... 86
Section 10.27.	Platform ..... 86
Section 10.28.	Treatment of Certain Information; Confidentiality ..... 87
Section 10.29.	Counterparts and Integration ..... 87
Section 10.30.	Severability ..... 88

**TABLE OF CONTENTS**

	<b><u>Page No.</u></b>
Section 10.31. Acknowledgments .....	88
Section 10.32. USA Patriot Act Notice .....	88

**SCHEDULES**

Schedule 1.01.C	Commitments and Applicable Percentages
Schedule 1.01.R	Related Parties
Schedule 3.02	Capitalization and Ownership
Schedule 3.03	Subsidiaries
Schedule 3.21	Material Contracts
Schedule 6.03	Indebtedness

**EXHIBITS**

Exhibit A	Form of Assignment and Assumption
Exhibit B	Form of Compliance Certificate
Exhibit C-1	Form of NM Term Loan Note
Exhibit C-2	Form of Roll-Up Loan Note
Exhibit D-1	Foreign Lender Tax Certificate
Exhibit D-2	Foreign Lender Tax Certificate
Exhibit D-3	Foreign Lender Tax Certificate
Exhibit D-4	Foreign Lender Tax Certificate
Exhibit E	Approved Budget
Exhibit F	Interim Financing Order

**SENIOR DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

THIS SENIOR DEBTOR-IN-POSSESSION CREDIT AGREEMENT is dated to be effective as of \_\_\_\_\_, 2020, by and among CREATIVE HAIRDRESSERS, INC., a Virginia corporation (“Borrower”), each lender from time to time party hereto (collectively, the “Lenders” and each a “Lender”), and HC Salon Holdings, Inc., as Agent.

**R E C I T A L S**

WHEREAS, on April [23], 2020 (the “Petition Date”), the Borrower commenced Chapter 11 Case No. [ ] (the “Borrower Chapter 11 Case”) and [Ratner Companies, L.C. ] (together with the Borrower and any other Person later joined therewith, the “Debtors”) commenced Case Nos. [ ] and [ ] (the “Party Chapter 11 Cases” and together with the Borrower Chapter 11 Case, the “Chapter 11 Cases”) by filing voluntary petitions for reorganization under Chapter 11 of the Bankruptcy Code, with the Bankruptcy Court. The Debtors continue to operate their business and manage their properties as debtors and debtors-in-possession pursuant to [Sections 1107(a) and 1108] of the Bankruptcy Code;

WHEREAS, prior to the Petition Date, the Prepetition First Lien Lenders provided financing to the Borrower pursuant to that certain Third Amended and Restated Credit Agreement, effective as of November 15, 2017 (as amended or otherwise modified through the Petition Date, the “Prepetition First Lien Credit Agreement”), among the Borrower, the other credit parties signatory thereto, the lenders and issuing banks party thereto (collectively, the “Prepetition First Lien Lenders”), and HC Salon Holdings, Inc. (as successor to Manufacturers and Traders Trust Company, a New York Banking Corporation) as administrative agent (in such capacity , the “Prepetition First Lien Agent”);

WHEREAS, the Prepetition First Lien Obligations are secured by a security interest in substantially all of the existing and after acquired assets of the Borrower and certain of its Subsidiaries as more fully set forth in the Security Documents (as defined in the Prepetition First Lien Credit Agreement) and such security interest is perfected and, with certain exceptions, as described in the Security Documents (as defined in the Prepetition First Lien Credit Agreement), has priority over other security interests;

WHEREAS, the Borrower has requested the Lenders provide a term loan facility in an aggregate principal amount of \$40,675,235.66, consisting of (a) NM Term Loans in an aggregate principal amount of \$5,000,000 and (b) Roll-Up Loans in an aggregate principal amount of \$35,675,235.66, in each case, for the purposes set forth in Section 6.10; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, and other valuable consideration, and intending to be legally bound hereby, the parties hereby covenant and agree as follows:

## ARTICLE 1

### CERTAIN DEFINITIONS; RULES OF CONSTRUCTION

Section 1.01. *Certain Definitions.* In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings, respectively, unless the context hereof clearly requires otherwise:

“*Acceptable Plan of Reorganization*” means a plan of reorganization for each of the Chapter 11 Cases that (a) provides for the termination of the unused NM Commitments and the payment in full in cash and full discharge of the Obligations at emergence or, solely with respect to the Roll-Up Loans, as to which the Lenders having Roll-Up Loans outstanding at such time that represent at least 66 2/3% of the sum of all outstanding Roll-Up Loans not being paid in cash have informed the Borrower in writing that such plan is an “Acceptable Plan of Reorganization”, (b) contains releases and other exculpatory provisions for the Agent and the Lenders in form and substance reasonably satisfactory to the Agent and the Required Lenders, and (c) is otherwise in form and substance reasonably satisfactory to the Agent and the Required Lenders.

“*Account*” means any “account” within the meaning of that term under the Uniform Commercial Code.

“*Account Debtor*” means any “account debtor” within the meaning of that term under the Uniform Commercial Code, including any Person who is obligated to pay an Account.

“*Accumulated Adjustment Account*” means a special accounting account used to track undistributed earnings of an S corporation that have been taxed to shareholders previously, all as more specifically described in 26 CFR 1.1368-2.

“*Act*” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act), Pub. L. No. 107-56, 115 Stat. 272 (codified in scattered sections of 18 U.S.C.A.).

“*Actual Capital Expenditures*” means, for any Period, the actual Capital Expenditures of the Loan Parties for such Period.

“*Actual Collections*” means, for any period, the actual collections of the Loan Parties during such period, including collections from any Foreign Subsidiary, relating to accounts receivable and for work performed by the Loan Parties, but excluding any collections from any Disposition.

“*Actual Disbursements*” means the actual disbursements of the Loan Parties during the relevant period, including all cash outflows from each Loan Party including, without limitation, any transfers to any Foreign Subsidiary.

“*Additional NM Lender*” has the meaning set forth in Subsection 2.01.1.

“*Adjusted Base Rate*” means that rate of interest equal to the Base Rate plus the Applicable Margin.

“*Adjusted Base Rate Borrowing*” means each amount of the unpaid principal balance of a Loan which accrues interest at the Adjusted Base Rate.



“*Adjusted LIBOR Rate*” means for any LIBOR Borrowing for any Interest Period, an interest rate per annum that is equal to the LIBOR Rate for such Interest Period plus the Applicable Margin.

“*Affiliate*” means, with respect to a specified 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.

“*Agent*” means DIP Agent, in its capacity as Agent for the Lenders in accordance with this Agreement, and its successors and assigns in such capacity as authorized by the terms of this Agreement.

“*Agreement*” means this Credit Agreement, as it may be amended or modified from time to time, together with all schedules and exhibits hereto.

“*Anti-Terrorism Laws*” means any Laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such Laws, all as amended, supplemented or replaced from time to time.

“*Applicable Margin*” means with respect to the Roll-Up Loans, the following percentages corresponding to the Consolidated Leverage Ratio in effect as of the most recent Calculation Date:

<b>Tier Level</b>	<b>Consolidated Leverage Ratio</b>	<b>Applicable Margin For Adjusted Base Rate Borrowings</b>	<b>Applicable Margin For LIBOR Borrowings</b>
1	≥2.25 X	1.75	3.50
2	≥1.75 X <2.25 X	1.25	3.00
3	<1.75 X	1.00	2.75

The initial Applicable Margin shall be based on Tier Level 1. Beginning with the Calculation Date immediately following the Fiscal Quarter of the Borrower ending after the Closing Date, and after each consecutive Fiscal Quarter thereafter, the Applicable Margin shall be determined and adjusted by the then current Consolidated Leverage Ratio as determined in accordance with the quarterly Compliance Certificates to be provided by the Borrower in accordance with this Agreement. If the Borrower fails to timely provide a Compliance Certificate for any Fiscal Quarter of the Borrower as required by and within the time limitations set forth in this Agreement, the Applicable Margin from the applicable date of such failure shall be based on Tier Level 1 until five (5) Business Days after a Compliance Certificate has been provided, whereupon the applicable Tier Level shall be determined by the Consolidated Leverage Ratio set forth in such Compliance Certificate. Except as set forth above, each Applicable Margin shall be effective from a Calculation Date until the next Calculation Date. If, as a result of any restatement of or other adjustment to the financial statements of the Borrower and its Subsidiaries or for any other reason, the Borrower or the Lenders determine that (a) the Consolidated Leverage Ratio (or any component thereof) as calculated by the Borrower as of any applicable date was inaccurate, and (b) a proper calculation would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Agent for the account of the applicable Lenders promptly on demand by Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under

the Bankruptcy Code, automatically and without further action by Agent or any Lender), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. Borrower's obligations to make such payment shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

*"Approved Fund"* means a Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender, or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

*"Approved Bankruptcy Court Order"* means (a) each Financing Order, as such order is amended and in effect from time to time in accordance with this Agreement, (b) any other order entered by the Bankruptcy Court regarding, relating to or impacting (i) any rights or remedies of any Secured Party, (ii) the Credit Documents (including the Loan Parties' obligations thereunder), (iii) the Collateral, any Liens thereon or any DIP Superpriority Claims (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or DIP Superpriority Claims), (iv) use of cash collateral, (v) debtor-in-possession financing, (vi) adequate protection or otherwise relating to any of the Prepetition Obligations, (vii) any plan of reorganization (it being understood that any Acceptable Plan of Reorganization is in form and substance satisfactory to the Agent and the Required Lenders), or (viii) any transaction outside of the ordinary course of business with any Loan Party, in any such case, that (x) is in form and substance reasonably satisfactory to the Agent and the Required Lenders, (y) has not been vacated, reversed or stayed and (z) has not been amended or modified except as agreed in writing by Agent and the Required Lenders in their sole discretion, and (c) any other order entered by the Bankruptcy Court that (i) is in form and substance reasonably satisfactory to the Agent and the Required Lenders, (ii) has not been vacated, reversed or stayed and (iii) has not been amended or modified except in a manner reasonably satisfactory to the Agent and the Required Lenders; provided that any approval of the Required Lenders under clause (b) or (c) shall be deemed given if the Required Lenders have not notified the Borrower and the Agent otherwise within (2) two Business Days (for matters under clause (b) above) or (4) four Business Days (for matters under clause (c) above) after the Lenders receive from the Borrower a copy of the proposed order or proposed amendment or modification to an order, as applicable.

*"Approved Budget"* means the budget prepared by the Borrower and furnished to the Agent and the Lenders on or prior to the Closing Date and which, in the case of the initial Approved Budget attached hereto as Exhibit E, was approved by the Agent and all of the Lenders and their financial advisors, as the same may be updated, modified or supplemented from time to time with the approval of the Agent and the Required Lenders, as provided in Section 5.18.

*"Assignment And Assumption"* means an Assignment And Assumption entered into by a Lender and an Eligible Assignee, and accepted by the Agent, substantially in the form of Exhibit A or any other form approved by the Agent.

*"Attributable Indebtedness"* means, on any date, (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.

“*Authorized Officer*” means, with respect to any Person (other than a natural Person), any officer, partner, manager or other representative authorized to act on behalf of such Person and shall include, with respect to any Loan Party, those Persons duly designated as such in any incumbency certificates delivered to the Agent from time to time.

“*Availability Period*” means, in respect of the NM Term Loans, the period from and including the Closing Date to the Termination Date.

“*Avoidance Action*” shall mean only those causes of action of the Borrower or its bankruptcy estate that the Borrower asserts or may assert under Chapter 5 of Title 11, United States Code relating to any Designated Contract as defined in the Asset Purchase dated April 23, 2020, or any trade vendor that the purchaser of the Loan Parties’ assets will conduct business with following the closing of the sale of the Borrower’s business.

“*Avoidance Action Proceeds*” shall mean any proceeds obtained or that could be obtained as a result of a successful Avoidance Action.

“*Bank Products*” means any one or more of the following types of services or facilities extended to any of the Loan Parties by any Credit Party or Affiliate of a Credit Party: (a) Automated Clearing House (ACH) transactions and other similar money transfer services; (b) cash management, lockbox services and other similar services; (c) establishing and maintaining deposit accounts; (d) credit cards or stored value cards; and (e) other similar or related bank products and services.

“*Bankruptcy Code*” means the bankruptcy code of the United States of America codified in Title 11 of the United States Code, as from time to time amended or supplemented.

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

“*Base Rate*” means, for any day, the fluctuating rate per annum equal to the highest of (a) the Prime Rate for such day, (b) the Federal Funds Rate in effect on such day plus fifty (50) Basis Points, and (c) the one-month LIBOR Rate, determined on a daily basis, plus one hundred fifty (150) Basis Points. Any change in the Base Rate shall be effective on the opening of business on the day of such change.

“*Basis Point*” means one one-hundredth (.01) of one percent.

“*Borrower Chapter 11 Case*” has the meaning assigned to such term in the recitals hereto.

“*Budget Variance Report*” means a report, in form and detail reasonably acceptable to the Requisite Lenders, certified by an Authorized Officer, showing by line item: (a) Actual Collections, (b) Actual Disbursements and (c) Actual Capital Expenditures, in each case, for (i) the Prior Week, (ii) the immediately preceding Cumulative Four Week Period and (iii) the Cumulative Period. The Budget Variance Report shall include all variances, on a line-item basis, from amounts set forth for such Period in the Approved Budget, and shall include explanations for all material variances.

“*Business Day*” means (a) any day other than a Saturday or Sunday or a legal holiday on which commercial banks in either the State of New York or the State of Maryland are

authorized or required to be closed under the Laws of either the State of New York or the State of Maryland, and (b) if the applicable Business Day relates to any day for the determination of a LIBOR Rate, any day that satisfies the conditions of clause (a) above which is also a day on which dealings in Dollar deposits are conducted by and between banks in the London Interbank Eurodollar Market.

“*Calculation Date*” means each of the dates upon which the Applicable Margins are to be determined and adjusted, which adjustments shall be made quarterly on the date occurring five (5) Business Days after the date on which the Agent receives the quarterly Compliance Certificate in accordance with the provisions of this Agreement, or otherwise as required by the terms of this Agreement.

“*Capital Expenditures*” means expenditures (whether payable in cash or other property or accrued as a liability) in respect of the purchase or other acquisition of any fixed or capital asset (excluding maintenance charges which are properly charged to current operations), including, without limitation, the entering into of a Capital Lease.

“*Capital Lease*” means, with respect to any Person, any lease of property for which the related lease obligations have been or should be, in accordance with GAAP, capitalized on the balance sheet of such Person.

“*Capital Stock*” means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership interests, and (e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person.

“*Carve-Out*” shall have the meaning ascribed thereto in the Interim Financing Order.

“*Carve-Out Trigger*” shall have the meaning ascribed thereto in the Interim Financing Order.

“*Cash Balance*” means, on any Business Day, (a) the collected balance of total cash held by the Borrower and its Subsidiaries, including only those deposited funds that have cleared bank processing, less (b) outstanding payments made by check, debit and wire that have been sent to the payee but not yet cleared bank processing.

“*Cash Equivalents*” means (a) securities issued or directly and fully guaranteed or insured by the United States Government or any agency or instrumentality thereof having maturities of not more than one year from the date of acquisition, (b) time deposits, certificates of deposit and Eurodollar time deposits with maturities of not more than six months from the date of acquisition, bankers’ acceptances with maturities not exceeding six months from the date of acquisition and overnight bank deposits, in each case with the Agent or any Lender or with any domestic commercial bank having capital and surplus in excess of Five Hundred Million Dollars (\$500,000,000), (c) repurchase obligations with a term of not more than thirty (30) days for underlying securities of any of the types described in clause (a) or (b) and entered into with any bank meeting the qualifications specified in clause (b) above, (d) commercial paper maturing in one hundred eighty (180) days or less rated not lower than A-1 or A-2 by Standard & Poor’s Ratings Group or P-1 or P-2 by Moody’s Investors Service, Inc. on the date of acquisition, and (e) interests

in pooled investment funds (including mutual funds and money market funds) the assets of which are invested in investments referred to in items (a) through (d) above.

“*Cash Inflows*” means, for any given Week, the amount of Actual Collections in cash for such Week.

“*Cash Outflows*” means, for any given Week, the amount of Actual Disbursements in cash of the Loan Parties for such Week.

“*Casualty Event*” means any loss of or damage to, or any condemnation or other taking of, any of the Collateral for which any Loan Party receives insurance proceeds, or proceeds of a condemnation award or other compensation.

“*CEA*” means the Commodity Exchange Act (7 U.S.C. §1, *et seq.*), as amended from time to time, and any successor statute.

“*CFTC*” means the Commodity Futures Trading Commission.

“*Change in Control*” means an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, of fifty percent (50%) or more of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right),

(b) during any period of twenty-four (24) consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who are either members of the Ratner Family or were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body, or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body (excluding, in the case of both clause (ii) and clause (iii), any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors), or

(c) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of the Borrower, or control over

the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis (and taking into account all such securities that such Person or group has the right to acquire pursuant to any option right) representing fifty percent (50%) or more of the combined voting power of such securities.

(d) notwithstanding the foregoing to the contrary, the transfer of Capital Stock of the Borrower to a member of the Ratner Family shall not constitute a “Change of Control.”

“*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 or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“*Chapter 11 Cases*” has the meaning assigned to such term in the recitals hereto.

“*Closing*” means the execution and delivery of this Agreement by the parties hereto.

“*Closing Date*” means the first date upon which the Interim Financing Order shall have been entered and all other conditions precedent to funding shall have been satisfied or waived.

“*Code*” means the Internal Revenue Code of 1986, as the same may be amended or supplemented from time to time, and any successor statute of similar import, and the rules and regulations thereunder, as from time to time in effect.

“*Collateral*” means all of the tangible and intangible assets and real and personal property of the Loan Parties which is pledged from time to time to the Credit Parties in accordance with the Security Documents to secure the Obligations.

“*Collateral Agreement*” means the Collateral Agreement of even date herewith between the Borrower, the Control Custodian, and the Agent, as such Agreement may be amended or replaced from time to time.

“*Collateral Information Certificate*” means the Collateral Information Certificate of even date herewith prepared, executed and delivered by an Authorized Officer of the Borrower.

“*Commercial Account*” means the commercial checking account maintained with the Agent by the Borrower and which may be utilized as the means of advancing funds under the Loans.

“*Commitment Percentages*” means, with respect to any Lender, such Lender’s NM Term Loan Commitment percentage and Roll-Up Loan Commitment percentage, and with respect



to all Lenders, all of the NM Term Loan Commitment percentages, and all of the Roll-Up Loan Commitment percentages.

“*Commitments*” means, with respect to any Lender, such Lender’s Term Loan Commitment, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01.C or in the Assignment And Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

“*Compliance Certificate*” means a certificate provided by the Borrower in accordance with the requirements of Subsection 5.08.4 of this Agreement in form and substance as Exhibit B attached hereto.

“*Consolidated EBITDA*” means for any period, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to Consolidated Net Income for such period plus (a) the following (without duplication) to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges for such period, (ii) the provision for Federal, state, local and foreign income taxes payable by the Borrower and its Subsidiaries for such period, (iii) depreciation and amortization expense for such period, (iv) other non-recurring expenses of the Borrower and its Subsidiaries reducing such Consolidated Net Income which do not represent a cash item in such period or any future period, (v) non-cash losses of the Borrower and its Subsidiaries incurred in the sale of equipment, (vi) adjustments for losses attributable to entities in which the Borrower and its Subsidiaries have a non-controlling interest and (vii) extraordinary losses, and minus (b) the following (without duplication) to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits of the Borrower and its Subsidiaries for such period, (ii) all non-cash items increasing Consolidated Net Income for such period, (iii) adjustments for income attributable to entities in which the Borrower and its Subsidiaries have a non-controlling interest, and (iv) extraordinary gains.

“*Consolidated EBITDAR*” means for any period, Consolidated EBITDA plus the consolidated lease expense for the Borrower and its Subsidiaries.

“*Consolidated Excess Cash Flow*” means for any period the amount equal to the Consolidated EBITDAR for such period minus the Consolidated Fixed Charges for such period.

“*Consolidated Fixed Charge Coverage Ratio*” means the ratio for the four (4) consecutive Fiscal Quarters most recently ended prior to any date of determination of (a) Consolidated EBITDAR for such period to (b) Consolidated Fixed Charges for such period.

“*Consolidated Fixed Charges*” means for any period of determination for the Borrower and its Subsidiaries determined on a consolidated basis: the sum of (a) Consolidated Interest Charges, (b) scheduled principal payments upon Consolidated Funded Indebtedness (including the principal components of Capital Lease payments), (c) Restricted Payments paid by the Borrower during such period, (d) lease expense, (e) tax expense, and (f) Earn Out Payments paid during such period by the Borrower or its Subsidiaries which are not required by GAAP to be included in the consolidated income statement of the Borrower and its Subsidiaries. The following shall not be included in the definition of Consolidated Fixed Charges: (i) Mandatory Prepayments, and (ii) voluntary prepayments upon Consolidated Funded Indebtedness.

“*Consolidated Forecast*” has the meaning set forth in Subsection 5.18.3.

*“Consolidated Funded Indebtedness”* means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including the Obligations owing by the Borrower with respect to the Loans) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under letters of credit (including standby and commercial), (d) all direct obligations arising under bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (e) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business), (f) Attributable Indebtedness in respect of Capital Leases and Synthetic Lease Obligations, (g) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (f) above of Persons other than the Borrower or any Subsidiary, and (h) all Indebtedness of the types referred to in clauses (a) through (g) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Borrower or a Subsidiary of the Borrower is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Borrower or such Subsidiary.

*“Consolidated Interest Charges”* means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the sum of (a) all interest expense (for purposes of clarity, interest expense is not reduced by interest income), premium payments, debt discount, fees, charges and related expenses of the Borrower and its Subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, and (b) the portion of rent expense of the Borrower and its Subsidiaries with respect to such period under Capital Leases that is treated as interest in accordance with GAAP.

*“Consolidated Leverage Ratio”* means, as of any date of determination, the ratio of (a) (i) Consolidated Funded Indebtedness as of the date of determination, excluding, to the extent of the market value of the Securities Collateral as evidenced by the most recent statement from Raymond James at the time of calculation, any direct obligations under letters of credit, to (b) Consolidated EBITDA for the four (4) Fiscal Quarter period most recently ended prior to such date of determination.

*“Consolidated Net Income”* means, for any period, for the Borrower and its Subsidiaries on a consolidated basis, the income of the Borrower and its Subsidiaries (including adjustments for losses and income attributable to entities in which the Borrower and its Subsidiaries have a non-controlling interest), for that period, determined in accordance with GAAP. As an example and for purposes of clarity, in the Borrower’s 2016 audited financial statements the “Consolidated Net Income” is shown in the “Consolidated Statements Of Income” in the line item titled “Income Before Noncontrolling Interests”.

*“Consolidated Tangible Net Worth”* means, as of any date of determination, for the Borrower and its Subsidiaries on a consolidated basis, an amount equal to the Shareholder’s Equity of the Borrower and its Subsidiaries on that date, plus unsecured Indebtedness owed to Related Parties which is subordinated to the Obligations pursuant to a writing in a form acceptable to Agent, minus goodwill, and minus the amount outstanding under the Shareholder Distribution Loans.

*“Contamination”* means the presence of any Hazardous Substance at any real property owned or leased by any Loan Party which may require investigation, clean-up or remediation under any Environmental Law.



“*Control*” means 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. “Controlling” and “Controlled” have meanings correlative thereto.

“*Control Custodian*” means James Pittleman, or such other Person agreed to by the Borrower and Agent that is or becomes bound to hold certificates evidencing non-voting Capital Stock in the Borrower on behalf of the Agent pursuant to the terms of the Collateral Agreement.

“*Covered Entity*” means: (a) the Borrower, the Borrower’s Subsidiaries, any of the Guarantors and any pledgors of Collateral; and (b) each Person that, directly or indirectly, is in Control of a Person described in clause (a) above.

“*Credit Documents*” means collectively, this Agreement, the Notes, the Guaranty Agreements, the Security Documents, and all agreements, instruments and documents evidencing or securing the Obligations, including without limitation each document listed as a “Credit Document” on a Closing Index dated as of the Closing Date, and all amendments and modifications thereto.

“*Credit Parties*” means the Agent and the Lenders, and their respective successors and assigns as permitted by the terms of this Agreement.

“*Credit Party Expenses*” means, without duplication (a) costs and expenses incurred by the Agent and its Affiliates, including the reasonable fees, charges, and disbursements of counsel for the Agent arising out of or relating to this Agreement, any of the other Credit Documents or the Obligations, the syndication of the credit facilities provided for herein, or otherwise in connection with such credit facilities, (b) all costs and reimbursements required to be paid by the Borrower to the Agent by the terms of the Credit Documents, (c) all costs and expenses incurred by the Agent relating to the Platform or to any other dedicated agency web page on the internet to distribute to the Lenders and to other investors or potential investors any required documentation and financial information regarding the Credit Documents and the Loans, (d) taxes and insurance premiums advanced or otherwise paid by the Agent or any other Credit Party in connection with the Collateral or on behalf of the Borrower, (e) filing and recording costs, title insurance premiums, environmental and consulting fees, audit fees, search fees, appraisal fees, and other reasonable and substantiated expenses paid or incurred by the Agent or any other Credit Party, (f) reasonable costs and expenses incurred by the Agent in the collection of the accounts (with or without the institution of legal action), or to enforce any provision of this Agreement or any other Credit Document on behalf of the Credit Parties, or in gaining possession of, maintaining, handling, evaluating, preserving, storing, shipping, selling, preparing for sale and/or advertising to sell or foreclose upon the Securities Collateral or the Collateral or any other property of any of the Loan Parties whether or not a sale is consummated, (g) reasonable costs and expenses of litigation incurred by the Credit Parties, including reasonable attorney’s fees, in enforcing or defending this Agreement or any portion hereof or any other Credit Document, or in collecting any of the Obligations after the occurrence and during the continuance of any Event of Default, (h) reasonable attorneys’ fees and expenses incurred by the Agent in obtaining advice or the services of its attorneys with respect to the structuring, drafting, negotiating, reviewing, amending, terminating, waiving, enforcing or defending of this Agreement and the other Credit Documents, or any agreement or matter related hereto, whether or not litigation is instituted and (i) reasonable travel expenses of the Agent or its agents related to any of the foregoing.

“*Cumulative Period*” means the period from the Petition Date through the most recent Week ended

“*Cumulative Four Week Period*” means the four-week period through the Saturday of the most recent Week then ended, or if a four-week period has not then elapsed from the Petition Date, the Cumulative Period.

“*Debtor Relief Laws*” means the Bankruptcy Code of the United States of America, and 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.

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

“*Default Rate*” means (a) with respect to the NM Term Loans, two hundred (200) Basis Points per annum or (b) with respect to the Roll-Up Loans, the Adjusted Base Rate plus two hundred (200) Basis Points per annum.

“*Defaulting Lender*” means, subject to Section 2.14, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Agent or any Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (b) has notified the Borrower or the Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), and/or (c) has failed, within three Business Days after written request by the Agent or the Borrower, to confirm in writing to the Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has (i) become the subject of a proceeding under any Debtor Relief Law, or (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 a 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. Any determination by the Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (c) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.14) upon delivery of written notice of such determination to the Borrower and each Lender.

“*Disposition*” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any real or personal property by any Loan Party or any Subsidiary of a Loan Party (other than the sale or lease of Inventory in the ordinary course of business), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“*DIP Superpriority Claims*” has the meaning set forth in Section 2.18.

“*Dollar,*” “*Dollars,*” “*U.S. Dollars*” and the symbol “*\$*” mean lawful money of the United States of America.

“*Domestic Subsidiary*” means any Subsidiary that is organized and existing under the laws of the United States or any state thereof or under the laws of the District of Columbia.

“*Earn Out Payments*” means payments made to the management of a company or Persons that have sold their equity interest in a company, which payments are contingent on the achievement of certain performance criteria.

“*Eligible Assignee*” means: (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than those Persons expressly excluded below) approved (each such approval not to be unreasonably withheld or delayed) by (i) the Agent and (ii) unless either a Default or Event of Default has occurred and is continuing, the Borrower; provided that notwithstanding the foregoing, the definition of “*Eligible Assignee*” shall not include (A) any Defaulting Lender or a Subsidiary thereof, (B) any natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person), or (C) any Loan Party or any Affiliate or Subsidiary of a Loan Party. The Borrower shall be deemed to have approved any proposed assignee unless the Borrower objects to such proposed assignee by written notice to the Agent within five (5) Business Days after having received notice of the proposal of such assignee.

“*Environmental Laws*” means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“*Environmental Liability*” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (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.

“*Equity Interest*” means with respect to any Person, the shares of Capital Stock of (or other ownership or profit interests in) such Person, 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, 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 other ownership or

profit interests in such Person, whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“*Equity Issuance*” means any issuance by any Loan Party to any Person which is not a Loan Party or by any Foreign Subsidiary of a Loan Party which is not a Loan Party of any Equity Interests.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as the same may be amended or supplemented from time to time.

“*ERISA Affiliate*” means any trade or business (whether or not incorporated) under common Control with the Loan Parties 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 (a) a Reportable Event with respect to a Pension Plan, (b) a withdrawal by a 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) a complete or partial withdrawal by a Loan Party or any ERISA Affiliate from a Multiemployer Plan or 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 Section 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 which 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 a Loan Party or any ERISA Affiliate.

“*Event of Default*” has the meaning given to such term in Article 7 hereof of this Agreement.

“*Excluded Stock*” means the Capital Stock of any Foreign Subsidiary to the extent such Capital Stock represents proportionate ownership interests in such Foreign Subsidiary which are in excess of sixty-five percent (65%) of the total ownership interests in such Foreign Subsidiary, or such greater percentage that as a result of any Change In Law after the Closing Date, would not result in material adverse tax consequences to the Borrower.

“*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 a Loan or Commitment pursuant to a Law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.10), or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.11, 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 Subsection 2.09.6; and (d) any U.S. federal withholding Taxes imposed under FATCA.

*"Extraordinary Receipts"* means any cash or non-cash payments or consideration received by any Loan Party or its Subsidiaries which are (a) proceeds of a Casualty Event in excess of One Million Dollars (\$1,000,000.00) arising from such Casualty Event which are not utilized by such Loan Party or such Subsidiary for the repair or replacement of the asset that is the subject of such Casualty Event to the extent permitted by the terms of Section 5.02, (b) proceeds of a Disposition in excess of One Million Dollars (\$1,000,000.00) arising from any such Disposition or series of Dispositions of the Loan Parties, (c) proceeds arising from the issuance by any Loan Party or its Subsidiaries of any debt obligations, (d) proceeds arising from any Equity Issuances, (e) proceeds arising from any judgments, settlements or other consideration of any kind arising from any claims or causes of action (excluding the collection of Accounts), (f) purchase price adjustments received under any purchase agreements in excess of One Million Dollars (\$1,000,000.00), (g) pension plan reversions in excess of One Million Dollars (\$1,000,000.00), (h) tax refunds, and (i) indemnity payments (excluding payments that reimburse any Loan Party or its Subsidiaries for payments previously made to third parties).

*"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) and any current or future regulations or official interpretations thereof.

*"Federal Funds Rate"* means, for any day, the rate per annum, (rounded, if necessary, to the next greater 1/100 of 1%) determined (which determination shall be in good faith, conclusive and binding, absent manifest error) by the Agent to be equal to the weighted average of the rates on overnight Federal funds transactions with member banks of the Federal Reserve System arranged by Federal funds brokers 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, 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, the Federal Funds Rate for such day shall be the average rate charged to the Agent (in its individual capacity) on such day on such transactions as determined by the Agent (which determination shall be in good faith, conclusive and binding, absent manifest error).

*"Federal Reserve Board"* means the Board of Governors of the United States Federal Reserve System as constituted from time to time.

*"Final Financing Order"* has the meaning specified in Section 4.03.1.

*"Financing Orders"* means, collectively, the Interim Financing Order and the Final Financing Order.

*"Fiscal Quarter"* means each three (3) month fiscal period of the Borrower beginning on the first (1st) day of each consecutive January, April, July and October during the term of this Agreement.

*"Fiscal Year"* means each twelve (12) month fiscal period of the Borrower which is based on a fifty-two (52) week cycle that ends on the last Saturday in September and begins the



following day, except for one (1) year approximately every seven (7) years which has fifty-three (53) weeks in that Fiscal Year. The Borrower's current Fiscal Year ends on September 26, 2020.

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

*"Foreign Subsidiary"* means any Subsidiary that is not a Domestic Subsidiary.

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

*"GAAP"* means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be recognized by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination, consistently applied.

*"Governing State"* means the Commonwealth of Virginia.

*"Governmental Authority"* means the government of the United States of America 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 entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

*"Guarantors"* means, collectively, Ratner Companies, L.C. , Cielo #3119, L.L.C. and any other now existing or hereafter created Subsidiary of the Borrower.

*"Guaranty Agreements"* mean each of the guaranty agreements of the Guarantors guaranteeing the repayment and performance of the Obligations.

*"Guaranty Obligation"* or *"Guarantee"* (or *"guaranty"* or *"guarantee"*) means any obligation, direct or indirect, by which a Person undertakes to guaranty, assume or remain liable for the payment of another Person's obligations, including but not limited to (a) endorsements of negotiable instruments, (b) discounts with recourse, (c) agreements to pay upon a second Person's failure to pay, (d) agreements to maintain the capital, working capital solvency or general financial condition of a second Person, and (e) agreements for the purchase or other acquisition of products, materials, supplies or services, if in any case payment therefor is to be made regardless of the nondelivery of such products, materials or supplies or the non-furnishing of such services.

*"Hazardous Materials"* means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“*Indebtedness*” means, as to any Person at a particular time, 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), bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (c) net obligations of such Person under any Swap Agreement, (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 and, in each case, not past due for more than ninety (90) 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) obligations under Capital Leases and Synthetic Lease Obligations, (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person, valued, in the case of 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 of the foregoing. For purposes of this definition, the Indebtedness of any Person shall include the Indebtedness 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 venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

“*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 Credit Document, and (b) to the extent not otherwise described in clause (a), Other Taxes.

“*Indemnitee*” has the meaning provided to such term in Section 10.05 of this Agreement.

“*Information*” means all information received from any Loan Party relating to the Loan Parties or any of their respective businesses, other than any such information that is available to the Credit Parties on a nonconfidential basis prior to disclosure by the Loan Parties, provided that, in the case of information received from the Loan Parties after the date hereof, such information is clearly identified at the time of delivery as confidential.

“*Initial Weekly Budget Period*” has the meaning set forth in Section 5.18.1.

“*Insolvency Proceeding*” means, with respect to any referenced Person, any case or proceeding commenced by or against such Person, under any provision of the Bankruptcy Code or under any other Debtor Relief Laws.

“*Interest Payment Date*” means (a) with respect to any Adjusted Base Rate Borrowing, the first Business Day of each consecutive month and the Termination Date, and (b) with respect to any LIBOR Borrowing, the last day of the Interest Period applicable to such Loan and the Termination Date.

*“Interest Period”* means, with respect to any LIBOR Borrowing, the period commencing on the date of such LIBOR Borrowing and ending on the numerically corresponding day in the calendar month that is one (1), two (2), or three (3) months thereafter, as the Borrower may elect, provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day, unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day, (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period, and (c) the Borrower may not select any Interest Period which would end after the Scheduled Termination Date. For purposes hereof, the date of a LIBOR Borrowing initially shall be the date on which such LIBOR Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such LIBOR Borrowing.

*“Interim Financing Order”* has the meaning specified in Section 4.01.7.

*“Interim NM Availability Amount”* means the lesser of (a) \$3,500,000 and (b) such amount of NM Term Loans authorized to be borrowed by the Borrower pursuant to the terms of the Interim Financing Order

*“Investment”* means, as to any referenced Person, any direct or indirect acquisition or investment by such Person, including (a) the purchase or other acquisition of Capital Stock or other securities of another Person, (b) a loan, advance or capital contribution to, financing of, guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person, (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit, (d) the repurchase of any franchise, franchise right or any assets or liabilities of any franchise, (e) entering into any agreement which obligates the Person to provide cash or other funding for expenditures, operating losses or for the performance of other obligations of any kind whatsoever of another Person, or (f) any other investment in securities, deposits, or the obligations of other Persons. 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.

*“Law”* means any law (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, release, ruling, order, injunction, writ, decree or award of any Governmental Authority.

*“Lenders”* means collectively the Persons listed on Schedule 1.01.C hereto that have executed this Agreement as a “Lender” and any other Person that hereafter shall become party hereto as a “Lender” pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto as a “Lender” pursuant to an Assignment and Assumption.

*“LIBOR Borrowing”* means each unpaid principal balance of a Loan which accrues interest at the Adjusted LIBOR Rate.

*“LIBOR Rate”* means, for any LIBOR Borrowing for any Interest Period the rate per annum (rounded upwards, if necessary, to the nearest 1/16<sup>th</sup> of 1%) obtained by dividing (a) the rate fixed by the ICE Benchmark Association (or any successor thereof if the ICE Benchmark Association is no longer making a London Interbank Offered Rate available) for United States Dollar deposits in the London Interbank Eurodollar Market, for a term comparable to such Interest



Period, as determined by the Agent from any broker, quoting service, or commonly available source utilized by the Agent as a basis for such quotations, at approximately 11:00 a.m. London, England time (or as soon thereafter as practicable) two (2) Business Days prior to the first day of such Interest Period, by (b) a percentage equal to one hundred percent (100%) minus the stated maximum rate of all reserves required to be maintained against “Eurocurrency Liabilities” as specified in Regulation D (or against any other category of liabilities which includes deposits by reference to which the interest rate on LIBOR Rate loans is determined or any category of extensions of credit or other assets which includes loans by a non-United States office of a bank to United States residents) on such date to any member bank of the Federal Reserve System.

“*Lien*” means any mortgage, deed of trust, pledge, lien, security interest, charge or other encumbrance or security arrangement of any nature whatsoever, whether voluntarily or involuntarily given, including but not limited to any conditional sale or title retention arrangement, and any assignment, deposit arrangement or lease intended as, or having the effect of, security and any filed financing statement or other notice of any of the foregoing (whether or not a lien or other encumbrance is created or exists at the time of the filing).

“*Loan Parties*” means, collectively, the Borrower and the Guarantors (including Persons that become Guarantors after the Closing Date).

“*Loans*” means the Term Loans.

“*DIP Agent*” means HC Salon Holdings, Inc. and its successors and assigns.

“*Management Joint Venture*” means the joint venture between the Borrower and Bubbles, Inc., with respect to the management of “Bubbles” salons as more fully described in that certain Joint Venture Agreement dated September 12, 1991, and all other instruments and agreements executed and delivered in connection therewith, as any of the same may be amended, supplemented or modified from time to time.

“*Mandatory Prepayments*” has the meaning provided to such term in Subsection 2.03.1 of this Agreement.

“*Margin Regulations*” means Regulation T, U or X as promulgated by the Federal Reserve Board, as amended from time to time.

“*Material Adverse Change*” means any set of circumstances or events which (a) has or could reasonably be expected to have a material adverse effect upon the validity or enforceability of this Agreement or any of the other Credit Documents, (b) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition or results of operations of the Borrower and the other Loan Parties, taken as a whole, (c) materially impairs or could reasonably be expected to impair materially the ability of the Borrower and the other Loan Parties, taken as a whole, to pay and perform the Obligations, (d) materially impairs or could reasonably be expected to impair materially the ability of the Borrower and the other Loan Parties, taken as a whole, to duly and punctually pay their Indebtedness, or (e) materially impairs or could reasonably be expected to impair materially the ability of the Credit Parties to enforce their remedies against the Loan Parties as authorized by the terms of the Credit Documents or pursuant to applicable Law. Notwithstanding the foregoing, (i) the filing of the Chapter 11 Cases (and any defaults under pre-petition agreements, so long as the exercise of remedies as a result of such defaults are stayed under the Bankruptcy Code or such agreements are voided or invalidated by the Bankruptcy Court) and (ii) the existence of any claim or liability that is Pre-Petition, unsecured and

junior in priority to the Obligations (each of the foregoing clauses (i) and (ii), collectively, the “*Chapter 11 Events and Circumstances*”), will each not be deemed to be a Material Adverse Change.

“*Minimum Borrowing Amount*” means Two Million Dollars (\$2,000,000.00) for LIBOR Borrowings with minimum increments of Five Hundred Thousand Dollars (\$500,000.00).

“*Multiemployer Plan*” means any employee benefit plan which is a “multiemployer plan” within the meaning of Section 4001(a)(3) of ERISA and to which any Loan Party or any member of the ERISA Group is then making or accruing an obligation to make contributions or, within the preceding five (5) plan years, has made or had an obligation to make such contributions.

“*Net Available Proceeds*” means any cash payments, and the fair market cash value of any non-cash consideration, received by any Loan Party or its Subsidiaries directly or indirectly in connection with or from any transaction, event, condition or occurrence which generates or results in any Extraordinary Receipts, net of (a) the amount of any legal, title, accounting, investment banking and recording tax expenses, commissions and other reasonable and necessary fees and expenses payable by any Loan Party or its Subsidiaries in connection with the subject transaction, (b) any foreign or U.S. federal, state and local income or other taxes estimated to be payable by any Loan Party or its Subsidiaries (or their stockholders) as a result of such transaction, and (c) any repayments (including reasonable expenses in connection therewith) of Indebtedness to the extent that (x) such Indebtedness is secured by a Lien on an asset that is the subject of the transaction, and (y) the transferee of (or holder of a Lien on) such asset requires that such Indebtedness be repaid as a condition to the subject transaction.

“*NM Commitments*” means, with respect to any Lender, the commitment of such Lender to make NM Term Loans to the Borrower pursuant to Section 2.01 in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 1.01(c) under the caption “NM Commitment,” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted in accordance with Section 2.01 or otherwise in accordance with this Agreement.

“*NM Lender*” means each Lender with a NM Commitment and/or that holds a NM Term Loan.

“*NM Term Loan Commitment Percentage*” means, as to any NM Lender, the percentage initially set forth as such on Schedule 1.01.C and thereafter on any relevant Assignment and Assumption.

“*NM Term Loans*” means the term loans made to the Borrower pursuant to Section 2.01.

“*NM Term Loan Obligations*” means (a) the due and punctual payment by the Borrower of (i) the unpaid principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the NM Term Loans made to the Borrower under this Agreement, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, and (ii) all other monetary obligations of the Borrower owed under or pursuant to this Agreement and each other Credit Document with respect to the NM Term Loans

and/or NM Commitments or otherwise owing, due or payable to a NM Lender (in its capacity as such), including obligations to pay fees, expense reimbursement obligations and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), (b) the due and punctual payment of all obligations of each other Loan Party under or pursuant to each of the Credit Documents with respect to the NM Term Loans and/or NM Commitments or otherwise owing, due or payable to a NM Lender (in its capacity as such) and (c) all other Obligations that do not constitute Roll-Up Loan Obligations.

“*NM Term Loan Note*” means a promissory note of the Borrower evidencing NM Term Loans substantially in the form of Exhibit C-1.

“*NM Rate*” has the meaning specified in Section 2.04.

“*Non-Consenting Lender*” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all affected Lenders in accordance with the terms of Section 10.03, and (b) has been approved by the Required Lenders.

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

“*Notes*” means, collectively, the Roll-Up Loan Notes and NM Term Loan Notes, each in the form of Exhibit C-1 and Exhibit C-2 attached hereto, together with all amendments and replacements thereof.

“*Obligations*” means, collectively, the obligations of the Borrower or of any other Loan Party to pay to the Credit Parties or to perform for the benefit of the Credit Parties, DIP Agent or any of their Affiliates (a) sums due arising out of or in connection with the Loans or otherwise pursuant to the terms of the Notes, and the other Credit Documents, including without limitation all unpaid principal, accrued interest (including interest that accrued during any Insolvency Proceeding of the Borrower), fees and expenses, (b) indemnification and reimbursement duties and obligations owed in accordance with the terms of any of the Credit Documents, (c) Credit Party Expenses, (d) reimbursement, repayment or indemnity obligations owed by the Borrower or any of the other Loan Parties to any Credit Party or to an Affiliate of a Credit Party arising out of or related to Bank Products, (e) payments owed to DIP Agent in accordance with this Agreement, (f) any indebtedness or liability which may exist or arise as a result of any payment made by or for the benefit of any of the Credit Parties being avoided or set aside for any reason including any payment being avoided as a preference under Sections 547 and 550 of the Bankruptcy Code, as amended, or under any state law governing insolvency or creditors’ rights, and (g) any interest on any portion of the Loans that accrues after the commencement of any Insolvency Proceeding.

“*OFAC*” means the U.S. Department of Treasury’s Office of Foreign Asset Control.

“*Organization 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), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement, 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 and any agreement,

instrument, filing or notice with respect thereto filed in connection with its 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 entity.

“*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 security interest under, engaged in any other transaction pursuant to or enforced any Credit Document, or sold or assigned an interest in any Loan or Credit Document).

“*Other Taxes*” means all present or future stamp, court, 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 security interest under, or otherwise with respect to, any Credit Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.10).

“*PBGC*” means the Pension Benefit Guaranty Corporation.

“*Participant*” has the meaning provided to such term in Section 10.13 of this Agreement.

“*Participant Register*” has the meaning provided to such term in Section 10.13 of this Agreement.

“*Participation*” means an undivided participation interest sold by a Lender, in accordance with the provisions of Section 10.13, in such Lender’s Commitments, Loans and rights and obligations under this Agreement and the other Credit Documents.

“*Party Chapter 11 Cases*” has the meaning assigned to such term in the recitals hereto.

“*Pension Plan*” means any “employee pension benefit plan” (as such 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 the Borrower or any ERISA Affiliate or to which the Borrower 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.

“*Permitted Encumbrances*” means collectively:

(a) Liens for taxes, assessments, governmental levies or similar charges incurred in the ordinary course of business and which are not yet due and payable, or if due and payable, (i) are being contested in good faith and by appropriate and lawful proceedings diligently conducted, but only so long as such proceedings could not subject any Credit Party to any civil or criminal penalties or liabilities, and (ii) for which such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made, and (iii) which shall be paid in accordance with the terms of any final non-appealable judgments or orders relating thereto within thirty (30) days after the entry of such judgments or orders,

(b) Pledges or deposits made in the ordinary course of business to secure payment of worker's compensation, or to participate in any fund in connection with worker's compensation, unemployment insurance, old-age pensions, other social security programs or similar program or to secure liability to insurance carriers under insurance or self -insurance agreements or arrangement,

(c) Liens of mechanics, materialmen, warehousemen, carriers, or other like Liens, securing obligations incurred in the ordinary course of business that are not yet due and payable and Liens of landlords securing obligations to pay lease payments that are not yet due and payable or in default, or if such Liens are due and payable, (i) are being contested in good faith and by appropriate and lawful proceedings diligently conducted, and (ii) for which such reserves or other appropriate provisions, if any, as required by GAAP shall have been made, and (iii) which shall be paid in accordance with the terms of any final non-appealable judgments or orders relating thereto within thirty (30) days after the entry of such judgments or orders,

(d) Pledges or deposits made in the ordinary course of business to secure performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, not in excess of the aggregate amounts due thereunder, or to secure statutory obligations, or surety, appeal, indemnity, performance or other similar bonds required in the ordinary course of business,

(e) (i) Encumbrances consisting of zoning restrictions, easements, rights-of-way, or other restrictions on the use of real property, (ii) defects in title to real property, and (iii) Liens, encumbrances and title defects affecting real property not known by the Borrower or a Subsidiary, as applicable, and not discoverable by a search of the public records, none of which materially impairs the use of such property,

(f) Liens created by or resulting from any litigation or legal proceedings which are currently being contested in good faith by appropriate and lawful proceedings diligently conducted and for which such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made and Liens arising out of judgments or orders for the payment of money which do not constitute an Event of Default hereunder,

(g) Other Liens incidental to the conduct of the Loan Parties' businesses or the ownership of their respective properties and assets which were not incurred in connection with the borrowing of money or the obtaining of advances or credit, and which do not in the aggregate materially detract from the value of the Loan Parties' properties or assets and or which do not materially impair the use thereof in the operation of the Loan Parties' business,

(h) Liens securing the Obligations, and

(i) Precautionary financing statements filed in connection with leases of equipment which pertain solely to such leased equipment.

*"Permitted Variance"* shall mean, with respect to any disbursement made by the Debtors pursuant to an Approved Budget, that the actual amount of such disbursement may be up to (but not greater than) 110% of the projected amount therefor set forth in such Approved Budget.

*"Person"* means any individual, corporation, partnership, limited liability company, association, joint-stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof, or any other entity.

“*Petition Date*” has the meaning assigned to such term in the recitals hereto.

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

“*Plan Confirmation Date*” has the meaning assigned to such term in Subsection 5.20.3.

“*Platform*” has the meaning provided by Section 10.27 of this Agreement.

“*Pledge Agreement*” means collectively (a) Pledge Agreement (Shares In Creative Hairdressers, Inc.) of even date herewith pursuant to which the Capital Stock in the Borrower has been pledged to the Agent as security for the Obligations, and (b) the Pledge Agreement (Subsidiaries) of even date herewith pursuant to which the Capital Stock in the Subsidiaries of the Borrower have been pledged to Agent as security for the Obligations, as such agreements may be hereafter amended.

“*Post-Trigger Carve-Out*” shall have the meaning ascribed thereto in the Interim Financing Order.

“*Prepetition First Lien Agent*” has the meaning assigned to such term in the recitals hereto.

“*Prepetition First Lien Credit Agreement*” has the meaning assigned to such term in the recitals hereto.

“*Prepetition First Lien Lenders*” has the meaning assigned to such term in the recitals hereto.

“*Prepetition First Lien Loans*” means any extension of credit made by Prepetition First Lien Lenders under the Prepetition First Lien Credit Agreement.

“*Prepetition First Lien Obligations*” shall mean the Indebtedness evidenced by the Prepetition First Lien Credit Agreement.

“*Prime Rate*” means the rate of interest per annum publicly announced from time to time by the Agent, in its sole discretion, as its prime lending rate of interest. Such announced rate bears no inference, implication, representation or warranty that such announced rate is charged to any particular customer or customers of Agent. The Agent’s prime lending rate of interest is but one of several interest rate bases used by the Agent. Changes in the applicable interest rate shall be made as of, and immediately upon the occurrence of, changes in the Agent’s prime rate.

“*Prior Week*” means, as of any date of determination, the immediately preceding week ended on a Saturday and commencing on the prior Sunday.

“*Professionals*” shall have the meaning ascribed thereto in the Interim Financing Order.

“*Prohibited Transaction*” shall mean any prohibited transaction as defined in Section 4975 of the Code or Section 406 of ERISA that is not exempt under Section 408 of ERISA



and for which neither an individual nor a class exemption has been issued by the United States Department of Labor.

“*Property*” means, any parcel of real property, whether owned in fee or leased, of any of the Loan Parties.

“*Ratner Family*” means, collectively, Dennis Ratner, Ann Ratner, Warren Ratner, Gary Ratner, Kelly Ratner, Lauren Ratner, lineal descendants of the above Persons and trusts for the sole benefit of any of the above.

“*Raymond James*” means Raymond James & Associates, Inc. and any successor or replacement institution serving as security intermediary, broker, issuer or that otherwise holds or has issued any of the Securities Collateral pledged to the Agent under the terms of the Securities Pledge Agreement.

“*Recipient*” means (a) the Agent and (b) the Lender, as applicable.

“*Register*” has the meaning given to such term in Section 10.09 of this Agreement.

“*Regulation D*” means certain regulations issued by the Federal Reserve Board generally known as Regulation D and entitled “Reserve Requirements of Depository Institutions,” codified at 12 CFR § 204, et seq., as amended and in effect from time to time.

“*Regulatory Change*” means any change after the Closing Date in the Laws of the United States, any state thereof, or any other Governmental Authority, or the adoption or making after such date, of any interpretations, changes in convention, directives or requests applying to a class of depository institutions, including any Lender, of or under any Laws of the United States, any state thereof, or any other Governmental Authority (whether or not any such interpretation, directive or request has the force of Law).

“*Related Parties*” means (a) with respect to the Borrower, the Persons set forth on Schedule 1.01.R attached hereto and all of the Borrower’s Affiliates, and (b) with respect to any Person other than the Borrower, such Person’s Affiliates and the partners, directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“*Related Lender*” means (a) with respect to any NM Lender, (i) any of its Affiliates holding Prepetition First Lien Loans on the date of this Agreement or any other applicable date of determination in connection with the transactions contemplated by Section 2.01 or 2.02 or (ii) if and to the extent that such NM Lender is acting as a “fronting lender” (or similar role) for any Person that is a Prepetition First Lien Lender, in accordance with the procedures separately agreed among the Agent and such NM Lender, such Prepetition First Lien Lender and any of its Affiliates, and (b) with respect to any Prepetition First Lien Lender, (i) any of its Affiliates holding Prepetition First Lien Loans on the date of this Agreement or any other applicable date of determination in connection with the transactions contemplated by Section 2.01 or 2.02 or (ii) any NM Lender acting as a “fronting lender” (or similar role) for such Prepetition First Lien Lender, in accordance with the procedures separately agreed among the Agent and such NM Lender.

“*Release Leverage Ratio*” means, as of any date of determination, the ratio of (a) the sum of Consolidated Funded Indebtedness, to (b) Consolidated EBITDA for the four (4) Fiscal Quarter period most recently ended prior to such date of determination.

“*Reportable Anti-Terrorism Event*” means that any Covered Entity becomes a Sanctioned Person, or is charged by indictment, criminal complaint or similar charging instrument, arraigned, or custodially detained in connection with any Anti-Terrorism Law or any predicate crime to any Anti-Terrorism Law, or has knowledge of facts or circumstances to the effect that it is reasonably likely that any aspect of its operations is in actual or probable violation of any Anti-Terrorism Laws.

“*Reportable Event*” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the thirty (30) day notice period has been waived.

“*Required Lenders*” means, at any time of determination, Lenders holding in the aggregate more than sixty-six and two-thirds percent (66⅔%) of the aggregate outstanding unpaid principal balances of the Loans, provided however, the portions of the unpaid principal balances of the Loans held or deemed held by any Defaulting Lenders shall be excluded for the purposes of making any determination of Required Lenders.

“*Restricted Payment*” means collectively, with respect to the Loan Parties and each of their Subsidiaries (a) any dividend or other payment or distribution, direct or indirect, on account of any Equity Interest in such Person now or hereafter outstanding, except a dividend or distribution payable solely in the same class or type of Equity Interest to the holders of that class or type, (b) any redemption, repurchase, conversion, exchange, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, by such Person of any Equity Interest in such Person now or hereafter outstanding, (c) any payment made by such Person to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire Equity Interests in such Person now or hereafter outstanding, or (d) any payment by such Person of any management, consulting or similar fees which are not payments in amounts comparable to sums paid in the marketplace by entities comparable to the payor for similar services to unrelated employees for services actually performed.

“*Restricted Subsidiary*” means any Subsidiary of the Borrower which is not (and is not required by the terms of this Agreement to be) a Guarantor.

“*Roll-Up Challenge*” means any liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including attorney costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any Indemnitee in any way relating to or arising out of or in connection with the design, development, negotiation, documentation, closing, execution or implementation of the transfer or designation of the Roll-Up Loans or the effect, operation, performance or enforcement of the provisions under the Credit Documents with regard to the Roll-Up Loans (including the receipt of payment in respect thereof).

“*Roll-Up Challenge Period*” means the “Challenge Period” as defined in the Interim Financing Order or Final Financing Order as in effect at the relevant time.

“*Roll-Up Loan Commitment Percentage*” means, as to any Roll-Up Lender, the percentage initially set forth as such on Schedule 1.01.C and thereafter on any relevant Assignment and Assumption.

“*Roll-Up Lenders*” means each Lender that holds a Roll-Up Loan.



“*Roll-Up Loan Obligations*” means (a) the due and punctual payment by the Borrower of (i) the unpaid principal of and interest (including interest accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Roll-Up Loans made to the Borrower under this Agreement, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise, and (ii) all other monetary obligations of the Borrower owed under or pursuant to this Agreement and each other Credit Document with respect to the Roll-Up Loans or otherwise owing, due or payable to a Roll-Up Lender (in its capacity as such), including obligations to pay fees, expense reimbursement obligations and indemnification obligations, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), and (b) the due and punctual payment of all obligations of each other Loan Party under or pursuant to each of the Credit Documents with respect to the Roll-Up Loans or otherwise owing, due or payable to a Roll-Up Lender (in its capacity as such).

“*Roll-Up Loans*” has the meaning set forth in Section 2.01(c).

“*Roll-Up Priority Provision*” means, subject to the Financing Orders, that the Roll-Up Loans (i) may be compromised under a plan of reorganization only by a class vote and (ii) may not be crammed down under a plan of reorganization pursuant to section 1129(b)(2)(A) of the Bankruptcy Code.

“*Roll-Up Loan Note*” means a promissory note of the Borrower evidencing Roll-Up Loans substantially in the form of Exhibit C-2.

“*Salon Store*” means an individual hair salon operated by the Borrower or one of its Subsidiaries.

“*Sanctioned Country*” means a country subject to a sanctions program maintained under any Anti-Terrorism Law.

“*Sanctioned Person*” means: (a) a Person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>, or as otherwise published from time to time or otherwise recognized as a specially designated, prohibited, or sanctioned Person under any Anti-Terrorism Laws; or (b) (i) an agency of the government of a Sanctioned Country, (ii) an organization controlled by a Sanctioned Country, or (iii) a Person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC or under any other Anti-Terrorism Law.

“*Scheduled Termination Date*” means June 30, 2020.

“*Security Agreement*” means the Security Agreement of even date herewith executed by the Loan Parties and the Agent.

“*Securities Collateral*” means, collectively, whether now owned or hereafter acquired or existing or wherever located, all of that investment property pledged to the Agent to secure the Obligations (as defined in the Securities Pledge Agreement), all of which investment property shall be unencumbered and marketable securities equity, and all cash and non-cash proceeds, substitutions and replacements of the foregoing.

“*Securities Collateral Documents*” means the Securities Pledge Agreement, Securities Control Agreement or other agreements, instruments, documents or filings pursuant to which the Loan Parties, from time to time, pledges or grants Liens for the benefit of the Credit Parties in or to any of Securities Collateral.

“*Securities Control Agreement*” means that Control Agreement dated effective as of [\_\_\_], 2020, by and among the Borrower, Raymond James and the Agent, as the same may be amended from time to time.

“*Secured Parties*” means, collectively, the Agent, the Lenders, each co-agent or sub-agent appointed by the Agent from time to time pursuant to this Agreement, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Security Documents.

“*Securities Pledge Agreement*” means that Pledge of Securities by the Borrower to the Agent dated effective as of [\_\_\_], 2020 to secure the Obligations (as defined therein) in accordance with the terms thereof, as the same may be amended from time to time.

“*Security Documents*” means, collectively, the Security Agreement, the Pledge Agreement and all other security agreements, pledges, mortgages, deeds of trust, control agreements, or other agreements, instruments, documents or filings pursuant to which any of the Loan Parties, from time to time, pledges or grants Liens for the benefit of the Credit Parties in or to any of the Collateral.

“*Shareholder Distribution Loans*” means distributions to shareholders of the Borrower which for accounting purposes are related to the Borrower’s Accumulated Adjustment Account and are classified as loans from the Borrower to the shareholders.

“*Shareholders’ Equity*” means, as of any date of determination, consolidated total shareholders’ equity, inclusive of noncontrolling interests, of the Borrower and its Subsidiaries as of that date determined in accordance with GAAP.

“*Solvent*” means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to pay its debts and other liabilities as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged or about to be engaged, as the case may be. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“*Subsidiary*” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent’s consolidated financial

statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than fifty percent (50%) of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held by the parent or one or more subsidiaries of the parent.

“*Swap*” means any “swap” as defined in Section 1a(47) of the CEA and regulations thereunder, other than (a) a swap entered into, or subject to the rules of, a board of trade designated as a contract market under Section 5 of the CEA, or (b) a commodity option entered into pursuant to CFTC Regulation 32.3(a).

“*Swap Agreement*” means any “Swap Agreement” as defined in §101(53B) of the Bankruptcy Code.

“*Swap Termination Value*” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include a Lender or any Affiliate of a Lender).

“*Synthetic Lease Obligation*” means the monetary obligation of a Person under (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).

“*Tax Distributions*” means quarterly distributions by the Borrower to its holders of Capital Stock in such amounts as are reasonably calculated to ensure that each holder of Capital Stock shall be able to pay estimated installments of the federal, state and local tax on the income derived by such holders of Capital Stock for such quarter from the holder’s ownership of Capital Stock in the Borrower. For the purposes of computing Tax Distributions, it shall be assumed that all income allocated to the holders of Capital Stock of the Borrower is taxable for estimated tax purposes by the appropriate federal, state and local taxing authorities at the highest individual marginal tax rates. The amount of the Tax Distributions shall be reduced by any amounts paid or required to be paid by the Borrower on behalf of any of its holders of Capital Stock to any taxing authorities.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“*Term Borrowing*” means a borrowing consisting of simultaneous NM Term Loans of the same Type made by each of the NM Lenders pursuant to Section 2.01.

“*Termination Date*” means the earliest of (a) the Scheduled Termination Date, (b) twenty-five (25) days after the entry of the Interim Financing Order, if the Final Financing Order has not been entered prior to the expiration of such period, (c) the substantial consummation (which

shall be no later than the “effective date” thereof) of a plan of reorganization that is confirmed pursuant to an order entered by the Bankruptcy Court, (d) the consummation of a sale of all or substantially all assets of the Loan Parties, and (e) the acceleration of the Loans and the termination of all NM Term Loan Commitments in accordance with this Agreement and the other Loan Documents.

“*Term Loan Commitment*” means, as to any Lender, the amount set forth as such on Schedule 1.01.C under the heading “NM Term Loan”, “Roll-Up Loan” or “Term Loan”, and thereafter on any relevant Assignment And Assumption, and “Term Loan Commitments” shall mean the aggregate Term Loan Commitments of all of the Lenders, which shall be in the amount of \$40,655,235.66.

“*Term Loans*” means collectively the NM Term Loans and Roll-Up Loans.

“*Term Principal Payment Date*” means the last Business Day of each consecutive Fiscal Quarter and the Termination Date. The first Term Principal Payment Date is the last Business Day of the Fiscal Quarter in which this Agreement is executed.

“*Type*” means, with respect to a Loan, its character as an Adjusted Base Rate or LIBOR Loan.

“*Threshold Amount*” means Two Hundred Fifty Thousand Dollars (\$250,000.00).

“*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*” or “*UCC*” means the Uniform Commercial Code as adopted and in effect from time to time in the Governing State.

“*Upfront Fee*” means an upfront fee paid to the account of each Lender in an amount equal to 2.0% of the aggregate NM Commitment of each Lender, such fee earned and due and payable on the Closing Date.

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

“*U.S. Borrower*” means any Borrower that is a U.S. Person.

“*U.S. Person*” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“*U.S. Tax Compliance Certificate*” has the meaning assigned to such term in Subsection 2.09.6.(b)(ii)(C) of this Agreement.

“*Voting Capital Stock*” means, as to the Borrower, the Capital Stock in the Borrower entitled to vote either in the election of directors or in other matters brought up at a meeting of shareholders of the Borrower.

“*Week*” means any seven day period commencing on a Sunday and ending on the immediately following Saturday.

Section 1.02. *Terms Generally.* The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (f) each reference to a time shall be a reference to the prevailing Eastern U.S. time, and (g) Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 1.03. *Accounting Principles.* Except as otherwise provided in this Agreement, all computations and determinations as to accounting or financial matters and all financial statements to be delivered pursuant to this Agreement shall be made and prepared in accordance with GAAP (including principles of consolidation where appropriate), and all accounting or financial terms shall have the meanings ascribed to such terms by GAAP. In the event GAAP changes after the date hereof in a manner that causes noncompliance with the covenants hereof, the parties hereto shall agree in good faith to modify the covenants and the related defined terms to compensate for such change in GAAP; provided, however, until any such modification has been agreed to in writing: (a) the covenants contained herein and the related terms shall continue to be calculated and determined based on GAAP as it existed prior to such change; and (b) the Borrower shall provide to the Agent financial statements and other documents required under this Agreement setting forth a reconciliation between calculations of such covenants made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to in this Agreement, including the financial covenants, shall be made, without giving effect to any election under Statement of Financial Accounting Standards 825-10 (or any other Financial Account Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Loan Party or any Subsidiary of any Loan Party at “fair value.”

## ARTICLE 2

### CREDIT FACILITIES

Section 2.01. *NM Term Loans.* Subject to the terms and applicable conditions set forth herein (including without limitation the conditions set forth in Article IV), each NM Lender agrees to make NM Term Loans to the Borrower during the Availability Period in an aggregate principal amount not to exceed such NM Lender’s NM Commitment; provided that (i) the aggregate

principal amount of NM Term Loans made prior to the entry of the Final Financing Order shall not exceed the Interim NM Availability Amount and (ii) if for any reason the full amount of any Lender's NM Term Loan Commitment is not fully drawn on the expiration of the Availability Period, the undrawn portion thereof shall automatically be cancelled and shall terminate immediately and without further action. Each Borrowing shall consist of NM Term Loans made simultaneously by the NM Lenders in accordance with their respective NM Commitments. Amounts borrowed under this Section 2.01 and repaid or prepaid may not be reborrowed. *Additional NM Lenders.* The NM Lenders with NM Commitments as of the Closing Date shall make reallocations of their respective NM Commitments, and, to the extent applicable, NM Term Loans, to allow for additional Prepetition First Lien Lenders having Prepetition First Lien Loans as of the date of the entry of the Final Financing Order (without giving effect to any Roll-Up Loans made on such date) to become parties to this Agreement as NM Lenders no later than the date of the entry of the Final Financing Order (which election to become a NM Lender may be exercised though a Related Lender of any such Prepetition First Lien Lender) (collectively, the "Additional NM Lenders").

NM Commitments and, to the extent applicable, NM Loans shall be reallocated and deemed assigned hereunder to the extent agreed to by, or in accordance with the procedures separately agreed to among, the Agent, the Borrower and the NM Lenders (provided that (x) each such reallocation shall be effective on the date of the entry of the Final Financing Order, (y) no Additional NM Lender's Applicable Percentage with respect to the NM Commitments and NM Term Loans shall exceed the percentage of Prepetition First Lien Loans held by such Additional NM Lender as of the date of the entry of the Final Financing Order (without giving effect to any Roll-up Loans made on such date) and (z) such allocations and assignments shall not reduce the aggregate amount of NM Commitment). The NM Lenders agree to make such payments, sales, assignments and other transactions among themselves (or through the Agent, its affiliates or another broker or agent engaged for any such purposes by any NM Lender) as are necessary to effect such reallocation, and for the avoidance of doubt, no reallocation shall be effective until each applicable NM Lender has made such payments, sales, assignments and other transactions.

Notwithstanding anything herein to the contrary, prior to any Person becoming a Lender or being allocated NM Loans and/or NM Commitments in connection with the reallocation set forth in this Section 2.01.1, the Agent shall have received and be reasonably satisfied with all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the USA PATRIOT ACT.

Section 2.02. *Roll-Up Loans.*

(i) On the Closing Date and without any further action of any Person, each NM Lender having a NM Commitment as of such date and/or Related Lender thereof shall be deemed to have made Roll-Up Loans hereunder with the proceeds thereof being applied to the Prepetition First Lien Obligations in respect of such NM Lenders' and Related Parties' then-outstanding Prepetition First Lien Loans.

(ii) On the date of the entry of the Final Financing Order and without any further action of any Person, the balance of the Prepetition First Lien Obligations outstanding as of such date shall be rolled up and Roll-Up Loans shall be deemed made hereunder in such amount by each of the Prepetition First Lien Lenders holding such Prepetition First Lien Obligations.



(iii) Until the latest of (x) the date of the entry of the Final Financing Order (y) the expiration of any Roll-Up Challenge Period without the timely commencement of any Roll-Up Challenge or (z) the exhaustion of any and all appeals in any adversary proceeding or contested matter asserting a Roll-Up Challenge, the Roll-Up Loans shall continue (A) to be guaranteed and secured by and entitled to the benefits of all Liens and security interests created and arising under the Security Documents (as defined in the Prepetition First Lien Credit Agreement as in effect on the date hereof), which Liens and security interests shall remain in full force and effect on a continuous basis, unimpaired, uninterrupted and undischarged, and having the same perfected status and priority, as if such loans had not been so designated and (B) in the event that a Roll-Up Challenge is successful, to be entitled to a pro rata share of any payment, distribution or recovery on account of the Prepetition First Lien Obligations as if the Roll-Up Loans had continued to be administered under the Prepetition First Lien Credit Agreement. The Agent shall, and each Roll-Up Lender authorizes the Agent to, promptly notify the Prepetition First Lien Agent or its successors as in such capacities thereunder, of the amount of each Roll-Up Lender's Roll-Up Loans, and the amount of Roll-Up Loans subject to a successful Roll-Up Challenge, so that the Prepetition First Lien Agent may update the register with respect to the loans under the Prepetition First Lien Credit Agreement to reflect the transactions described in this Section 2.02. For the avoidance of doubt, each Roll-Up Lender acknowledges and agrees that by accepting the benefits of this Agreement it shall be deemed to have agreed to all provisions hereof, including the duties and obligations of a Lender.

Notwithstanding anything to the contrary in the Credit Documents, the Roll-Up Loans shall have the benefit of the Roll-Up Priority Provision.

### Section 2.03. *Prepayments.*

2.03.1. *Mandatory Prepayments.* The Borrower shall have the obligation to pay, or cause to be paid, to the Agent for the accounts of the Lenders the Net Available Proceeds of any Extraordinary Receipts (such payments are herein referred to collectively as "Mandatory Prepayments") within one (1) Business Day of the receipt thereof by any Loan Party or any Subsidiary of any Loan Party. The provisions of this Subsection 2.03.1 shall not be deemed a waiver of or constitute the implied consent of the Credit Parties to any transactions which are either prohibited by the terms of the Credit Documents or which by the terms of any of the Credit Documents require the prior consent of any or all of the Credit Parties. The Mandatory Prepayments from Extraordinary Receipts described in clauses (a), (b) or (f) of the definition of Extraordinary Receipts in Section 1.01 hereof shall be applied first to the unpaid balances of the NM Term Loans, secondly to the unpaid balances of Roll-Up Loans, and finally to any other unpaid Obligations. Mandatory Prepayments made upon the Term Loans shall be applied in the inverse order of scheduled maturities.

2.03.2. *Voluntary Prepayments.* Subject to Section 2.03.1, the Borrower may, upon notice to the Agent, at any time or from time to time voluntarily prepay the Roll-Up Loans in whole or in part without premium or penalty; provided that (a) such notice must be received by the Agent not later than 11:00 a.m. (i) three (3) Business Days prior to any date of prepayment of LIBOR Borrowings, and (ii) on the date of prepayment of Adjusted Base Rate Borrowings; and (b) any voluntary prepayment of the Roll-Up Loans shall be in a principal amount of not less than Five Hundred Thousand Dollars (\$500,000.00). Each such notice shall specify the date and amount of such prepayment and, if LIBOR Borrowings are to be prepaid, the Interest Period(s) of such LIBOR Borrowings. The Agent will promptly notify each Roll-Up Lender of its receipt of each such notice, and of the amount of such Roll-Up Loan Commitment Percentage of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment

amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a LIBOR Borrowing shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Subsection 2.04.2. Each such prepayment shall be applied to the Roll-Up Loans in accordance with the Roll-Up Loan Commitment Percentages of the Roll-Up Lenders. Any voluntary prepayment shall be applied in the inverse order of scheduled maturities.

Section 2.04. *Interest Terms Applicable To The Loans.* Interest shall accrue upon the unpaid principal balances of the Loans until the Loans have been repaid in full (i) with respect to NM Term Loans, at a ten percent (10%) interest rate per annum (the “*NM Rate*”) and (ii) with respect to Roll-Up Loans, at the rate or rates described in the Prepetition First Lien Credit Agreement, as further described below in this Section 2.04. Interest shall be paid in arrears on the applicable Interest Payment Dates.

2.04.1. *Adjusted Base Rate for Roll-Up Loans.* Absent a timely election by the Borrower of a LIBOR Borrowing in accordance with Subsection 2.06.2 of this Agreement, the unpaid balances of the Roll-Up Loans, including any balances of any LIBOR Borrowings for which the applicable Interest Period has expired, shall be deemed automatically to bear interest at the Adjusted Base Rate. Changes in the Adjusted Base Rate (and corresponding Default Rate) shall be made when and as changes in the Base Rate occur. Each election by the Borrower of an Adjusted Base Rate Borrowing shall be in the Minimum Borrowing Amount, or any multiple thereof.

2.04.2. *LIBOR Borrowing Option for Roll-Up Loans.* Subject to the terms of this Section, interest may accrue at the election of the Borrower for Interest Periods selected by the Borrower, at the Adjusted LIBOR Rate on portions of the unpaid principal balances of the Roll-Up Loans (but not the NM Term Loans). Any election for a LIBOR Borrowing shall be subject to the following terms and conditions:

(a) *Notice of Election for Roll-Up Loans.* An Authorized Officer of the Borrower shall deliver by 10:00 a.m. on that Business Day which occurs two (2) Business Days prior to the Business Day on which the Borrower desires that an Interest Period commence, a written election to the Agent specifying (i) the commencement date of and length of the relevant Interest Period, (ii) the Dollar amount of that portion of the total aggregate principal amount of the Loans identified by the Borrower, which are to bear interest at the Adjusted LIBOR Rate, which amount: (A) shall not be less than the Minimum Borrowing Amount; and (B) shall not be in a principal amount greater than that sum obtained by deducting the aggregate amount of principal payments upon the Roll-Up Loans which are scheduled for payment on Term Principal Payment Dates occurring prior to the end of the subject Interest Period from the aggregate unpaid principal balances of the Roll-Up Loans.

(b) *Effect Of Election.* Interest shall accrue from and including the first day of each Interest Period selected by the Borrower to (but not including) the last day of such Interest Period determined as applicable to such Interest Period upon the amount of the unpaid principal balances of the Loans identified by the Borrower in the Borrower’s written election.

(i) *Interest Periods.* There shall be no more than six (6) Interest Periods outstanding at any one time. No Interest Period may expire after the Scheduled Termination Date.

(ii) *Availability.* If prior to the commencement of any Interest Period for a LIBOR Borrowing: (A) the Agent is advised that the Required Lenders have



determined that a Change In Law or a change in market conditions has made it impractical for the Lenders to offer pricing based on the Adjusted LIBOR Rate; or (B) the Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the LIBOR Rate for such Interest Period; or (C) the Agent is advised by the Required Lenders that the LIBOR Rate applicable to such Interest Period will not adequately and fairly reflect the cost to the Lenders of making or maintaining the proposed LIBOR Borrowing for such Interest Period; then the Agent shall give notice thereof to the Borrower and the Lenders as promptly as practicable thereafter and, until the Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (x) any request to convert any borrowing to, or continue any borrowing as, a LIBOR Borrowing shall be ineffective and (y) any requested LIBOR Borrowing shall bear interest at the Adjusted Base Rate.

(iii) *Breakage Costs.* The Borrower agrees to compensate the Roll-Up Lenders from time to time, upon demand from any Roll-Up Lender through the Agent, for all losses, expenses, lost earnings, costs and liabilities (including all interest paid to lenders of funds borrowed by the Roll-Up Lenders to carry LIBOR Borrowings) which any of the Roll-Up Lenders sustains if: (A) any repayment or prepayment of any LIBOR Borrowings (including any payment resulting from the acceleration of the Roll-Up Loans in accordance with the terms of this Agreement) or any conversion of a LIBOR Borrowing for any reason occurs on a date which is not the last day of the applicable Interest Period; or (B) any failure by the Borrower to borrow a LIBOR Borrowing or convert an Adjusted Base Rate Borrowing to a LIBOR Borrowing on the date for such borrowing or conversion specified in the relevant notice of election given by the Borrower to the Agent in accordance with the terms of this Agreement. For purposes of calculating amounts payable by the Borrower to the Roll-Up Lenders under this Section, each Roll-Up Lender shall be deemed to have funded each Adjusted LIBOR Rate Borrowing made by it at the LIBOR Rate for such LIBOR Borrowing by a matching deposit or other borrowing in the offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such LIBOR Borrowing was in fact so funded.

(iv) *Termination Of Right To Elect LIBOR Borrowings.* Notwithstanding anything to the contrary set forth in this Agreement, and without limiting any other rights and remedies of the Lenders, the Required Lenders during any continuing Default or Event of Default may suspend the right of the Borrower to elect any new LIBOR Borrowing or to convert any Adjusted Base Rate Borrowing into a LIBOR Borrowing or to permit any LIBOR Borrowing to be renewed as a LIBOR Borrowing, in which case all LIBOR Borrowings shall be converted (on the last days of the respective Interest Periods therefor) or continued, as the case may be, as Adjusted Base Rate Borrowings.

2.04.3. *Calculation Of Interest.* Interest shall be calculated upon Adjusted Base Borrowings on the basis of a 365 or 366 days per year factor applied to the actual days on which there exists an unpaid balance of the Adjusted Base Rate Borrowings. Interest shall be calculated upon LIBOR Borrowing on the basis of a 360 day per year factor applied to the actual days on which there exists an unpaid balance of the LIBOR Borrowing.

2.04.4. *Default Interest.* The interest rates payable upon the Loans may be increased to the Default Rate during any continuing Event of Default upon the election of the

Required Lenders until the Event of Default has been cured or waived by the Agent upon the authorization of the Required Lenders.

2.04.5. *Maximum Rate Of Interest.* Any provision contained in the Credit Documents to the contrary notwithstanding, the Lenders shall not be entitled to receive or collect, nor shall the Borrower be obligated to pay, interest, fees, or charges thereunder in excess of the maximum rate of interest permitted by any applicable Law, and if any provision of this Agreement, the Notes or any of the other Credit Documents is construed or held by any court of law or Governmental Authority having jurisdiction to permit or require the charging, collection or payment of any amount of interest in excess of that permitted by such Laws, the provisions of this Section shall control and shall override any contrary or inconsistent provision. The intention of the parties is to at all times conform strictly with all applicable usury requirements and other Laws limiting the maximum rates of interest which may be lawfully charged upon the Loans. The interest to be paid pursuant to the Notes shall be held subject to reduction to the amount allowed under said usury or other Laws as now or hereafter construed by the courts having jurisdiction, and any sums of money paid in excess of the interest rate allowed by applicable law shall be applied in reduction of the principal amount owing pursuant to the Notes.

Section 2.05. *Late Payment Charges.* Any payment of principal, interest or fees due upon any of the Loans (including any final payment) which is received by the Agent more than fifteen (15) calendar days after its due date shall incur a late payment charge equal to five percent (5%) of the amount of the payment due, which charge shall be immediately due and payable. The existence of the right by the Lenders to receive a late payment charge shall not be deemed to constitute a grace period or provide any right to the Borrower to make a payment other than on such payment's scheduled due date.

Section 2.06. *Pro Rata Treatment And Payments.*

2.06.1. *Distribution of Payments to Lenders.* Except as otherwise expressly provided to the contrary by the terms of this Agreement, all payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise shall be made without set-off or counterclaim and shall be made prior to 12:00 Noon on the due date thereof to the Agent for the accounts of the Lenders at the Agent's offices in Buffalo, New York in immediately available Dollars. The Agent shall promptly distribute to each Lender by wire transfer such Lender's pro rata share of each of such payments in like funds as received. The Agent may assume that the Borrower has made such payments on the applicable date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payments, then each of the Lenders severally agrees to repay to the Agent forthwith on demand the amount so distributed to such Lender in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Agent, at the greater of the Federal Funds Rate or a rate determined by the Agent in accordance with banking industry customs and rules on interbank compensation.

2.06.2. *Funding Of Loans.* The Lenders agree that the Agent may assume that each Lender will fund timely its pro rata portion of each borrowing requested by the Borrower in accordance with the terms of this Agreement and that the Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable borrowing available to the Agent, then the applicable Lender and the Borrower severally agree to pay to the Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and

including the date such amount is made available to the Borrower to but excluding the date of payment to the Agent, at (a) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate or a rate determined by the Agent in accordance with banking industry customs and rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Agent in connection with the foregoing, (b) in the case of a payment with respect to Roll-Up Loans to be made by the Borrower, the interest rate applicable to Adjusted Base Rate Borrowings, and (c) in the case of a payment with respect to NM Term Loans to be made by the Borrower, the NM Rate. If the Borrower and such Lender shall pay such interest to the Agent for the same or an overlapping period, the Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Agent, then the amount so paid shall constitute such share included in the subject borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Agent.

2.06.3. *Ratable Sharing.* Each borrowing by the Borrower shall be made ratably from the Lenders in accordance with their applicable respective Commitment Percentages. Each payment (including each prepayment) by the Borrower on account of principal and interest on the Loans shall be shared pro rata by the Lenders in accordance with their respective balances of the Loans which are being paid.

2.06.4. *Sharing Of Setoffs.* If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, then the Lender receiving such greater proportion shall (a) notify the Agent of such fact, and (b) purchase (for cash at face value in Dollars) participations in the Loans, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, 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 shall not be construed to apply to (A) any payment made by the Borrower 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 of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff 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 2.07. *Application Of Payments.* Except as expressly required to the contrary by the terms of this Agreement, all payments received upon the Loans may be applied first to Credit Party Expenses, next to late payment charges, then to accrued interest and the unpaid principal balances of the Loans, or in such other order as elected by the Required Lenders.

Section 2.08. *Increased Costs.*

2.08.1. *Increased Costs Generally.* If any Change In Law shall:

(a) 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 (except any reserve requirement reflected in the Adjusted LIBOR Rate);

(b) subject any Recipient to any Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (iii) Other Connection Taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(c) impose on any Lender or the London Interbank Market any other condition, cost or expense affecting this Agreement or any LIBOR Borrowing made by such Lender;

and the result of any of the foregoing shall be to increase the cost to such Lender or other Recipient of making, converting to or continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to reduce the amount of any sum received or receivable by such Lender or other Recipient hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or other Recipient, the Borrower will pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

2.08.2. *Capital Requirements.* If any Lender determines in good faith that any Change in Law affecting such Lender or any lending office of 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 Loans 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 the Borrower will 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.

2.08.3. *Certificate 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 this Section 2.08 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

2.08.4. *Delay In Requests.* Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine (9) months prior to the date that such Lender notifies the Borrower 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 (9) month period referred to above shall be extended to include the period of retroactive effect thereof).

Section 2.09. *Taxes.*

2.09.1. *Payments Free of Taxes.* Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Credit Document shall be made free and clear of and without reduction or withholding for any Indemnified Taxes or Other Taxes, provided that if the Borrower shall be required by applicable law to deduct any Indemnified Taxes (including any Other Taxes) from such payments, then (a) 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) the Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (b) the Borrower shall make such deductions and (c) the Borrower shall timely pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

2.09.2. *Payment of Other Taxes by the Borrower.* Without limiting the provisions of Subsection 2.09.1 above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

2.09.3. *Indemnification by the Borrower.* The Borrower shall indemnify the Agent and each Lender, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Agent or such Lender, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Agent), or by the Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

2.09.4. *Indemnification by the Lenders.* Each Lender shall severally indemnify the Agent, within ten (10) days after demand therefore, for (a) any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (b) any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.13 relating to the maintenance of a Participant Register, and (c) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Agent in connection with any Credit Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Agent to set off and apply any and all amounts at any time owing to such Lender under any Credit Document or otherwise payable by the Agent to the Lender from any other source against any amount due to the Agent under this Subsection 2.09.4.

2.09.5. *Evidence of Payments.* As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the 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 the Agent.



## 2.09.6. Status of Lenders.

(a) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Credit Document shall deliver to the Borrower and the Agent, at the time or times reasonably requested by the Borrower or the Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(b) Without limiting the generality of the foregoing, in the event that any Borrower is a U.S. Borrower,

(i) any Lender that is a U.S. Person shall deliver to the Borrower and the Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(ii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), whichever of the following is applicable:

(A) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Credit Document, executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Credit Document, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(B) executed copies of IRS Form W-8ECI;

(C) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of *Exhibit D-1* to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described

in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E, as applicable; or

(D) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-2 or Exhibit D-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-4 on behalf of each such direct and indirect partner;

(iii) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Agent to determine the withholding or deduction required to be made; and

(iv) if a payment made to a Lender under any Credit 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 the Borrower and the Agent at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iv), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Agent in writing of its legal inability to do so.

2.09.7. *Treatment of Certain Refunds.* If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to Section 2.09 (including by the payment of additional amounts pursuant to Section 2.09), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Subsection with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this Subsection 2.09.7 (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event

that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Subsection 2.09.7, in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Subsection 2.09.7 the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amount with respect to such Tax had never been paid. This Section shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

2.09.8. *Survival.* Each party's obligations under this Section 2.09 shall survive the resignation or replacement of the Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Credit Document.

Section 2.10. *Mitigation Obligations; Replacement of Lenders.*

2.10.1. *Designation of a Different Lending Office.* If any Lender requests compensation under Section 2.08, or requires the Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.09, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its 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 2.08 and 2.09, 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. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

2.10.2. *Replacement of Lenders.* If any Lender requests compensation under Section 2.08, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.09, or if any Lender is a Defaulting Lender or Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Agent, require any of such Lenders to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.08), all of its interests, rights and obligations under this Agreement and the related Credit Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Agent the assignment fee specified in Section 10.08;

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, and accrued fees and all other amounts payable to it hereunder and under the other Credit Documents from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);



(c) in the case of any such assignment resulting from a claim for compensation under Section 2.08 or payments required to be made pursuant to Section 2.09, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable laws; and

(e) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 2.11. *Fees.* The Borrower shall pay to the Agent all fees as are required by the terms of this Agreement and the Interim Financing Order, including but not limited to payment of the Upfront Fee on the Closing Date.

Section 2.12. *Payments.* All payments received by the Credit Parties which are to be applied to reduce the Obligations shall be provisional and shall not be considered final unless and until such payment is not subject to avoidance under any provision of the Bankruptcy Code, as amended, including Sections 547 and 550, or any state law governing insolvency or creditors' rights. If any payment is avoided or set aside under any provision of the Bankruptcy Code, including Sections 547 and 550, or any state law governing insolvency or creditors' rights, the payment shall be considered not to have been made for all purposes of this Agreement and the Credit Parties shall adjust their respective records to reflect the fact that the avoided payment was not made and has not been credited against the Obligations.

Section 2.13. *Advancements.* If the Borrower or any other Loan Party fails to perform any of its respective agreements or covenants contained in the Credit Documents or if the Borrower or any other Loan Party fails to protect or preserve the Collateral or any other security for the Obligations or the status and priority of the Liens of the Credit Parties in the Collateral or in any other security for the Obligations, the Agent for the account of the Lenders may make advances to perform the same on behalf of the Borrower or other Loan Party to protect or preserve the Collateral or any other security for the Obligations or the status and priority of the Liens of the Credit Parties in the Collateral or in any other security for the Obligations, and all sums so advanced shall immediately upon such advance become secured by the Liens granted in the Credit Documents and any other security for the Obligations, and shall become part of the principal amount owed to the Lenders with interest to be assessed at the Default Rate. The Borrower shall repay on demand all sums so advanced on the Borrower's behalf, plus all expenses or costs incurred by the Agent, on account of the Lenders, including reasonable legal fees, with interest thereon. The provisions of this Section shall not be construed to prevent the institution of the rights and remedies of the Agent upon the occurrence of an Event of Default. The authorization contained in this Section is not intended to impose any duty or obligation on the Agent or any other Credit Party to perform any action or make any advancement on behalf of the Borrower and is intended to be for the sole benefit and protection of the Credit Parties.

Section 2.14. *Defaulting Lenders.*

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

(a) *Waivers and Amendments.* Such 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 the definition of Required Lenders.

(b) *Defaulting Lender Waterfall.* Any payment of principal, interest, fees or other amounts received by the Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 8 or otherwise) or received by the Agent from a Defaulting Lender pursuant to Section 10.20 shall be applied at such time or times as may be determined by the Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder; *second*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent; *third*, if so determined by the Agent and the Borrower, to be held in a deposit account and released *pro rata* in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, to such 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 such Defaulting Lender, and each Lender irrevocably consents hereto.

2.14.2. *Defaulting Lender Cure.* If the Borrower and the Agent each agree in writing that a Lender is no longer a Defaulting Lender, the 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 at par that portion of outstanding Loans of the other Lenders or take such other actions as the Agent may determine to be necessary to cause the Loans to be held *pro rata* by the Lenders in accordance with the Commitments under the applicable credit facility, whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and 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 having been a Defaulting Lender.

Section 2.15. *Reserved.*

Section 2.16. *Notes.* The obligations of the Borrower to repay the Term Loans to each of the Lenders are evidenced by a Note issued to each Lender in the stated principal amount of each Lender's respective Term Loan Commitment.

Section 2.17. *Payment.* All unpaid balances of the Term Loans, including all unpaid principal, unpaid and accrued interest and fees, shall be paid in full on the Termination Date. The Borrower unconditionally promises to pay interest to the Agent for the accounts of the Lenders on the unpaid principal balances of the Term Loans from time to time outstanding from the date of Closing until the date of the payment in full of the Term Loans at the rates per annum, and on the dates set forth in Section 2.04 of this Agreement.

Section 2.18. *Security and Priorities.* All of the Obligations shall, subject to the Carve-Out, at all times:

2.18.1. Pursuant to Section 364(c)(1) of the Bankruptcy Code, all of the Obligations shall, subject to the Carve-Out, at all times constitute allowed superpriority administrative expense claims against the Debtors (without the need to file any proof of claim) with priority over any and all claims against the Debtors 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 and any and all administrative expenses or other claims arising under Sections 105, 326, 328, 330, 331, 364, 365, 503(b), 506(c) (with respect to 506(c), subject to the Final Financing Order), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (including any adequate protection obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the “DIP Superpriority Claims”), and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors and all proceeds thereof (including, effective upon entry of the Final Financing Order, Avoidance Action Proceeds), subject only to the valid, perfected and unavoidable Liens thereon and the Carve-Out. The DIP Superpriority Claims shall be entitled to the full protection of Section 364(e) of the Bankruptcy Code in the event that the Interim Financing Order (or, after entry thereof, the Final Financing Order) or any provision thereof is vacated, reversed, amended or otherwise modified, on appeal or otherwise.

2.18.2. Pursuant to Section 364(c)(2) of the Bankruptcy Code, be secured by (i) a valid, perfected, continuing, enforceable, non-avoidable first priority security interest and lien on the Collateral of each Debtor, (x) to the extent such Collateral is not subject to valid, perfected and non-avoidable liens permitted under the Prepetition First Lien Credit Agreement as of the Petition Date and (y) including Avoidance Actions and Avoidance Action Proceeds (it being understood that such lien on Avoidance Actions and Avoidance Action Proceeds shall attach upon entry of the Final Financing Order).

2.18.3. Pursuant to Section 364(c)(3) of the Bankruptcy Code, be secured by a valid, perfected, continuing, enforceable, non-avoidable security interest and lien on the Collateral of each Loan Party, to the extent that such Collateral, as applicable, is subject to (x) valid, perfected and unavoidable liens in favor of third parties that were in existence and permitted under the Prepetition First Lien Credit Agreement immediately prior to the Petition Date, or (y) valid and unavoidable liens in favor of third parties that were in existence and permitted under the Prepetition First Lien Credit Agreement immediately prior to the Petition Date that were perfected subsequent to the Petition Date as permitted by Section 546(b) of the Bankruptcy Code, subject as to priority to Prepetition Prior Liens; provided that this clause 2.18.3 shall not apply to the Primed Liens, which existing liens will be primed by the liens described in clause 2.18.4 below, as applicable.

2.18.4. Pursuant to Section 364(d)(1) of the Bankruptcy Code, be secured by a perfected first priority priming security interest and lien on the Collateral of each Debtor (the “Primed Liens”) to the extent that such Collateral is subject to the Primed Liens, which Primed Liens pursuant to this clause 2.18.4 shall, for the avoidance of doubt, be senior to (x) any current

and future liens granted on such property of the Prepetition First Lien Lenders under the Prepetition First Lien Credit Agreement and the other “secured parties” referred to therein (the “Prepetition First Lien Credit Agreement Primed Parties”), and (y) any liens granted to provide adequate protection in respect of any of the Primed Liens; provided that the liens pursuant to this clause 2.18.4 shall be subject as to priority only to (x) the Carve-Out and (y) Permitted Liens on cash collateral securing Cash Management Agreements with a Cash Management Bank.

2.18.5. Notwithstanding anything to the contrary in this Section 2.18, with respect to any Collateral consisting of the proceeds of any sale, transfer or other disposition of Collateral, the relative priorities of the liens securing NM Term Loan Obligations and Roll-Up Loan Obligations shall be preserved in all respects, and (a) the liens securing Roll-Up Loan Obligations shall be entitled to the priorities otherwise applicable to the liens securing NM Term Loan Obligations and (b) the liens securing NM Term Loan Obligations shall be entitled to the priorities otherwise applicable to the liens securing Roll-Up Loan Obligations, if any.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES

The Borrower makes the following representations and warranties to the Credit Parties as of the Closing Date and, as of each date on which any Roll-Up Loan is requested or made, and as of each date on which any Loan or portion of a Loan is converted to or continued as a LIBOR Borrowing:

Section 3.01. *Organization and Qualification.* Each Loan Party and each Subsidiary of each Loan Party (a) is a corporation duly organized, validly existing and in good standing under the laws of the state (or nation and/or province or other applicable jurisdiction, in the case of a Foreign Subsidiary) of incorporation of such Loan Party or Subsidiary, (b) has the lawful power to own or lease its properties and to engage in the business it presently conducts or proposes to conduct, and (c) is duly licensed or qualified and in good standing in all jurisdictions where the property owned or leased by it or the nature of the business transacted by it makes such licensing or qualification necessary (except to the extent that the failure to be licensed, qualified or in good standing is not likely to cause a Material Adverse Change or where failure or non-compliance is permitted by the Bankruptcy Code).

Section 3.02. *Capitalization and Ownership.* As of the Closing Date, the authorized Capital Stock and the issued and outstanding Capital Stock of the respective Loan Parties consists of those shares of common stock described on Schedule 3.02 hereto, having such par value as may be indicated therein, of which that number of shares indicated therein as issued and outstanding are in fact issued and outstanding. All of the Capital Stock of the Loan Parties indicated as issued and outstanding has been validly issued and is fully paid and nonassessable. As of the Closing Date, there are no options, warrants or other rights outstanding to purchase any Capital Stock of any Loan Party, except as disclosed on Schedule 3.02 hereto.

Section 3.03. *Subsidiaries.* No Loan Party nor any Subsidiary of a Loan Party has any Subsidiaries as of the Closing Date, except as otherwise set forth on Schedule 3.03 hereto. Each Loan Party has good and marketable title to all the Capital Stock of any Subsidiary which such Loan Party owns, free and clear of any Lien other than Permitted Encumbrances. All of the issued and outstanding shares of Capital Stock of each Subsidiary of the respective Loan Parties are fully paid and non-assessable. There are no options, warrants or other rights outstanding to purchase any shares of Capital Stock of any Subsidiary of any Loan Party or, to the best of the Borrower’s

knowledge, any Restricted Subsidiary, nor are any securities of any Subsidiary or, to the best of the Borrower's knowledge, any Restricted Subsidiary, convertible into or exchangeable for their common stock. Except for any investments in such assets permitted under the provisions of this Agreement, no Loan Party or, to the best of the Borrower's knowledge, Restricted Subsidiary, owns directly or indirectly any Capital Stock of any other Person, no Loan Party or, to the best of the Borrower's knowledge, Restricted Subsidiary, is a partner (general or limited) of any partnership, and no Loan Party or, to the best of the Borrower's knowledge, Restricted Subsidiary is a party to any joint venture and or otherwise owns (beneficially or of record) any Equity Interest or similar interest in any other Person.

Section 3.04. *Power and Authority.* Subject to entry of the Interim Financing Order (or the Final Financing order, when applicable), each of the Loan Parties has the full power to enter into, execute, deliver, carry out and perform this Agreement and the Credit Documents to which it is a party, to incur the Indebtedness contemplated by the Credit Documents and to perform its respective obligations under the Credit Documents to which it is a party and all of such actions have been duly authorized in each instance by all necessary corporate proceedings.

Section 3.05. *Validity and Binding Effect.* This Agreement has been, and each Credit Document, when executed and delivered by the respective Loan Parties, will have been, duly and validly executed and delivered by the Loan Parties which are signatories thereto. This Agreement and each of the other Credit Documents executed and delivered by the respective Loan Parties will, upon such execution and delivery, constitute the legal, valid and binding obligations of such Loan Parties, enforceable against the respective Loan Parties in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization moratorium or similar laws affecting the rights of creditors generally and to the effect of general principles of equity whether applied by a court of law or equity.

Section 3.06. *No Conflict.* Subject to entry of the Interim Financing Order (or the Final Financing order, when applicable), neither the execution and delivery by the Borrower of this Agreement nor the execution and delivery by any other Loan Party of any Credit Documents to which it is a party, nor the consummation of the transactions herein or therein contemplated, nor compliance with the terms and provisions hereof or thereof by the Borrower or the Other Loan Parties will (a) conflict with, constitute a default under or result in any breach of (i) the terms and conditions of the Organization Documents of any Loan Party or (ii) any Law or any agreement or instrument or order, writ, judgment, injunction or decree to which any Loan Party is a party or by which it is bound or to which it is subject, which conflict, default or breach would cause a Material Adverse Change, or (b) result in the creation or enforcement of any Lien upon any property (now or hereafter acquired) of any of the Loan Parties (other than Liens securing the Obligations and the Permitted Encumbrances).

Section 3.07. *Litigation.* (a) Other than the Chapter 11 Cases, there are no actions, suits, proceedings or investigations pending or, to the knowledge of the Borrower, threatened against any Loan Party or any Restricted Subsidiary, at law or in equity, before any Governmental Authority (1) which individually or in the aggregate, could be reasonably expected to result in any Material Adverse Change or (2) involve any of the Loan Documents (other than objections or pleadings that may have been filed in the Chapter 11 Cases with respect to the Loan Parties seeking authorization to enter into the Loan Documents and incur Obligations under this Agreement; and (b) no Loan Party or Restricted Subsidiary is in violation of any order, writ, injunction or decree of any Governmental Authority, the violation of which could reasonably be expected to result in any Material Adverse Change.



Section 3.08. *Financial Statements; Financial Projections.*

3.08.1. *Financial Statements.* The Borrower has previously delivered to the Agent correct and complete copies of the audited consolidated balance sheets and statements of income, retained earnings and cash flows of the Borrower and its Subsidiaries as of and for its Fiscal Years since the Fiscal Year ending September 28, 2019 including the footnotes thereto. Such financial statements fairly present, in all material respects, the financial condition of the Borrower and its Subsidiaries as at the end of the periods covered thereby and the results of the Borrower's and its Subsidiaries' operations and the changes in the Borrower's and its Subsidiaries' financial positions for the periods covered thereby, and were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby subject, in the case of the above described interim financial statements, to year-end audit adjustments (which will not be material) and the lack of footnotes and other presentation items.

3.08.2. *Books and Records.* (a) The books of account and other financial records of the Borrower and its Subsidiaries as in effect on the Closing Date are correct and complete in all material respects, represent actual, bona fide transactions and have been maintained in accordance with sound business and accounting practices; and (b) as of the Closing Date, the Borrower and its Subsidiaries maintain an adequate system of internal accounting controls and does not engage in or maintain any off-the-books accounts or transactions.

3.08.3. *Absence of Material Liability.* As of the Closing Date, neither the Borrower nor any of its Subsidiaries have any material liabilities of any kind, whether direct or indirect, fixed or contingent or otherwise which is not disclosed upon the consolidated and consolidating financial statements of the Borrower and its Subsidiaries which have been provided to the Credit Parties; other than executory obligations under contracts, leases, or other agreements which GAAP would not require to be set forth in the consolidated and consolidating financial statements of the Borrower and its Subsidiaries.

3.08.4. *Financial Projections.* The Borrower has delivered to the Credit Parties financial projections of the Borrower and its Subsidiaries. Such projections set forth in the judgment of the Borrower a reasonable range of possible results in light of the history of the businesses of the Borrower and its Subsidiaries, and present reasonably foreseeable conditions and the intentions of the management of the Borrower and its Subsidiaries. In the reasonable judgment of the Borrower, such projections accurately reflect the liabilities of the Borrower and its Subsidiaries on the Closing Date, after giving effect to the transactions contemplated by that Agreement. No events have occurred since the preparation of the projections which would cause the projections, taken as a whole, not to be reasonably attainable.

Section 3.09. *Margin Stock.* Neither the Borrower nor any of its Subsidiaries engages or intends to engage principally, or as one of its important activities, in the business of incurring Indebtedness or extending credit to others for the purpose, immediately, incidentally or ultimately, of purchasing or carrying "margin stock" (within the meaning of Regulation U issued by the Federal Reserve Board). No part of the proceeds of any Loan or other extension of credit hereunder has been or will be used, to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock or to refund or retire Indebtedness originally incurred for such purpose. As of the Closing Date neither the Borrower nor any of its Subsidiaries intends to hold any margin stock.

Section 3.10. *Full Disclosure.* Neither this Agreement nor any Credit Document, nor any certificate, statement, agreement or other document furnished to the Credit Parties by the Loan

Parties, contains any misstatement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which they were made, not misleading. There is no fact known to the Borrower which materially adversely affects the business, property, assets, financial condition, results of operations or prospects of the Borrower and its Subsidiaries, taken as a whole, which has not been set forth in this Agreement or the Credit Documents or in the certificates, statements, agreements or other documents furnished in writing to the Credit Parties before or at the date hereof in connection with the transactions contemplated hereby and thereby.

Section 3.11. *Tax Returns and Payments.* Except as permitted by the Bankruptcy Code, all federal and state tax returns that are required by applicable Law to be filed by the Borrower and its Subsidiaries have been filed or properly extended. Except as permitted by the Bankruptcy Code, all taxes, assessments and other governmental charges levied upon the Borrower and its Subsidiaries, or any of their respective properties, assets, income or franchises which are due and payable have been paid in full other than (a) those presently payable without penalty or interest, (b) those which are being contested in good faith by appropriate proceedings, and (c) those which, if not paid, would not, in the aggregate, constitute a Material Adverse Change; and as to each of items (a), (b) and (c) the Borrower and its Subsidiaries have established reserves for such claims as have been determined to be adequate by application of GAAP consistently applied. There are no agreements or waivers extending the statutory period of limitations applicable to any consolidated federal income tax return of the Borrower and its Subsidiaries for any period.

Section 3.12. *Consents and Approvals.* Subject to entry of the Interim Financing Order (or the Final Financing order, when applicable), no consent, approval, exemption, order or authorization of, or a registration or filing with any Governmental Authority or any other Person is required by any Law or any agreement (other than the Credit Documents) in connection with the execution, delivery and carrying out of this Agreement and the Credit Documents to which any Loan Party is a party.

Section 3.13. *No Event of Default; Compliance with Instruments.* Except for any such defaults (a) arising under any lease that the applicable Debtor has rejected under Section 365 of the Bankruptcy Code not in prohibition of this Agreement and (b) arising solely as a result of the commencement of the Chapter 11 Cases and the effects therefore, no event has occurred and is continuing and no condition exists or will exist after giving effect to the Loans which constitutes an Event of Default or a Default. No Loan Party or Subsidiary of a Loan Party is in violation of any term of its Organization Documents.

Section 3.14. *Compliance with Laws.* Each of the Loan Parties and their respective Subsidiaries are in compliance in all material respects with all applicable Laws in all jurisdictions in which any of the Loan Parties or their Subsidiaries are presently or will be doing business, the non-compliance with which would be likely to cause a Material Adverse Change or where failure or non-compliance is permitted by the Bankruptcy Code.

Section 3.15. *Investment Company Act.* No Loan Party or Subsidiary of a Loan Party is an "investment company" registered or required to be registered under the Investment Company Act of 1940 or under the "control" of an "investment company" as such terms are defined in the Investment Company Act of 1940, as amended from time to time, and shall not become such an "investment company" or under such "control." No Loan Party or Subsidiary of a Loan Party is subject to any Laws of any Governmental Authority having jurisdiction over such Loan Party or Subsidiary which purports to restrict or regulate its ability to borrow money, or to extend or obtain credit, or to pledge its interests in its assets in accordance with the terms of the Credit Documents.

Section 3.16. *ERISA Compliance.* Except as a result of the Chapter 11 Events and Circumstances:

3.16.1. *Plans and Contributions.* Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state Laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service (“IRS”) or an application for such a letter is currently being processed by the IRS with respect thereto and, to the best knowledge of the Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. The Loan Parties and each ERISA Affiliate have made all required contributions to each Plan subject to Section 412 of the Code, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Plan.

3.16.2. *Pending Claims.* There are no pending or, to the best knowledge of the Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to result in a Material Adverse Change. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Change.

3.16.3. *ERISA Events.* (a) No ERISA Event has occurred or is reasonably expected to occur, (b) no Pension Plan has any Unfunded Pension Liability, (c) no Loan Party and no ERISA Affiliate has incurred, or reasonably expects to incur, any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA), (d) neither the Borrower nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of ERISA, would result in such liability) under Section 4201 or 4243 of ERISA with respect to a Multiemployer Plan, and (e) neither the Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA.

Section 3.17. *Title to Properties.* The Loan Parties and their Subsidiaries have good title to, or a valid leasehold interest in, all their respective real and personal property.

Section 3.18. *Insurance.* There are in full force and effect for the benefit of the Loan Parties and their Subsidiaries insurance policies and bonds providing adequate coverage from reputable and financially sound insurers in amounts sufficient to insure the assets and risks of the Loan Parties and their Subsidiaries in accordance with prudent business practices in the respective industries of the Loan Parties and their Subsidiaries. As of the Closing Date, and, as of each subsequent reaffirmation of this representation and warranty, except as otherwise previously disclosed in writing to the Agent, no notice has been given or claim made and to the knowledge of the Loan Parties, no grounds exist, to cancel or void any of such policies or bonds or to reduce the coverage provided thereby.

Section 3.19. *Employment Matters.* Each Loan Party and each Subsidiary of a Loan Party is in material compliance with all employee benefit plans, employment agreements, collective bargaining agreements and labor contracts and all applicable Laws thereto. There are no outstanding grievances, arbitration awards or appeals relating to any of the foregoing plans, agreements or contracts, or, to the knowledge of the Borrower, threatened strikes, picketing, handballing or other work stoppages or slowdowns at facilities of any Loan Party or any Subsidiary of a Loan Party which could reasonably be expected to result in any Material Adverse Change. All payments due or to become due from any Loan Party or the Subsidiary of the Loan Party on account of obligations in respect of employee health and welfare insurance which could reasonably be



expected to have a Material Adverse Change if not paid have been paid or, in the case of such amounts not yet due, have been recorded as liabilities on the books of the Borrower and its Subsidiaries.

Section 3.20. *[Reserved]*.

Section 3.21. *Material Contracts; Burdensome Restrictions.* Except as otherwise disclosed on Schedule 3.21 and, in each instance in which the representations and warranties of this Section are given or deemed given on a date subsequent to the Closing Date, as theretofore otherwise disclosed to the Credit Parties in writing, all material contracts relating to the business operations of the Loan Parties and their Subsidiaries, are valid, binding and enforceable upon the Loan Parties and their Subsidiaries, and to the knowledge of the Borrower, the other parties thereto, without any material defaults thereunder.

Section 3.22. *Patents, Trademarks, Copyrights, Licenses, Etc.* Each Loan Party and each Subsidiary of a Loan Party owns or possesses all the patents, trademarks, service marks, trade names, copyrights, licenses, registrations, franchises, permits and rights which are materially necessary to own and operate its assets and to carry on its business as presently conducted and as planned to be conducted by such Loan Party or Restricted Subsidiary, without known possible, alleged or actual conflict with the rights of others.

Section 3.23. *Liens.* The Liens in the Collateral granted to the Credit Parties pursuant to the Credit Documents constitute and will continue to constitute valid and enforceable Liens under all applicable Laws, having the priority required herein and in the other Credit Documents, and are entitled to all the rights, benefits and priorities provided by applicable Law. All filing fees and other expenses in connection with each such action have been or will be paid by the Borrower.

Section 3.24. *Margin Regulations.* No Loan Party or any Subsidiary thereof is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of “purchasing” or “carrying” any “margin stock” as such terms are defined in Regulation U of the Federal Reserve Board as now and from time to time hereafter in effect (such securities being referred to herein as “Margin Stock”). No Loan Party or any Subsidiary thereof owns any Margin Stock, and none of the proceeds of the Loans or other extensions of credit under this Agreement will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any Margin Stock or for any other purpose that might cause any of the Loans or other extensions of credit under this Agreement to be considered a “purpose credit” within the meaning of Regulations T, U or X of the Federal Reserve Board. No Loan Party or any Subsidiary thereof will take or permit to be taken any action that might cause any Credit Document to violate any regulation of the Federal Reserve Board.

Section 3.25. *Environmental Compliance.* The Borrower has conducted a review of the effect of existing Environmental Laws on the businesses, operations and properties of itself and of each of the other Loan Parties, and of the potential for it or the other Loan Parties to incur any Environmental Liabilities, and as a result thereof the Borrower in conjunction with the other Loan Parties has reasonably concluded that the application of any such Environmental Laws and potential Environmental Liabilities could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

Section 3.26. *Anti-Money Laundering/International Trade Law Compliance.* No Covered Entity is a Sanctioned Person. No Covered Entity, either in its own right or through any

third party: (a) has any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person in violation of any Anti-Terrorism Law; (b) does business in or with, or derives any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Terrorism Law; or (c) engages in any dealings or transactions prohibited by any Anti-Terrorism Law.

Section 3.27. *Use of Proceeds.* The Borrower will use the proceeds of the Loans solely (a) for working capital and general corporate purposes of the Loan Parties and their Subsidiaries consistent with the Approved Budget, including, to refinance in full on the Closing Date the indebtedness outstanding under the Receivables Facility, to cash collateralize letters of credit outstanding under the Prepetition First Lien Credit Agreement, and to refinance the other Prepetition First Lien Obligations, (b) to pay fees, costs and expenses incurred in connection with the transactions contemplated hereby and (c) other administration costs incurred in connection with the Chapter 11 Cases consistent with the Approved Budget.

Section 3.28. *Securities Collateral Documents.* Subject to, and upon entry of, the Financing Orders, the Securities Collateral Documents and the Financing Orders are effective to create in favor of the Agent, for the benefit of the Secured Parties, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof, which shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and the proceeds thereof, as security for the Obligations (as defined in the Securities Collateral Documents), in each case prior and superior in right to any other Person (except as provided in Section 2.20(c)). Without limiting the foregoing, neither the filing of any UCC-1 financing statement nor the obtaining of “control” (as defined in the UCC) of Collateral is required to create or perfect any such security interest or Lien. The Obligations shall, pursuant to the Interim Financing Order (or the Final Financing Order, when applicable), be secured by the Liens on the Collateral described in Section 2.20, which Liens have the priorities described in Section 2.20.

## ARTICLE 4

### CONDITIONS PRECEDENT

Section 4.01. *Conditions to Closing.* The obligations of each Lender to make any advances of proceeds of the Loans are subject to the reasonable satisfaction on or before the Closing Date of the following conditions precedent:

4.01.1. *Closing Submissions.* The Agent’s receipt of the following, each properly executed by an Authorized Officer of the signing Loan Party, each dated either the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance reasonably satisfactory to the Agent and its counsel, (a) executed counterparts of this Agreement and the other Credit Documents, (b) Notes executed by the Borrower in favor of each Lender requesting a Note for each Loan extended by such Lender, (c) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Authorized Officers of each Loan Party as the Agent may require evidencing the identity, authority and capacity of each Authorized Officer thereof authorized to act as an Authorized Officer in connection with this Agreement and the other Credit Documents to which such Loan Party is a party, (d) such documents and certifications as the Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, (e) a duly completed Compliance Certificate as of the last day of the Fiscal Quarter most recently ended prior

to the Closing Date, signed by an Authorized Officer of the Borrower, and (f) such other assurances, certificates, documents, consents or opinions as the Agent or the Required Lenders reasonably may require. Without limiting the generality of the provisions of Subsection 9.02.4 of this Agreement, for purposes of determining compliance with the conditions specified in this Subsection 4.01.1, each Lender that has signed this Agreement shall be deemed to have consented to, approved, accepted and to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objections thereto.

4.01.2. *Collateral Agreement.* A guarantee, pledge and security agreement as duly executed by the Loan Parties (as it may be amended, restated, modified and/or supplemented from time to time, the “Collateral Agreement”), together with:

(A) a completed “perfection certificate”, dated on or before the date of the initial Borrowing, describing the assets of the Loan Parties;

(B) the Interim Order shall have created and perfected a legal, valid, continuing and enforceable security interest in and Lien upon the collateral set forth in the Collateral Agreement and such UCC financing statement as the Required Lenders may reasonably deem necessary in order to perfect the Liens created by the Interim Order or Collateral Agreement shall have been (or substantially concurrently with the Closing Date shall be) filed;

(C) evidence that all other action that the Required Lenders deem necessary or desirable in order to perfect the Liens created under the Guarantee and Collateral Agreements has been taken (including receipt of duly executed payoff letters, UCC-3 termination statements and any landlords’ and bailees’ waiver and consent agreements reasonably requested by the Required Lenders (to the extent the same are obtainable using commercially reasonable efforts); provided that any required (after taking into account the foregoing standard) landlords’ and bailee waivers and consent agreements may be delivered on a post-closing basis, but in no case later than sixty (60) days after the Closing Date unless the Agent has otherwise agreed in writing); and

(D) an intellectual property security agreement, in form and substance satisfactory to the Required Lenders (together with each other intellectual property security agreement and intellectual property security agreement supplement, in each case as amended, the “Intellectual Property Security Agreement”), duly executed by each Loan Party

4.01.3. *Deposit Account; Securities Account.* The control agreements with respect to Deposit Accounts and Securities Accounts, in each case as referred to in the Securities Collateral Documents (solely to the extent reasonably required by the Required Lenders), duly executed by the appropriate parties.

4.01.4. *Officers’ Certificate.* A certificate signed by a Responsible Officer of the Borrower certifying (A) that there have been no events or circumstances since December 31, 2019 that have had or could be reasonably expected to have, either individually or in the aggregate (other than as customarily occurs as a result of events leading up to and following the commencement of the Chapter 11 Cases under Chapter 11 of the Bankruptcy Code by the Debtors)

a Material Adverse Effect; and (B) other than the Chapter 11 Cases, no actions, suits, investigations or proceedings are pending, or to the knowledge of the Borrower, threatened in writing in any court or before any arbitrator or Governmental Authority that could reasonably be expected, either individually or in the aggregate (other than as customarily occurs as a result of events leading up to and following the commencement of the Chapter 11 Cases under Chapter 11 of the Bankruptcy Code by the Debtors) to have a Material Adverse Effect, except for any such actions already known by the Lenders.

4.01.5. *Intercreditor and Subordination Agreement.* The Agent shall have received duly authorized, executed and delivered intercreditor and subordination agreements for Related Party Indebtedness.

4.01.6. *Petition Date.* The Petition Date shall have occurred and Borrower and each of its Subsidiaries that is a Loan Party shall be a debtor and a debtor-in-possession. All of the “first day orders” entered by the Bankruptcy Court on or about the time of commencement of the Chapter 11 Cases (and if any such orders shall not have been entered by the Bankruptcy Court, the form of such orders submitted to the Bankruptcy Court for approval) of the type referred to in clause (a) or (b) of the definition of “Approved Bankruptcy Court Order” shall be in form and substance satisfactory to the Agent and the Required Lenders, and all other “first day orders” entered by the Bankruptcy Court on or about the time of commencement of the Chapter 11 Cases (and if any such orders shall not have been entered by the Bankruptcy Court, the form of such orders submitted to the Bankruptcy Court for approval) shall be reasonably satisfactory to the Agent and the Required Lenders.

4.01.7. *Interim Financing Order.* Not later than five (5) Business Days following the Petition Date (or such later date as the Required Lenders may agree), an interim order approving the Loan Documents in form and substance satisfactory to the Required Lenders in their sole discretion (and to the extent effecting the rights, duties, benefits, privileges, protections, indemnities or immunities of the Agent, the Agent)(as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof, the “Interim Financing Order”) (it being understood and agreed that an order in the form of *Exhibit F* shall, if entered by the Bankruptcy Court, be deemed acceptable to the Required Lenders) shall have been entered by the Bankruptcy Court, which Interim Financing Order shall, among other things, (i) have been entered on such prior notice to such parties as may be satisfactory to the Required Lenders in their sole discretion, (ii) authorize the Loans, each in the amounts and on the terms set forth herein, (iii) grant the DIP Superpriority Claim status, (iv) authorize and perfect the Liens on the Collateral with the priority referred to herein and in the other Loan Documents, (v) approve the payment by the Debtors of the fees provided for herein, (vi) approve the repayment in of the Prepetition First Lien Obligations from the proceeds of the Roll-Up Loans to the extent provided in Section 2.02, (vii) grant such adequate protection in respect of the claims secured by the Primed Liens as shall be acceptable to the Required Lenders in their sole discretion, and (viii) not have been (A) stayed, vacated or reversed, or (B) amended or modified except as otherwise agreed to in writing by Agent and the Required Lenders in their sole discretion. The Required Lenders shall have received a signed copy of the Interim Financing Order.

4.01.8. *Approved Budget.* The Agent and the Lenders shall have received, and the Lenders shall be reasonably satisfied with the Approved Budget.

4.01.9. *Approvals.* All necessary governmental and third party consents and approvals necessary in connection with the making of the Loans and the transactions contemplated thereby shall have been obtained (without the imposition of any adverse conditions that are not

reasonably acceptable to the Agent and the Required Lenders) and shall remain in effect unless non-compliance is permitted under the Bankruptcy Code; and no Requirements of Law shall be applicable in the judgment of the Agent and the Required Lenders that restrains, prevents or imposes materially adverse conditions upon the Loans or the transactions contemplated thereby, except to the extent non-compliance is permitted under the Bankruptcy Code.

4.01.10. *Fees.* Any fees required to be paid on or before the Closing Date shall have been paid.

4.01.11. *Credit Party Expenses.* The Borrower shall have paid in full all Credit Party Expenses to the extent invoiced prior to or on the Closing Date.

4.01.12. *Closing Date.* The Closing Date shall have occurred on or before May 1, 2020.

Section 4.02. *Conditions to Advances of Proceeds of Loans After Closing Date.* The obligations of each Lender to honor any request for the advance of any proceeds of the Loans after the Closing Date shall be subject to the satisfaction of the following conditions precedent:

4.02.1. *Representations and Warranties.* The representations and warranties of the Loan Parties contained in Article 3 of this Agreement or in any other Credit Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects on and as of the date of any such advance of proceeds of the Loans or issuance of Letters of Credit, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date.

4.02.2. *Absence of Defaults and Events of Default.* No continuing Default or Event of Default shall exist, or would result from such requested advance or issuance.

4.02.3. *No Material Adverse Changes.* Other than the Chapter 11 Events and Circumstances, no Material Adverse Changes shall have occurred since the Closing Date.

4.02.4. *Case Milestones.* The Loan Parties shall be in compliance with the case milestones set forth in Section 5.20 hereof.

4.02.5. *Compliance with Orders.*

4.02.5.1. The making of such Borrowing shall not result in the total outstanding amount of Loans made under this Agreement exceeding the amount authorized at such time by the Interim Financing Order or the Final Financing Order, as applicable.

4.02.5.2. The Interim Financing Order or, after entry thereof, the Final Financing Order, shall be in full force and effect and shall not have been vacated, reversed or stayed.

4.02.5.3. The making of such Borrowing shall not violate any Requirement of Law (except to the extent non-compliance is permitted under the Bankruptcy Code) and shall not be enjoined temporarily, preliminarily or permanently.

Section 4.03. *Conditions to Borrowings of NM Term Loans in excess of the Interim NM Availability Amount.*

The obligations of the Lenders to make NM Term Loans hereunder that exceed the Interim NM Availability Amount are subject to satisfaction of the conditions precedent set forth above in the Section 4 as well as the following conditions precedent on the date of such Borrowing under this Agreement:

4.03.1. *Final Order.* An order approving the Loan Documents in form and substance satisfactory to the Agent and the Lenders in their sole discretion on a final basis (as the same may be amended, supplemented or modified from time to time after entry thereof in accordance with the terms hereof, the “Final Financing Order”) (it being understood and agreed that an order entered by the Bankruptcy Court substantially in the form of the Interim Financing Order, granting such additional relief necessary with respect to the Roll-Up Loans and/or any Guarantee or Collateral in respect thereof, with only such other modifications as are satisfactory in form and substance to the Agent and the Required Lenders in their sole discretion shall, if entered by the Bankruptcy Court, be deemed acceptable to the Agent and the Lenders), (i) shall have been entered and in full force and effect and (ii) shall not have been (A) vacated, reversed, or stayed, or (B) amended or modified except as otherwise agreed to in writing by the Lenders in their sole discretion.

4.03.2. *Fees and Expenses.* Any fees or Credit Party Expenses to the extent invoiced prior to or on the relevant funding date shall have been paid in full.

4.03.3. *Signed Final Order.* The Administrative Agent shall have received a signed copy of the Final Financing Order.

## ARTICLE 5

### AFFIRMATIVE COVENANTS

The Borrower agrees that until the payment and satisfaction in full of all of the Obligations, it will comply with and cause the other Loan Parties to comply with the covenants set forth in this Article 5.

Section 5.01. *Payment and Performance.* All Obligations shall be paid and performed in full when and as due. For the avoidance of doubt, nothing herein requires payment of any obligation subject to the automatic stay of the Bankruptcy Code.

Section 5.02. *Insurance.* Subject to any entry of any required orders of the Bankruptcy Court including, without limitation, the entry of the Interim Financing Order and the Final Financing Order, as applicable, the Borrower and each Loan Party shall obtain and maintain and shall cause its Subsidiaries to obtain and maintain such insurance coverages as are reasonable, customary and prudent for businesses engaged in activities similar to the business activities in which it is engaged. Without limitation to the foregoing, the Borrower and the other Loan Parties shall each maintain fire and extended coverage casualty insurance covering the Collateral and their respective assets in amounts satisfactory to the Agent consistent with prudent practices and sufficient to prevent any co insurance liability (which amount shall be the full insurable value of the assets and properties insured unless the Agent in writing agrees to a lesser amount), naming the Agent for the benefit of the Credit Parties as sole loss payee and/or additional insured with respect to the Collateral and such assets, with insurance companies and upon policy forms which are acceptable to and approved by the Agent. Notwithstanding the foregoing to the contrary, the Borrower may self-insure assets located at Salon Stores. The Loan Parties shall submit to the Agent originals or certified copies of the casualty insurance policies and paid receipts evidencing payment



of the premiums due on the same. The casualty insurance policies shall be endorsed so as to make them noncancellable unless thirty (30) days prior notice of cancellation is provided to the Agent. The proceeds of any insured loss for any single loss constituting a Casualty Event and the proceeds of any insured loss received when there is an Event of Default or Default shall be applied as a Mandatory Prepayment in accordance with the provisions of Subsection 2.05.1, unless the Required Lenders approve the use thereof to repair or replace damaged or destroyed Collateral.

Section 5.03. *Collection of Accounts; Sale of Inventory.* The Loan Parties shall collect their respective Accounts and sell their respective Inventory only in the ordinary course of their respective businesses, subject to customary credit and collection policies, which includes, but is not limited to, liquidating unsaleable inventory.

Section 5.04. *Notice of Litigation and Proceedings.* The Borrower and each other Loan Party shall give prompt notice to the Agent of any action, suit, citation, violation, direction, notice or proceeding before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, affecting such Loan Party, or the assets or properties thereof, which, if determined adversely to such Loan Party (a) could require it to pay over more than the Threshold Amount or deliver assets the value of which exceeds that sum, or (b) could reasonably be expected to cause a Material Adverse Change.

Section 5.05. *Payment of Liabilities to Third Persons.* The Borrower and each other Loan Party shall pay when and as due, or within applicable grace periods, all liabilities due to third persons, except when the amount thereof is being contested in good faith by appropriate proceedings and with adequate reserves therefor being set aside by it.

Section 5.06. *Notice of Change of Business Location.* Each of the Borrower and the other Loan Parties shall notify the Agent thirty (30) days in advance of, (a) any change in the location of its existing offices or places of business (other than locations of Salon Stores), (b) the establishment of any new, or the discontinuation of any existing, places of business, and (c) any change in or addition to the locations at which any material portion of the Collateral (or other property securing the Obligations) is kept. Prior to moving any Collateral (other than the movement of assets typically maintained at Salon Stores, from one Salon Store to another Salon Store) to any location not owned by a Loan Party (other than deliveries to Account Debtors of sold or leased goods), each Loan Party shall obtain and deliver to the Agent an agreement, in form and substance acceptable to the Agent, pursuant to which the owner of such location shall: (i) subordinate any rights which it may have, or thereafter may obtain, in any of the Collateral or other property to the rights and security interests of the Credit Parties; and (ii) allow the Agent access to the Collateral or other property in order to remove the Collateral or other property from such location.

Section 5.07. *Payment of Taxes.* Each of the Borrower and the other Loan Parties shall pay or cause to be paid when and as due all Taxes imposed upon it or on any of its property or which it is required to withhold and pay over to the taxing authority or which it must pay on its income, except where contested in good faith, by appropriate proceedings and at its own cost and expense; provided, however, that no Loan Party shall be deemed to be contesting in good faith by appropriate proceedings unless (a) such proceedings operate to prevent the taxing authority from attempting to collect the Taxes, (b) the Collateral is not subject to sale, forfeiture or loss during such proceedings, (c) the applicable Loan Party's contest does not subject the Credit Parties to any liabilities owed to or claims from the taxing authority or any other person, (d) the applicable Loan Party establishes appropriate reserves for the payment of all Taxes, court costs and other expenses for which such Loan Party would be liable if unsuccessful in the contest, (e) the applicable Loan Party prosecutes the contest continuously to its final conclusion, and (f) at the conclusion of the



proceedings, the applicable Loan Party promptly pays all amounts determined to be payable, including but not limited to all taxes, legal fees and court costs.

Section 5.08. *Reporting Requirements.* The Borrower shall submit the following items to each of the Credit Parties:

5.08.1. *Monthly Reporting.* Not later than thirty (30) calendar days after the end of each calendar month (or such shorter period as may be indicated below), the Borrower shall submit to the Credit Parties each of the following:

5.08.1.1. *Financial Statements.* A consolidated and consolidating balance sheet, income and retained earnings statements and cash flow of the Borrower and its Subsidiaries as of the end of such month, all in reasonable detail and all prepared in accordance with GAAP and certified by an Authorized Officer of the Borrower (subject to year-end adjustments). The financial statements shall include detail of the individual operating income of the various locations of the Borrower and its Subsidiaries as well as the income on a consolidated basis.

5.08.1.2. *Thirteen Week Forecast Reports.* Thirteen (13) week cash flow projections, and a comparison of actual results to forecast.

5.08.1.3. [Reserved].

5.08.1.4. *Institutional Statements.* Copies of all regular monthly statements from Raymond James relating to the Securities Collateral.

5.08.2. *Quarterly Financial Statements.* As soon as available and in any event within forty-five (45) calendar days after the end of each Fiscal Quarter (or as of the end of each month if requested by the Required Lenders), the Borrower shall submit to the Credit Parties a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such period and a consolidated statement of income and retained earnings of the Borrower and its Subsidiaries for such period, and a consolidated statement of cash flow of the Borrower and its Subsidiaries for such quarter, all in reasonable detail and stating in comparative form the respective consolidated figures for the corresponding date and period in the previous Fiscal Year and all prepared in accordance with GAAP and certified by an Authorized Officer of the Borrower (subject to year-end adjustments). The financial statements shall include detail of the individual operating income of the various locations of the Borrower and its Subsidiaries as well as the income on a consolidated basis.

5.08.3. *Annual Financial Statements.* As soon as available and in any event within one hundred fifty (150) calendar days after the end of each Fiscal Year, the Borrower shall submit to the Credit Parties a consolidated balance sheet of the Borrower and its Subsidiaries as of the end of such Fiscal Year and a consolidated statement of income and retained earnings of the Borrower and its Subsidiaries for such Fiscal Year, and a consolidated statement of cash flow of the Borrower and its Subsidiaries for such Fiscal Year, all in reasonable detail and stating in comparative form the respective consolidated figures for the corresponding date and period in the prior Fiscal Year and all prepared in accordance with GAAP and accompanied by an audited opinion thereon issued by independent certified public accountants selected by the Borrower and reasonably acceptable to the Required Lenders, which opinion shall state whether the accountants' examination revealed an Event of Default and also shall acknowledge that the Lenders will rely on the statement of the accountants.

5.08.4. *Management Letters.* Promptly upon receipt thereof, the Borrower shall submit to the Credit Parties copies of any reports submitted to the Borrower or to its Subsidiaries by independent certified public accountants in connection with the examination of the financial statements of the Borrower and its Subsidiaries made by such accountants.

5.08.5. *Compliance Certificate.* The Borrower shall submit a Compliance Certificate to the Credit Parties, within forty-five (45) calendar days after the end of each Fiscal Quarter.

5.08.6. *Reports To Other Creditors.* Promptly after the furnishing thereof, the Borrower shall submit to the Credit Parties copies of any statement or report furnished to any other Person pursuant to the terms of any indenture, loan, or credit or similar agreement and not otherwise required to be furnished to the Agent pursuant to any other provisions of this Agreement.

5.08.7. *Management Changes.* The Borrower shall notify the Credit Parties immediately of any changes in the personnel holding the positions of either Chairperson, President or Chief Financial Officer of the Borrower.

5.08.8. *Projections.* The Borrower shall deliver to the Credit Parties within fifteen (15) days prior to the end of each Fiscal Year financial projections for the Borrower and its Subsidiaries for the three (3) year period beginning on the first day of such Fiscal Year, which projections shall include a projected consolidated and consolidating balance sheet, income statement, statement of cash flows, Capital Expenditure requirements, covenant compliance calculations, as well as a statement of all assumptions relating to the preparation of the projections.

5.08.9. *Notice of Defaults and Events of Default.* The Borrower shall promptly give written notice to the Credit Parties of the occurrence of any event, occurrence or condition (which is known to an executive officer of any Loan Party) which constitutes an Event of Default or a Default or which could be reasonably expected to result in a Material Adverse Change.

5.08.10. *Notice of Litigation.* The Borrower shall promptly give written notice to the Credit Parties of any pending or, to the knowledge of the Borrower, threatened claims or litigation against any of the Loan Parties, which claims or litigations, individually or in the aggregate, are reasonably foreseeable as likely to result in a Material Adverse Change.

5.08.11. *Joint Venture Notices.* The Borrower shall promptly give written notice to the Credit Parties of (a) any termination of the Management Joint Venture; and (b) any amendment, modification or change in any of the documents, agreements or other instruments affecting, governing or evidencing the Management Joint Venture, if any such amendment, modification or change would result in Borrower having additional Indebtedness with respect to the Management Joint Venture, whether direct or indirect, contingent or non-contingent, over the amount of such Indebtedness prior to such amendment, modification or change.

5.08.12. [Reserved].

5.08.13. *Quarterly Reports.* Within forty-five (45) calendar days after the end of each Fiscal Quarter the Borrower shall deliver to the Agent: (a) a schedule, as of the end of such Fiscal Quarter, of all Indebtedness owed to each of the Related Parties and all Guaranty Obligations of the Borrower relating to obligations of Related Parties; and (b) a schedule as of the end of such Fiscal Quarter, listing all of the shareholders of the Borrower and the number of Capital Stock owned by each such shareholder.

5.08.14. *Reportable Anti-Terrorism Compliance Event.* The Borrower shall promptly notify the Credit Parties upon the occurrence of a Reportable Anti-Terrorism Compliance Event.

5.08.15. *Capital Stock.* By January 15<sup>th</sup> of each year, the Borrower shall provide to the Agent a report listing all certificates evidencing Capital Stock in the Borrower and the holder of such Capital Stock together with a letter from the Control Custodian to the Agent confirming that the Control Custodian is in possession, on behalf of the Agent, of all of the certificates evidencing the non-voting Capital Stock of the Borrower listed on the report being provided by the Borrower to the Agent, together with appropriate blank stock powers for each such certificate.

5.08.16. [Reserved].

5.08.17. [Reserved].

5.08.18. *General Information.* In addition to the items set forth in Subsections 5.08.1 through 5.08.18 above, the Borrower agrees to submit, and cause the other Loan Parties to submit, to the Credit Parties such other information respecting the condition or operations, financial or otherwise, of the Loan Parties as the Credit Parties may reasonably request from time to time.

Section 5.09. *Preservation of Existence, Etc.* The Borrower and the other Loan Parties shall each (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization, (b) except as otherwise excused by the Bankruptcy Code, take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to cause a Material Adverse Change, and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to cause a Material Adverse Change.

Section 5.10. *Maintenance of Assets and Properties.* Each of the Borrower and the other Loan Parties shall (a) maintain, preserve and protect all of its material assets and properties necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted.

Section 5.11. *Compliance with Laws.* Each of the Borrower and the other Loan Parties shall comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted.

Section 5.12. *Inspection Rights.* Each of the Borrower and the other Loan Parties shall permit representatives and independent contractors of the Credit Parties to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at such reasonable times during normal business hours and as often as may be reasonably desired, upon reasonable advance notice to the Loan Parties; provided, however, that when a continuing Default or Event of Default exists any Credit Party (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Loan Parties at any time during normal business hours and without advance notice.

Section 5.13. *Environmental Matters and Indemnification.* Each of the Borrower and the other Loan Parties shall comply, and shall cause its Subsidiaries to comply with all Environmental Laws, the non-compliance with which could reasonably be expected to cause a Material Adverse Change. The Loan Parties shall investigate any circumstances which give the Loan Parties reason to believe or suspect the Contamination of any of the Properties. The Loan Parties shall promptly perform any remediation of such Contamination required under applicable Laws.

Section 5.14. *Additional Subsidiaries.*

5.14.1. *Domestic Subsidiaries.* If any Domestic Subsidiary is formed or acquired after the Closing Date, the Borrower shall notify the Agent and the Lenders in writing thereof within fifteen (15) calendar days after the date on which such Domestic Subsidiary is formed or acquired and, within fifteen (15) calendar days after the Agent's request therefor, (i) the Borrower shall cause such Domestic Subsidiary to (A) duly execute and deliver, or join and become a party to, a Guaranty Agreement, and the other applicable Credit Documents in the manner provided therein, and (B) promptly take such actions to create and perfect superpriority Liens on such Domestic Subsidiary's assets as security for the Obligations as the Agent or Required Lenders shall reasonably request, and (ii) 100% of the Capital Stock issued by any such Domestic Subsidiary shall be pledged as security for the Obligations pursuant to such Credit Documents in form and substance satisfactory to the Agent, as may be required under the applicable Laws to effectuate a fully enforceable superpriority pledge of such Capital Stock.

5.14.2. *Foreign Subsidiaries.* If any Foreign Subsidiary is formed or acquired after the Closing Date, the Borrower shall notify the Agent and the Lenders in writing thereof within fifteen (15) calendar days after the date on which such Foreign Subsidiary is formed or acquired, and, within fifteen (15) calendar days after the Agent's request therefor, (i) all Capital Stock of such Foreign Subsidiary, other than Excluded Stock, shall be pledged as security for the Obligations pursuant to such Credit Documents in form and substance satisfactory to the Agent, as may be required under the applicable Laws to effectuate a fully enforceable superpriority pledge of such Capital Stock, and (ii) if any loans, advances or other debt is owed or owing by any such Foreign Subsidiary to the Borrower or any Guarantor, the Borrower or Guarantor shall cause all promissory notes and other instruments evidencing such loans, advances and other debt to be pledged as security for the Obligations pursuant to the Credit Documents.

5.14.3. *Requirements For All Additional Subsidiaries.* With respect to each such additional Subsidiary, the Borrower shall deliver or cause to be delivered to the Agent (i) a complete copy of the Organizational Documents of such Subsidiary, together with a certificate of status or good standing if such certificates are issued by the jurisdiction of formation, (ii) the original certificates for the Capital Stock of such Subsidiary (except in the case of a Foreign Subsidiary, Excluded Stock), together with undated stock powers for such certificates, executed in blank, or if any shares of Capital Stock are uncertificated, confirmation and evidence reasonably satisfactory to the Agent that the security interest in such uncertificated securities has been granted to and perfected by the Agent for the benefit of the Credit Parties, in accordance with the applicable sections under Articles 8 and 9 of the UCC or other similar or local or foreign Law that may be applicable, and (iii) all documentation and other information required by bank regulatory authorities under applicable "Know your customer" and anti-money laundering rules and regulations, including the US Patriot Act, as reasonably requested by the Agent or any Lender.

Section 5.15. *Additional Pledgors.* The Borrower shall notify the Agent at the time that any Person who was not previously a shareholder of the Borrower becomes a shareholder of the

Borrower and promptly thereafter (and in any event within fifteen (15) days) cause such Person to: (a) become a “Pledgor” by executing and delivering to the Agent a counterpart of the Pledge Agreement relating to the Capital Stock of the Borrower, (b) deliver to the Agent the original certificates evidencing voting Capital Stock owned by such Person, together with appropriate executed blank stock powers, (c) deliver to the Control Custodian the original certificates evidencing non-voting Capital Stock owned by such Person, together with appropriate blank stock powers, and (d) deliver to the Agent documents of the types referred to in clauses (c) and (d) of Subsection 4.01.1, all in form, content and scope reasonably satisfactory to the Agent.

Section 5.16. *Additional Capital Stock.* The Borrower shall notify the Agent within fifteen (15) days) after any existing shareholder of the Borrower obtains a new certificate evidencing Capital Stock of the Borrower and shall cause such Person to: (a) deliver to the Agent any such new certificates evidencing voting Capital Stock together with appropriate executed blank stock powers; and (b) deliver to the Control Custodian any such new certificates evidencing non-voting Capital Stock together with appropriate executed blank stock powers.

Section 5.17. *Use of Proceeds.* Use the proceeds of the Loans only for the purposes set forth in Section 3.27.

Section 5.18. *Approved Budget; Additional Reporting.*

5.18.1. The use of Loans by the Borrower under this Agreement and the other Loan Documents shall be limited in accordance with the Approved Budget, subject to the Permitted Variance. The initial Approved Budget delivered by the Borrower to the Agent, the Lenders, their financial advisors and their counsel on the Closing Date shall depict, (i) on a weekly basis, Cash Balances, Cash Inflows and Cash Outflows, payroll and other information for the period following the Closing Date set forth in the initial Approved Budget (the “Weekly Budget Period”), and such initial Approved Budget as attached hereto as Exhibit E and is in form and substance satisfactory to, each of the Lenders and their financial advisors and counsel in their sole discretion. The Approved Budget shall be updated, modified or supplemented (with the consent and/or at the request of the Required Lenders) from time to time, but in any event not less than on a weekly basis and at least seven (7) days prior to the end of each Weekly Budget Period commencing as of the Closing Date), and such update, modification or supplement shall be in form and detail consistent with the prior Approved Budget. Upon approval of each such update, modification or supplement to the Approved Budget by the Required Lenders in their reasonable sole discretion (such determination shall be provided within seven (7) days of receipt), the Approved Budget as so updated, modified or supplemented shall then become the Approved Budget for all purposes hereunder and under the Interim Financing Order and Final Financing Order. No such update, modification or supplement to any Approved Budget shall be effective until so approved. Approval of such update, modification or supplement shall be evidenced by a writing delivered (which may be through electronic transmission) by the Required Lenders (which may be by their counsel or financial advisors on their behalves). In the event that any update, modification or supplement to any Approved Budget is not approved, the existing Approved Budget without giving effect to such update, modification or supplement shall remain in effect. Each update, modification or supplement to an Approved Budget delivered to the Agent shall be accompanied by such supporting documentation as reasonably requested by the Lenders.

5.18.2. The Borrower shall deliver to the Agent on or before 5:00 p.m. (New York time) on Thursday of each Week (unless such day is not a Business Day, in which event the next succeeding Business Day): (i) a compliance certificate, in form and substance satisfactory to the Agent and the Required Lenders, signed by an Authorized Officer certifying that no Default or



Event of Default has occurred and is continuing or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, (ii) a consolidated accounts payable aging report as of the Friday of the Prior Week, (iii) a Budget Variance Report and (iv) such other information as may be reasonably requested by the Agent or the Lenders. Each of the foregoing shall be in form and detail reasonably satisfactory to the Agent and the Required Lenders.

5.18.3. The Borrower shall deliver to the Agent on or before 5:00 p.m. (New York time) on Friday of each Week (unless such day is not a Business Day, in which event the next succeeding Business Day) a cash flow forecast for the Weekly Budget Period beginning on the previous Monday (the "Consolidated Forecast"), with supporting detail and documentation, in form and detail reasonably satisfactory to the Required Lenders.

5.18.4. Agent and Lenders (i) may assume that the Borrower will comply with the Approved Budget (subject to the Permitted Variance), (ii) shall have no duty to monitor such compliance and (iii) shall not be obligated to pay (directly or indirectly from the Collateral other than indirectly through the funding of the Loans) any unpaid expenses incurred or authorized to be incurred pursuant to any Approved Budget. The line items in the Approved Budget for payment of interest, expenses and other amounts to the Agent and the Lenders are estimates only, and the Borrower remains obligated to pay any and all Obligations in accordance with the terms of the Loan Documents, and the Interim Financing Order and Final Financing Order. Nothing in any Approved Budget (including any estimates of a loan balance in excess of borrowing base restrictions) shall constitute an amendment or other modification of any Loan Document or any of the availability restrictions or other lending limits set forth therein.

Section 5.19. *Financial Advisor.* The Loan Parties shall continuously retain during the term of this Agreement a restructuring advisor or chief restructuring officer and a financial advisor in each case which is reasonably satisfactory to the Required Lenders, and the Loan Parties shall provide the Lenders and their advisors with reasonable access to the Loan Parties' restructuring and financial advisors; provided that, if a restructuring advisor, chief restructuring officer or a financial advisor ceases to be retained, the Borrower will retain a new restructuring advisor, or chief restructuring officer or financial advisor, as the case may be, reasonably satisfactory to the Required Lenders within thirty (30) days (which period may be extended by up to fifteen (15) days with the approval of the Required Lenders in their sole discretion) of such cessation

Section 5.20. *Case Milestones.* Each Loan Party shall ensure that each of the milestones set forth below is achieved in accordance with the applicable timing referred to below (or such later dates as approved by the Required Lenders):

5.20.1. Not later than two (2) days following the Petition Date, the Loan Parties shall file with the Bankruptcy Court a motion in form and substance satisfactory to the Agent seeking approval of bid procedures for a sale pursuant to section 363 of the Bankruptcy Code of the Acquired Assets (the "Bidding Procedures") with the ability of the DIP Lender or an affiliate thereof to credit bid up to the full amount of its claims (whether arising under this Agreement or the Prepetition Credit Agreement and which credit bid may provide for the assignment of the right to purchase the Acquired Assets) (the "363 Sale");

5.20.2. Not later than three (3) business days following the Petition Date, the Bankruptcy Court shall enter the Interim Order in form and substance satisfactory to the Agent and Stalking Horse Purchaser approving this Agreement and the Loan Documents on an interim basis;

5.20.3. Not later than fourteen (14) days following the Petition Date, the Bankruptcy Court shall enter an order approving the Bidding Procedures in form and substance satisfactory to the Stalking Horse Purchaser;

5.20.4. Not later than twenty-five (35) days following the Petition Date, the Bankruptcy Court shall enter the Final Order in form and substance satisfactory to the Agent and Stalking Horse Purchaser approving this Agreement and the Loan Documents on a final basis;

5.20.5. Not later than thirty-five (35) days following the Petition Date, the Bankruptcy Court shall enter an order in form and substance satisfactory to the Stalking Horse Purchaser approving the 363 Sale (the “363 Sale Effective Date”); and

5.20.6. Not later than forty-five (45) days following the Petition Date, the 363 Sale shall be consummated.

**Section 5.21. *Certain Other Bankruptcy Matters.***

5.21.1. The Borrower and the Subsidiaries shall comply (i) in all respects, after entry thereof, with all of the requirements and obligations set forth in the Financing Orders, as such order is amended and in effect from time to time in accordance with this Agreement, (ii) in all respects, after entry thereof, with each order of the type referred to in clause (b) of the definition of “Approved Bankruptcy Court Order”, as such orders, if entered by the Bankruptcy Court, must comply with, and only be modified from time to time in accordance with, clause (b) of the definition of “Approved Bankruptcy Court Order,” and (iii) in all material respects, after entry thereof, with the orders (to the extent not covered by subclause (i) or (ii) above) approving the Debtors’ “first day” and “second day” relief obtained in the Chapter 11 Cases, as such orders, if entered by the Bankruptcy Court, must comply with, and only be modified from time to time in accordance with, clause (c) of the definition of “Approved Bankruptcy Court Order”.

5.21.2. The Borrower shall provide at least five (5) Business Days’ (or such shorter notice acceptable to the Required Lenders in their sole discretion) prior written notice to the Agent and its advisors prior to any assumption or rejection of any Debtor’s material contracts or material non-residential real property leases pursuant to Section 365 of the Bankruptcy Code, and no such contract or lease shall be assumed or rejected, if such assumption or rejection adversely impacts (i) the Collateral, any Liens thereon or any DIP Superpriority Claims payable therefrom (including, without limitation, any sale or other disposition of Collateral or the priority of any such Liens or DIP Superpriority Claims) or (ii) any transaction outside of the ordinary course of business with any Loan Party, if the Required Lenders inform the Borrower in writing within three (3) Business Days of receipt of the notice from the Borrower referenced above that they object to such assumption or rejection, as applicable.

**ARTICLE 6**

**NEGATIVE COVENANTS**

The Borrower agrees that until the payment and performance in full of all of the Obligations, it will not do, and it will not permit any of the other Loan Parties to do, any of the following:

Section 6.01. *Liens.* Neither the Borrower nor any other Loan Party shall create, incur, assume or suffer to exist any Lien upon any of its properties (real or personal), assets or revenues,



whether now owned or hereafter acquired, other than Liens securing the Obligations and Permitted Encumbrances.

Section 6.02. *Investments And Loans.* Neither the Borrower nor any other Loan Party shall make any Investments, extend any loans or credit facilities to any Persons, or provide any financing of any kind to any Persons, except (a) Investments in Cash Equivalents, (b) advances to its employees, directors and officers in the ordinary course of business for travel, entertainment, relocation and general ordinary course of business purposes provided that the aggregate amount of such advances outstanding does not exceed One Hundred Thousand Dollars (\$100,000.00), (c) extensions of credit (other than to Related Parties) in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, (d) extensions of credit to Related Parties of Borrower in the nature of accounts receivable or notes receivable arising in the ordinary course of Borrower's business provided the aggregate amount of all such receivables outstanding at any time shall never exceed Two Million Dollars (\$2,000,000.00), (e) acquisitions of fixed assets and inventory in the ordinary course of business to the extent not otherwise prohibited by the terms of this Agreement; (f) credit accommodations provided by any Loan Party to another Loan Party in the ordinary course of business and (g) Investments of Borrower in any Guarantor and Investments of any Guarantor in Borrower.

Section 6.03. *Indebtedness.* No Loan Party shall create, incur, assume or suffer to exist any Indebtedness or Guaranty Obligations, except (a) the Obligations, (b) Indebtedness outstanding on the Petition Date and any refinancings, refundings, renewals or extensions thereof; provided that the amount of any such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder, (c) obligations (contingent or otherwise) of any Loan Party existing or arising under any Swap Agreements, provided that (i) such obligations are (or were) entered into either in connection with the Obligations or in the ordinary course of business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Loan Party, or changes in the value of securities issued by such Loan Party, and not for purposes of speculation or taking a "market view," and (ii) such Swap Agreement does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party, (d) unsecured Indebtedness owed to Related Parties of the Borrower and obligations under Guarantees relating to the Indebtedness of Related Parties, provided that the aggregate amount of all such Indebtedness under this clause (e) (including any such Indebtedness included in clause (b) above), outstanding at any one time shall never exceed \$1,500,000.00 or (f) unsecured Guaranty Obligations relating to operating leases of Related Parties, provided that the aggregate amount of such Guaranty Obligations (*i.e.*, the rental obligations of the Related Parties for the full term of the operating leases, including any such rental obligations included in clause (b) above) shall never exceed the amount owing on the Petition Date.

Section 6.04. *Fundamental Changes.* No Loan Party or Subsidiary of a Loan Party shall merge, dissolve, liquidate, consolidate with or into another Person (whether in one transaction or in a series of transactions), except that, so long as no continuing Default or Event of Default exists and no Material Adverse Change has occurred and no Default, Event of Default or Material Adverse Change would be likely to result therefrom after giving effect thereto (a) any Subsidiary of the Borrower may merge with the Borrower provided that the Borrower is the continuing or surviving Person of such merger, or (b) any Subsidiary of the Borrower may merge with or liquidate into any other Subsidiary of the Borrower, provided that the continuing surviving Person from such

merger shall be a Guarantor. The Borrower shall not amend its Articles of Incorporation without the consent of the Required Lenders.

Section 6.05. *Dispositions.* No Loan Party or Subsidiary of a Loan Party shall make any Disposition or enter into any agreement to make any Disposition without the consent of the Required Lenders, except (a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business, (b) Dispositions of equipment to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are applied to the purchase price of similar replacement property, (c) the sale of residual ownership rights in vehicles and equipment upon the termination of operating leases, (d) Disposition of Inventory in the ordinary course of business, (e) Dispositions of property held at a Salon Store upon the closure of such Salon Store, or (e) Dispositions of property by any Subsidiary to Borrower or to a wholly owned Subsidiary; provided that if the transferor of such property is a Guarantor, the transferee thereof must either be Borrower or a Guarantor.

Section 6.06. *Restricted Payments.* No Loan Party may declare or make, directly or indirectly, any Restricted Payments, or incur any obligation (contingent or otherwise) to do so, except that (a) each Subsidiary of the Borrower may make Restricted Payments to the Borrower, (b) the Loan Parties may declare and make non-cash dividend payments or other non-cash distributions payable solely in their Capital Stock, (c) the Borrower may make dividend payments to shareholders to extinguish existing Shareholder Distribution Loans and may make new Shareholder Distribution Loans provided that (i) there is no Default or Event of Default, and (ii) any such dividend or Shareholder Distribution Loan is a non-cash transaction and is not expected to be a cash item in any future accounting period, and (d) in the absence of any continuing Defaults or Events of Default, the Borrower may make Tax Distributions.

Section 6.07. *Change in Nature of Business.* No Loan Party and no Subsidiary of a Loan Party shall engage in any material line of business substantially different from (a) those lines of business conducted by it on the Closing Date or (b) any business substantially related or incidental to the lines of business conducted by it on the Closing Date.

Section 6.08. *Transactions With Affiliates.* No Loan Party and no Subsidiary of any Loan Party shall enter into any transaction of any kind with any Affiliate (other than with its wholly-owned Subsidiaries), whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable as would be obtainable at the time in a comparable arm's length transaction with a Person other than an Affiliate.

Section 6.09. *Burdensome Agreements; Negative Pledges.* No Loan Party shall enter into or grant any negative pledges or agreements restricting its ability to pledge its assets or to grant Liens against its assets, except as otherwise expressly provided for in the Credit Documents and except to the extent that any Capital Lease or purchase money facility of any of the Loan Parties prohibits the granting of Liens against the equipment that is being leased or financed, as applicable, pursuant to such Capital Lease or purchase money facility. No Subsidiary of the Borrower shall enter into any contractual obligation that limits the ability of such Subsidiary (a) to make Restricted Payments to the Borrower or to otherwise transfer property to the Borrower, or (b) to guarantee the Obligations.

Section 6.10. *Use of Proceeds.* The Loan Parties shall not use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry "margin stock" (within the meaning of the Margin Regulations) or to extend

credit to others for the purpose of purchasing or carrying margin stock or to refund Indebtedness originally incurred for such purpose.

Section 6.11. *Additional Bankruptcy Matters.*

(a) Assert or prosecute any claim or cause of action against any of the Secured Parties (in their capacities as such), unless such claim or cause of action is in connection with the enforcement of the Loan Documents against the Agent or Lenders;

(b) Subject to the terms of the Financing Orders and subject to Section 8.01, object to, contest, delay, prevent or interfere with in any material manner the exercise of rights and remedies by the Agent or the Lenders with respect to the Collateral following the occurrence of an Event of Default; or

(c) Except as expressly provided or permitted hereunder (including, without limitation, to the extent expressly identified in any line item in the Approved Budget or pursuant to any “first day” or “second day” orders complying with the terms of this Agreement) or, with the prior consent of the Required Lenders, as provided pursuant to any other Approved Bankruptcy Court Order, make any payment or distribution to any Affiliate that is not a Loan Party or to any insider of the Company outside of the ordinary course of business.

Section 6.12. *Other Superpriority Claims.* Incur, create, assume, suffer to exist or permit any Superpriority Claim which is *pari passu* with or senior to the DIP Superpriority Claim, except for the Carve-Out.

## ARTICLE 7

### EVENTS OF DEFAULT

The occurrence of any of the following events or conditions shall constitute an Event of Default.

Section 7.01. *Failure To Pay.* The failure or refusal of the Borrower to pay (a) all or any amount or installment of principal due upon the Loans (whether scheduled, by acceleration, or as otherwise required by the terms of the Credit Documents), or (b) any interest, fees or any other payment Obligation within ten (10) days after the due date thereof.

Section 7.02. *Violation Of Covenants.* (a) The failure or refusal of the Borrower to perform, observe, and comply with any covenant, agreement, or condition contained in Sections 5.02, 5.04, 5.06, 5.08, 5.09, 5.12, 5.13 or 5.20 or in Article 6 of this Agreement, or (b) the failure or refusal of the Borrower to timely perform, observe and comply with any other covenant, agreement, or condition contained in this Agreement (not specified above in Sections 7.01 or 7.02.(a)) and in the case of this clause (b) such failure or refusal continues for a period of fifteen (15) calendar days.

Section 7.03. *Representation Or Warranty.* Any representation or warranty made by the Borrower or by any other Loan Party herein or in any Credit Document, the Collateral Information Report, or in any Compliance Certificate or other document or instrument delivered from time to time to any of the Credit Parties shall be false, incorrect, or misleading in any material respect when made or deemed made.

Section 7.04. *Cross Default.* The Borrower or any other Loan Party (a) fails to timely perform, observe or comply with any covenant, agreement or condition contained in any of the Credit Documents, other than this Agreement and such failure continues for a period of fifteen (15) calendar days, or (b) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any post-petition or unstayed Indebtedness or guarantee (other than Indebtedness hereunder) or any debtor-in-possession financing 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, or (c) fails to observe or perform any other agreement or condition relating to any such Indebtedness or guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause (without regard to any existing intercreditor arrangements), with the giving of notice if required, such Indebtedness 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 Indebtedness to be made, prior to its stated maturity, or such guarantee to become payable or cash collateral in respect thereof to be demanded; or (d) there occurs a default or event of default under any Swap Agreement.

Section 7.05. *Judgments.* The Borrower or any of the other Loan Parties shall suffer final judgments for the payment of money aggregating for all Loan Parties in excess of the Threshold Amount in excess of available insurance proceeds and either: (i) enforcement proceedings are commenced by any creditor upon such judgment and have not been stayed; or (ii) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment is not in effect or the exercise of remedies as a result of which shall not have been stayed under the Bankruptcy Code.

Section 7.06. *Levy By Judgment Creditor.* A judgment creditor of any Loan Party shall obtain possession of any of the Collateral with a value in excess of the Threshold Amount by any means, including but not limited to levy, distraint, replevin or self-help; or a writ of garnishment is served on the Agent or any other Credit Party relating to any of the accounts of the Borrower maintained with the Agent or any other Credit Party.

Section 7.07. *[Reserved]*

Section 7.08. *[Reserved]*

Section 7.09. *Attempt To Terminate Or Limit Guaranties.* The receipt by a Credit Party of notice from a Guarantor that such Guarantor is attempting to terminate or limit any portion of its obligations under a Guaranty Agreement.

Section 7.10. *[Reserved].*

Section 7.11. *Injunction.* The issuance of any injunction against the Borrower or any other Loan Party which enjoins or restrains the Borrower or any other Loan Party from continuing to conduct any material part of its business affairs which continues for more than ten (10) days.

Section 7.12. *Change In Control.* The occurrence of any Change in Control of the Borrower, except as may occur or have occurred as a result of the Chapter 11 Cases.

Section 7.13. *[Reserved]*.

Section 7.14. *Material Adverse Change*. The occurrence of a Material Adverse Change.

Section 7.15. *Stock Pledge*. The failure by any pledgor under a Pledge Agreement to comply with any covenant or agreement contained in such Pledge Agreement and such failure is not cured within fifteen (15) calendar days.

Section 7.16. *Securities Collateral Documents*. The occurrence of a default or event of default under any Securities Collateral Document by the Loan Parties.

Section 7.17. *Bankruptcy*.

(a) (i) The entry of an order dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, or any Loan Party files a motion or other pleading seeking entry of such an order or supports or fails to promptly oppose such dismissal or conversion;

(ii) a trustee, responsible officer or an examiner having expanded powers under Section 1104 of the Bankruptcy Code (other than (x) a fee examiner or (y) for purposes of an investigation pursuant to Sections 1106(a)(3) and (4) of the Bankruptcy Code) is appointed or elected in the Chapter 11 Cases, any Loan Party or applies for, consents to, supports, acquiesces in or fails to promptly oppose, any such appointment, or the Bankruptcy Court shall have entered an order providing for such appointment, in each case without the prior written consent of the Required Lenders in their sole discretion;

(iii) the entry of an order staying, reversing or vacating the Interim Financing Order or the Final Financing Order or modifying or amending the Interim Financing Order or Final Financing Order other than in form and substance satisfactory to the Agent and the Required Lenders, or any Loan Party files an application, motion or other pleading seeking entry of such an order or supports or fails to promptly oppose entry of such an order, in each case without the prior written consent of the Agent and the Required Lenders in their sole discretion;

(iv) the entry of an order in any of the Chapter 11 Cases denying or terminating use of cash collateral by any of the Loan Parties, and the Loan Parties have not obtained use of cash collateral (consensually or non-consensually) with the prior written consent of the Agent and the Required Lenders;

(v) the entry of an order in any of the Chapter 11 Cases granting relief from any stay or proceeding (including, without limitation, the automatic stay) so as to allow any third party to proceed with foreclosure (or the granting of a deed in lieu of foreclosure or the like) against any assets of the Loan Parties with a value in excess of \$5,000,000 in the aggregate;

(vi) (i) the entry of a final non-appealable order in the Chapter 11 Cases charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Lenders, subject to the Final Financing Order or (ii) the commencement of other actions by the Loan Parties that challenges the rights and remedies of the Agent or the

Lenders under the Loan Documents in any of the Chapter 11 Cases or that is inconsistent with the Loan Documents;

(vii) without the prior written consent of the Agent and the Required Lenders, any Loan Party shall file a motion seeking or take any action supporting a motion seeking, or the Bankruptcy Court shall enter an order in any of the Chapter 11 Cases authorizing (x) financing under Section 364 of the Bankruptcy Code (other than the Loans) or (y) the sale of all or substantially all of the Loan Parties' assets unless such order contemplates payment in full in cash of the Obligations upon the closing of such financing or consummation of such sale, whether pursuant to a plan of reorganization or otherwise;

(viii) without the consent of the Required Lenders (not to be unreasonably withheld), the entry of an order in any of the Chapter 11 Cases granting adequate protection to any other person (which, for the avoidance of doubt, shall not apply to any payments made pursuant to "first day" or other orders reasonably acceptable to the Agent and the Required Lenders);

(ix) termination or expiration of any exclusivity period for any Debtor to file or solicit acceptances for a plan of reorganization;

(x) the filing or support of any pleading by any Loan Party (or any direct or indirect parent thereof) seeking, or otherwise consenting to, any of the matters set forth in clauses (i) through (ix) above, unless such filing or any pleading is in connection with the enforcement of the Loan Documents against the Agent or the Lenders;

(b) the commencement of any action, including the filing of any pleading, by any Loan Party or any direct or indirect subsidiary of any Loan Party (or by any direct or indirect parent of any Loan Party) against any of the prepetition secured parties with respect to any of the obligations or liens under or with respect to the Prepetition First Lien Credit Agreement;

(c) the making of any material payments in respect of prepetition obligations other than (i) to the extent permitted by the Financing Orders or an Approved Bankruptcy Court Order (including any "first day" orders) in amounts reasonably satisfactory to the Agent and Required Lenders (and not otherwise prohibited by this Agreement or any other Approved Bankruptcy Court Order then in effect), or (ii) as otherwise agreed to in writing by the Agent and Required Lenders;

(d) the entry of the Final Financing Order shall not have occurred within forty-five (45) days after entry of the Interim Financing Order (or such later date (but in no event later than sixty (60) days after the entry of the Interim Financing Order) as the Agent and the Required Lenders may reasonably agree);

(e) an order of the Bankruptcy Court granting, other than in respect of the Loans and the Carve-Out or as otherwise permitted under the applicable Loan Documents, any claim entitled to superpriority administrative expense claim status in the Chapter 11 Cases pursuant to Section 364(c)(1) of the Bankruptcy Code *pari passu* with or senior to the claims of the Agent and the Lenders under the Loan Documents, or the filing by any Loan Party of a motion or application seeking entry of such an order;



(f) other than with respect to the Carve-Out and the Liens provided for in the Loan Documents (subject, in the case of the Loans, to the priority set forth in the Financing Orders and Section 2.18), the Borrower or any other Loan Party shall create or incur, or the Bankruptcy Court enters an order granting, any claim on Collateral which is *pari passu* with or senior to any liens under the Prepetition First Lien Facility, the adequate protection liens and adequate protection obligations granted under the Interim Financing Order in contravention of the lien priorities specified in Section 2.18;

(g) noncompliance by any Loan Party or any of its Subsidiaries with the terms of the Interim Financing Order or, after entry thereof, the Final Financing Order;

(h) the Loan Parties or any of their Subsidiaries (or any direct or indirect parent of any Loan Party), or any person claiming by or through any of the foregoing, shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against the Agent or any of the Lenders regarding the Loans, unless such suit or other proceeding is in connection with the enforcement of the Loan Documents against the Agent or Lenders; or

(i) (i) a plan of reorganization shall be confirmed in any of the Chapter 11 Cases that is not an Acceptable Plan of Reorganization, or any order shall be entered which dismisses any of the Chapter 11 Cases and which order (x) does not provide for termination of the unused NM Commitments and payment in full in cash of the Obligations, (y) does not provide for release and exculpatory provisions relating to the Agent, the Arranger and the Lenders that are satisfactory to the Agent, the Arrangers and the Required Lenders and (z) is not otherwise reasonably satisfactory to the Agent and the Required Lender, or (ii) any of the Loan Parties or any of their Subsidiaries (or any of their direct or indirect parents), shall file, propose, support, or fail to promptly contest in good faith the filing or confirmation of such a plan or the entry of such an order; or

(j) any Loan Party (or any direct or indirect parent thereof) shall file any motion seeking authority to consummate the sale of assets of any Loan Party (other than any such sale that is permitted under the Loan Documents and other than in connection with any Cost-Cutting Transaction permitted hereunder) pursuant to Section 363 of the Bankruptcy Code, without the consent of the Required Lenders, or the Borrower shall file (or fail to oppose) any motion seeking an order authorizing the sale of all or substantially all of the assets of the Loan Parties (unless such sale would result in the repayment in full in cash of all Obligations upon consummation thereof); then in every event, and at any time thereafter during the continuance of such event, the Agent, on behalf of the Lenders, may (and at the direction of the Lenders, shall) (A) declare (i) the Commitments to be terminated, reduced or restricted forthwith to the extent any such Commitments remain the applicable Loans hereunder (with accrued interest thereon), (ii) all other amounts owing under this Agreement and the other Loan Documents to be due and payable forthwith, whereupon the same shall immediately become due and payable without presentment, demand, protest or any other notices of any kind which are hereby expressly waived by the Borrower (except as expressly provided above in this Section 8.01); and (iii) the termination of the Loan Documents as to any future liability or obligation of the Agent and Lenders, without any effect to any liens or obligations provided hereunder; and (B) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, proceed to protect, enforce and exercise all rights and remedies of the Agent or the Lenders under this Agreement, any of the other Loan Documents or applicable law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced,



and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Agent or the Lenders; provided that with respect to the enforcement of the Liens purported to be created by any Security Document or exercise of any other rights or remedies with respect to the Collateral (including rights to set off or apply any amounts in any bank accounts that are a part of the Collateral), provide the Borrower with at least five (5) Business Days' written notice prior to taking the action contemplated thereby (and in any hearing after the giving of such notice, the only issue that may be raised by any party in opposition thereto being whether, in fact, an Event of Default has occurred and is continuing) (the "Remedies Notice Period"); provided, that, no notice shall be required for any exercise of rights or remedies (x) to block or limit withdrawals from any bank accounts that are a part of the Collateral (including, without limitation, by sending any control activation notices to depository banks pursuant to any control agreement), except that (a) the Loan Parties shall be permitted to continue to use cash collateral in the ordinary course of business, including, without limitation, for the purchase and sale of raw materials and work-in-process and finished goods inventory from affiliates, during such five (5)-Business Day notice period in accordance with the Approved Budget then in effect (without giving effect to any updates thereto after delivery of such notice, unless consented to by the Required Lenders in their sole discretion, and subject to conditions to be agreed in the case of other payments to the Loan Parties' Affiliates or insiders) and to fund the amount of the Post-Trigger Carve-Out, and (b) during such five (5)-Business Day notice period, any party in interest shall be entitled to seek an emergency hearing with the Bankruptcy Court and (y) in the event the Obligations have not been repaid in full in cash on the Scheduled Termination Date.

## ARTICLE 8

### RIGHTS AND REMEDIES OF CREDIT PARTIES ON THE OCCURRENCE OF AN EVENT OF DEFAULT

Upon the occurrence of an Event of Default and during the continuance thereof:

Section 8.01. *Credit Parties' Specific Rights And Remedies.* In addition to all other rights and remedies provided by applicable Laws and the terms of the Credit Documents, upon the occurrence and during the continuance of any Event of Default, the Agent may, on behalf of the Lenders and shall, at the direction of the Required Lenders (a) declare the commitment of each Lender to advance proceeds of the Loans to be terminated, (b) accelerate and call immediately due and payable all or any part of the Obligations, (c) seek specific performance or injunctive relief to enforce performance of the undertakings, duties, and agreements provided in the Credit Documents, whether or not a remedy at law exists or is adequate, (d) exercise any rights of a secured creditor under applicable Laws against the Collateral, including (i) the right to take possession of the Collateral without the use of judicial process or hearing of any kind, (ii) the right to require the Loan Parties to assemble the Collateral at such place as the Agent may specify, and (iii) the right to sell the Collateral, in whole or in part, at either private or public sale, and (e) seek the appointment of a receiver for any or all of the Loan Parties and/or the assets of any or all of the Loan Parties.

Section 8.02. *Automatic Acceleration.* Upon the occurrence and during the continuance of an Event of Default as described in Sections 7.07 or 7.08 of this Agreement, the Obligations shall be automatically accelerated and due and payable without any notice, demand or action of any type on the part of the Credit Parties and the Commitments shall be automatically terminated.

Section 8.03. *Consent To Appointment of Receiver.* The Borrower irrevocably consents to the appointment of a receiver upon the request of the Agent during any continuing Event of

Default for it and for any or all of its business affairs and its assets, which receiver shall be authorized to have and exercise the broadest powers permitted or available under applicable Laws to operate, manage, conserve, liquidate and sell any or all of the Borrower's assets.

Section 8.04. *Remedies Cumulative.* The rights and remedies provided in this Agreement and in the other Credit Documents or otherwise under applicable Laws shall be cumulative and the exercise of any particular right or remedy shall not preclude the exercise of any other rights or remedies in addition to, or as an alternative of, such right or remedy.

Section 8.05. *Application Of Funds.* After the exercise of remedies (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Agent in the following order:

First, to the payment of that portion of the Obligations constituting fees, indemnities, expenses, reimbursements, and other amounts (including Credit Party Expenses) payable to the Agent and to that part of the Obligations owed to any of the Credit Parties or to Affiliates of any of the Credit Parties for Bank Products, as described in item (d) in the definition of Obligations.

Second, to the payment of that portion of the Obligations constituting fees, indemnities and other amounts payable to the Lenders (including Credit Party Expenses), ratably among the Lenders.

Third, to the payment of that portion of the Obligations constituting accrued and unpaid interest on the Loans and other Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them.

Fourth, to the payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them.

Fifth, to any other Obligations outstanding.

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by applicable Laws.

## ARTICLE 9

### THE AGENT

Section 9.01. *Appointment.* Each of the Lenders hereby irrevocably designates and appoints DIP Agent as Agent under this Agreement and the other Credit Documents and each Lender authorizes DIP Agent as their respective Agent to take such action on their behalf under the provisions of this Agreement and the other Credit Documents and to exercise such powers and perform such duties as are expressly delegated to the Agent by the terms of this Agreement and such other Credit Documents, together with such other powers as are reasonably incidental thereto. The provisions of this Article 9 are solely for the benefit of the Credit Parties and no Loan Party shall have any rights as a third party beneficiary of any of such provisions.

Section 9.02. *Exculpatory Provisions.*

9.02.1. *No Fiduciary, Discretionary, Or Implied Duties.* The Agent shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Agent:

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

(b) 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 Credit Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit Documents), provided that the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent to liability or that is contrary to any Credit Document or applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may affect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) Shall not, except as expressly set forth herein and in the other Credit 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 their Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

9.02.2. *No Liability for Certain Actions.* The Agent shall not be liable for any action taken or not taken by it (a) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.01 and 10.03) or (b) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final and non-appealable judgment.

9.02.3. *Knowledge.* The Agent shall be deemed not to have knowledge of any Default or Event of Default or Material Adverse Change unless and until written notice describing such Default, Event of Default or Material Adverse Change is given to the Agent by a Credit Party or by a Loan Party.

9.02.4. *No Duty To Inquire.* The 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 Credit 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 or Event of Default, (d) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document, or (e) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Agent.

Section 9.03. *Reliance by Agent.* The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument,

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

Section 9.04. *Delegation of Duties.* The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Credit Document by or through any one or more sub-agents appointed by the Agent. The Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the 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 Agent. The Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

Section 9.05. *Resignation Of Agent.* The Agent may at any time give notice of its resignation to the Credit Parties and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in either the Commonwealth of Virginia or the State of New York. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above provided that if the Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Agent on behalf of the Lenders under any of the Credit Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed), and (b) except for any indemnity payments owed to the retiring Agent, all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Agent, and the retiring Agent shall be discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Agent's resignation hereunder and under the other Credit Documents, the provisions of this Article and Section shall continue in effect for the benefit of such retiring 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 Agent was acting as Agent.

Section 9.06. *Non-Reliance On Agent And Other Lenders.* Each Lender acknowledges that it has, independently and without reliance upon the Agent or any other Lender 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 Lender acknowledges that it will, independently and without reliance upon the Agent or any other Lender 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 Credit Document or any related agreement or any document furnished hereunder or thereunder.

Section 9.07. *Agent May Hold Collateral For Lenders And Others.* The Lenders and the Loan Parties acknowledge that any security documents relating to the Loans, the Obligations, or the Collateral, including all of such documents filed in the public records in order to evidence or perfect the Liens granted in the Credit Documents, may name only the Agent, as agent for the Lenders as the secured party, mortgagee, beneficiary, or as lienholder. The Lenders and the Loan Parties authorize the Agent to hold any or all of the Liens in and to the Collateral and the Securities Collateral as the agent for the benefit of the Credit Parties, DIP Agent, or any of their respective Affiliates, as applicable under this Agreement.

Section 9.08. *The Agent in Its Individual Capacity.* The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, including the Person serving as the Agent hereunder in its individual capacity. 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 any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefore to the Lenders.

Section 9.09. *Agent May File Proofs Of Claim.* In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise (a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Agent and their respective agents and counsel and all other amounts due the Lenders and the Agent under Sections 2.01.5, 2.03.9, 2.13, 10.04 and 10.05) allowed in such judicial proceeding, and (b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Agent and, in the event that the Agent shall consent to the making of such payments directly to the Lenders, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent under Sections 2.03.9, 2.13, 10.04 and 10.05. Nothing contained herein shall be deemed to (i) permit the Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender, (ii) authorize the Agent to vote in respect of the claim of any Lender in any



such proceeding, or (iii) credit bid any Obligation held by any Lender in any such proceeding, without the prior consent of the Required Lenders.

Section 9.10. *Collateral And Guaranty Matters.* The Lenders irrevocably authorize the Agent, at its option and in its discretion: (a) to release any Lien on any property granted to or held by the Agent under any Credit Document (i) upon the final termination of all of the Commitments and payment in full of all Obligations (other than contingent indemnification obligations), (ii) that is sold or to be sold as part of or in connection with any sale permitted hereunder or under any Credit Document, or (iii) subject to Section 10.03, if approved, authorized or ratified in writing by the Required Lenders; and (b) to subordinate any Lien on any property granted to or held by the Agent under any Credit Document to the holder of any Lien or encumbrance on such property that is permitted under either clause (e) or (g) of the definition of Permitted Encumbrance. Upon request by the Agent at any time, the Required Lenders will confirm in writing the Agent's authority to release or subordinate its interest in particular types or items of property. The Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral or Securities Collateral, the existence, priority or perfection of the Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral or the Securities Collateral.

Section 9.11. *No Reliance on Agent's Customer Identification Program.* Each Lender acknowledges and agrees that neither such Lender, nor any of its Affiliates, participants or assignees, may rely on the Agent to carry out such Lender's, Affiliate's, participant's or assignee's customer identification program, or other obligations required or imposed under or pursuant to the Act or the regulations thereunder, including the regulations contained in 31 CFR 103.121 (as hereafter amended or replaced, the "CIP Regulations"), or any other Anti-Terrorism Law, including any programs involving any of the following items relating to or in connection with any Loan Party, its Affiliates or its agents, this Agreement, any other Credit Documents or the transactions hereunder or contemplated hereby: (a) any identity verification procedures, (b) any record-keeping, (c) comparisons with government lists, (d) customer notices or (e) other procedures required under the CIP Regulations or such other Laws.

Section 9.12. *No Other Duties, Etc.* Notwithstanding anything to the contrary herein, any documentation agent, syndication agent, or arranger listed on the cover page of this Agreement shall not have any powers, duties or responsibilities under this Agreement or any of the other Credit Documents, except in the capacity as a Lender.

Section 9.13. *No Advisory or Fiduciary Responsibility.* In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Credit Document), the Borrower acknowledges and agrees that: (a) (i) the arranging and other services regarding this Agreement provided by the Agent are arm's-length commercial transactions between the Borrower on the one hand, and the Agent on the other hand, (ii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent the Borrower has deemed appropriate, and (iii) the Borrower is capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby and by the other Credit Documents; (b) (i) the Agent is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower or any of its Affiliates, or any other Person and (ii) the Agent has no obligation to the Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Credit Documents; and (c) the Agent may be engaged in a broad

range of transactions that involve interests that differ from those of the Borrower, and the Agent has no obligation to disclose any of such interests to the Borrower. To the fullest extent permitted by Law, the Borrower hereby waives and releases any claims that it may have against the Agent with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

## ARTICLE 10

### MISCELLANEOUS

Section 10.01. *Notices.* Except in the case of notices and other communications expressly permitted to be given by telephone, 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 or sent by facsimile, as follows:

If to the Loan Parties:

Creative Hairdressers, Inc.  
1577 Spring Hill Road, Suite 500  
Vienna, Virginia 22182  
Attn.: Legal Dept. GC 17-02  
Telephone: (703) 269-5220  
Facsimile: (703) 269-5410

With copies to:

Ratner Companies, L.C.  
1577 Spring Hill Road, Suite 500  
Vienna, Virginia 22182  
Attn.: Legal Dept. GC 17-02  
Telephone: (703) 269-5269  
Facsimile: (703) 269-5418

D. Wyatt Bethel, Esquire  
Odin, Feldman & Pittleman, P.C.  
1775 Wiehle Avenue, Suite 400  
Reston, Virginia 20190  
Telephone: (703) 218-2148  
Facsimile: (703) 218-2160

If to the Agent (with a copy to each of the Lenders):

HC Salon Holdings, Inc.  
12333 Sowden Road, Suite 27167  
Houston, TX 77080  
Attention: Andrew Zins  
Telephone: 206-818-6245

If to any Lender, to it at its address (or facsimile number) set forth on the signature pages of this Agreement or in any Assignment And Assumption.

Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any



party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to any funding or issuance mechanics if such Lender has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the 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 acknowledgement 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, which shall be 8:00 a.m. to 5:00 p.m. Monday through Friday, 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.

Section 10.02. *Course of Conduct.* No failure or delay by any Credit Party in exercising any right or power under any Credit Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Credit Parties under the Credit Documents are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Credit Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless such waiver is made in accordance with Section 10.03 of this Agreement, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No waiver or indulgence by any of the Credit Parties shall constitute a future waiver of performance or exact performance by any of the Loan Parties. No amendment or waiver shall be effective unless in writing. Without limiting the generality of the foregoing, the advance of proceeds of a Loan shall not be construed as a waiver of any Default or an Event of Default, regardless of whether any Credit Party may have had notice or knowledge of such Default or Event of Default at the time of such advance or issuance.

Section 10.03. *Waivers and Amendments.* Except as expressly set forth herein, any term, covenant, agreement or condition of this Agreement or of any of the other Credit Documents may be amended or waived by the Required Lenders on behalf of the Lenders, and any consent may be given by the Required Lenders on behalf of the Lenders; provided, however, that no amendment, waiver or consent shall (a) without the prior written consent of each Lender directly affected thereby, (i) increase or decrease the principal amount of any Loans or of any Commitments of any Lender, (ii) extend the Termination Date, (iii) change any Commitment Percentage of any such Lender, (iv) postpone the originally scheduled time or times of payment of the principal of any of the Loans, or (v) reduce the rates of interest or fees payable on any of the Loans or other Obligations, or (b) without the prior written consent of all of the Lenders, (i) release all or substantially all of the Collateral or Securities Collateral (other than as specifically authorized by the terms of this Agreement or any of the other Credit Documents), (ii) release any Guarantor; (iii) amend the definition of Required Lenders or modify in any other manner the number or percentage

of Lenders required to make any determinations; or (iv) amend the provisions of this Section 10.03; and provided, further, that no such agreement shall amend, modify or otherwise affect the rights or duties of the Agent hereunder without the prior written consent of the Agent. Except as expressly provided to the contrary in this Agreement and with the exception of amendments to any provision of Article 9 of this Agreement, this Agreement may not be amended without the prior written consent of the Borrower. The Agent and all of the Lenders may amend or modify any provision of Article 9 of this Agreement without the need for any consent or approval from the Borrower or any Loan Party.

Section 10.04. *Expenses.* The Loan Parties shall joint and severally pay (i) all reasonable, invoiced out-of-pocket expenses incurred by the Agent (including reasonable and documented fees and expenses of DLA Piper LLP (US) and local bankruptcy counsel to the Agent) in connection with (A) the syndication of the Loans provided for herein, (B) the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents and the on-going administration of the Loan Documents (including any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated)) and the Chapter 11 Cases, and (C) the creation, perfection or protection of the liens under the Loan Documents (including all search, filing and recording fees); and (ii) all actual, invoiced, out-of-pocket expenses incurred by the Agent (including reasonable and documented fees and expenses of DLA Piper LLP (US) and local bankruptcy counsel to the Agent) and, during the existence of an Event of Default, any Lender (including the fees, charges and disbursements of any counsel for the Agent) 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, (B) in connection with Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring, refinancing or negotiations in respect of such Loans, and (C) any legal proceedings relating to or arising out of the Loans or the other transactions contemplated by this Agreement and the other Loan Documents, including the Chapter 11 Cases.

Section 10.05. *Indemnity.* The Borrower shall indemnify, and shall cause the other Loan Parties to indemnify, each of the Credit Parties and each Related Party of any of the Credit Parties (each such Person being called an "Indemnitee" against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Loan Party arising out of, in connection with, or as a result of (a) the execution or delivery of this Agreement, any other Credit Document or any agreement or instrument 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, (b) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party, any contamination of a Property or of any other Collateral, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries on the Collateral, or (c) 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 any Loan Party, and regardless of whether any Indemnitee is a party thereto, provided that such indemnity (as set forth in (a), (b), (c) and (d) above) shall not as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (i) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of any Indemnitee or (ii) result from a claim brought by a Loan Party against any Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Credit Document, if the Borrower or any other Loan Party has obtained a final and

nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. To the extent that the Borrower and the other Loan Parties for any reason fail to indefeasibly pay any amount required by this Section 10.05 to be paid to the Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, (but without limiting the obligation of the Borrower or such other Loan Parties to do so) each Lender severally agrees to pay to the Agent (or any sub-agent) or such Related Party, as the case may be, such Lender's applicable pro rata 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 the Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) in connection with such capacity.

Section 10.06. *Reimbursement by Lenders.* To the extent that the Borrower or any Loan Party for any reason fails to indefeasibly pay any amount required under Sections 10.04 or 10.05 to be paid by it to the Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the total Commitments for all Lenders at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); 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 the Agent (or any such sub-agent), or against any Related Party of any of the foregoing acting for the Agent (or any such sub-agent) in connection with such capacity.

Section 10.07. *Waiver of Claims.* To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the administration thereof, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit Documents or the transactions contemplated hereby or thereby. Without limitation to the foregoing, the Borrower acknowledges that the Agent will make available to the Lenders materials and information, including the Information, provided by or on behalf of the Loan Parties by posting such materials and information on IntraLinks, or another similar electronic system.

Section 10.08. *Assignments by Lenders.* Each Lender may assign to one or more Eligible Assignees all or any portion of such Lender's interests, rights and obligations set forth in this Agreement or the other Credit Documents, including all or a portion of its Commitments and the Loans provided that: (a) an administrative fee in the amount of Three Thousand Five Hundred Dollars (\$3,500.00) is paid to the Agent by either the assigning Lender or the Eligible Assignee in connection with the assignment; (b) if less than all of the assigning Lender's Commitments and Loans is to be assigned, the amount of the Commitments and Loans so assigned shall be for an aggregate principal amount of not less than Five Million Dollars (\$5,000,000.00); (c) each partial assignment shall be made as an assignment of a proportionate amount of all of the assigning Lender's rights and obligations under this Agreement with respect to the Loans and Commitments assigned (except this clause (c) the parties to each such assignment shall execute and deliver an Assignment And Assumption to the Agent (with copies to be sent contemporaneously to each Lender), for the Agent's acceptance; and (d) such Assignment And Assumption does not require

the filing of a registration statement with the Securities And Exchange Commission or require the Loans or the Notes to be qualified in conformance with the requirements imposed by any blue sky laws or other laws of any state. Upon such execution, delivery, acceptance and recording, from and after the Effective Date specified in each Assignment And Assumption, which Effective Date is at least five (5) Business Days after the execution thereof: (i) the Assignee thereunder shall be a party hereto and, to the extent provided in such Assignment And Assumption, have the rights, duties, and obligations of a Lender hereunder; and (ii) the assigning Lender thereunder shall, to the extent provided in such Assignment And Assumption, be released from its duties and obligations under this Agreement but shall continue to be entitled to all indemnification and reimbursement rights provided to the Lenders by the Borrower pursuant to any of the Credit Documents with respect to facts, events, and circumstances occurring prior to the Effective Date of such assignment. By executing and delivering an Assignment And Assumption, the assigning Lender thereunder and the Assignee thereunder confirm to and agree with each other and the other parties to this Agreement the facts and matters as set forth in such Assignment And Assumption. Lenders may only assign their interests in the Commitments, the Loans, and Credit Documents to Eligible Assignees. Any assignment or transfer by a Lender of rights or obligations under the Credit Documents that does not comply with this Section shall be treated for purposes of the Credit Documents as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.13 of this Agreement. Except to the extent otherwise expressly agreed in writing by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or a release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

Section 10.09. *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 the Borrower nor any other Loan Party may assign or otherwise transfer any of its rights or obligations without the prior written consent of the Agent and each other Credit Party and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (a) to an Eligible Assignee in accordance with the provisions of Section 10.08, (b) by way of participation in accordance with the provisions of Section 10.13, or (c) by way of pledge or assignment of a security interest subject to the restrictions of Section 10.14 (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 10.13) any legal or equitable right, remedy or claim under or by reason of this Agreement.

Section 10.10. *Certain Additional Payments.* In connection with any assignment of rights and obligations of any Defaulting Lender pursuant to Section 10.08, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to: (a) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent and each other Lender hereunder (and interest accrued thereon); and (b) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in accordance with its respective Commitment Percentages. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Laws without compliance

with the provisions of this Section, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Section 10.11. *Register.* The Agent shall maintain a copy of each Assignment And Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders and the amount of the Loans with respect to each Lender from time to time (the “Register”). The entries in the Register shall be conclusive, in the absence of manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or the Lenders at any reasonable time and from time to time upon reasonable prior notice.

Section 10.12. *Procedures for Implementing Lender Assignments.* Upon the Agent’s receipt of an Assignment And Assumption executed by an assigning Lender and an Eligible Assignee together with any Note or Notes subject to such Assignment And Assumption and any necessary consents to such Assignment And Assumption, the Agent shall, if such Assignment And Assumption has been completed and is substantially in the form of *Exhibit A* (a) accept such Assignment And Assumption, (b) record the information contained therein in the Register, (c) give prompt notice thereof to the Borrower, and (d) promptly deliver a copy of such Assignment And Assumption to the Borrower. Within three (3) Business Days after receipt of notice, the Borrower shall execute and deliver to the Agent, in exchange for the surrendered Notes, new Notes to the order of such Eligible Assignee in amounts equal to the Commitments and Commitment Percentages assumed by it pursuant to such Assignment And Assumption and new Notes to the order of the assigning Lender in an amount equal to the Commitments and Commitment Percentages retained by the assigning Lender. Such Notes shall be in the aggregate stated principal amount equal to the aggregate principal amount of such surrendered Notes, shall be dated the effective date of such Assignment And Assumption and shall otherwise be in substantially the form of the assigned Notes delivered to the assigning Lender. The surrendered Notes shall be canceled and returned to the Borrower. The Borrower expressly acknowledges that the cancellation of any Note or Notes and the replacement of any Note or Notes in accordance with this provision shall not constitute or be deemed to be a refinancing or a novation of any of the Obligations.

Section 10.13. *Participations.* Any Lender may at any time, without the consent of, or notice to, the Borrower, the Agent, or any other Lender, sell participations to any Person (other than to natural persons, the Borrower or any of the Borrower’s Affiliates or Subsidiaries, who would not qualify as an Eligible Assignee) (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 Loans owing to it); provided that: (a) such Lender’s obligations under this Agreement shall remain unchanged; (b) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (c) the Loan Parties and the other Credit Parties shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and the other Credit Documents. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that affects such Participant which: (i) increases or decreases the principal amounts of the Commitments or Loans of such Lender; (ii) extends the Termination Date; (iii) postpones the time of payment of principal, interest or fees on account of the Loans or LC Obligations; (iv) reduces the rates of interest payable on the Loans or reduces any fees payable under the Credit Documents; or (v) releases substantially all of the Collateral or Securities



Collateral that affects such Participant. Each Participant shall be entitled to the benefits of Sections 2.10 and 2.11.1 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.08. To the extent permitted by Law, each Participant also shall be entitled to the benefits of Section 10.20 as though it were a Lender, provided such Participant agrees to be subject to Subsection 2.08.4 as though it were a Lender. A Participant shall not be entitled to receive any greater payment under Sections 2.10 or 2.11.3 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Subsection 2.11.3 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Subsection 2.11.6 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, 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 Loans or other obligations under the Credit 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 Credit Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit 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, the Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

Section 10.14. *Pledges.* Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations 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.

Section 10.15. *[Reserved]*.

Section 10.16. *Survival.* All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments prepared or delivered in connection with or pursuant to this Agreement or any other Credit Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of any Credit Document and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that any Credit Party may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under the Credit Documents is outstanding and unpaid. The provisions of Sections 2.10, 2.11.3, Article 9 and Sections 10.04, 10.05, and 10.06 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans and the termination of the Commitments or the termination of this Agreement or any provision hereof.

Section 10.17. *Counterparts and Integration.* 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 single contract. This Agreement and the other Credit Documents constitute the entire contract among the parties relating

to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Article 4, this Agreement shall become effective when it shall have been executed by the Agent and when the 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 electronically shall be just as effective as the delivery of a manually executed counterpart of this Agreement.

Section 10.18. *Electronic Execution.* 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 law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.19. *Severability.* In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 10.20. *Right of Setoff.* If an Event of Default shall have occurred and be continuing, each Lender and each of 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 Lender or any such Affiliate, to or for the credit or the account of the Borrower or any other Loan Party against any and all of the Obligations of the Borrower or such Loan Party now or hereafter existing under this Agreement or any other Credit Document to such Lender or its Affiliates, irrespective of whether or not such Lender or any of its Affiliates shall have made any demand under this Agreement or any other Credit Document and although such Obligations of the Borrower or such Loan Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff: (a) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders; and (b) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or its Affiliates may otherwise have under applicable Laws. The Lender agrees to notify the Borrower and the 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.



Section 10.21. *Governing Law.* This Agreement shall be governed by, and construed in accordance with, the laws of the Governing State and, to the extent applicable, the Bankruptcy Code.

Section 10.22. *Jurisdiction.* The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court or, if the Bankruptcy Court does not have or abstains from jurisdiction, any state or federal court located in the Governing State for any action or proceeding arising out of or relating to this Agreement or the other Credit Documents.

Section 10.23. *Venue.* The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or the other Credit Documents in the Circuit Court of Fairfax County, Virginia or the United States District Court for the Eastern District of Virginia – Alexandria Division (the “Courts of Venue”). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

Section 10.24. *Service of Process.* Each party to this Agreement irrevocably agrees that service of process shall be made in accordance with the rules and statutes of the Governing State and those of the Courts of Venue, as applicable. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 10.25. **WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE OBLIGATIONS. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.**

Section 10.26. *Time.* Time is of the essence to this Agreement.

Section 10.27. *Platform.* (a) The Borrower and each Loan Party agrees that the Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the “Platform”); and (b) the Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, 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 any Agent Party in connection with the Communications or the Platform. In no event shall the Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to the Borrower or the other Loan Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct

or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Agent's transmission of Communications through the Platform. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Loan Party pursuant to any Credit Document or the transactions contemplated therein which is distributed to the Agent or any Lender by means of electronic communications pursuant to this Section, including through the Platform.

Section 10.28. *Treatment of Certain Information; Confidentiality.* Each of the Agent and the Lenders agree to maintain the confidentiality of the "Information" (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); (c) to the extent required by applicable Laws or by any subpoena or similar legal process; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Credit Document or any action or proceeding relating to this Agreement or any other Credit Document or the enforcement of rights hereunder or thereunder; (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement, or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder; (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities hereunder, or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the credit facilities hereunder; (h) with the consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Agent, any Lender, or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. For purposes of this Section, "Information" means all information received from the Borrower or any of its Subsidiaries relating to the Borrower or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower or any of its Subsidiaries; provided that, in the case of information received from the Borrower or any of its Subsidiaries after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 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.

Section 10.29. *Counterparts and Integration.* 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 Credit Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Agent and when the 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 electronic (i.e., “pdf” or “tif”) format shall be just as effective as the delivery of a manually executed counterpart of this Agreement.

Section 10.30. *Severability*. In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby (it being understood that the invalidity of a particular provision in a particular jurisdiction shall not in and of itself affect the validity of such provision in any other jurisdiction). The parties shall endeavor in good-faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 10.31. *Acknowledgments*. The Borrower hereby acknowledges that (a) it and each of the other Loan Parties has been advised and represented by counsel in the negotiation, execution and delivery of each Credit Document, (b) no Credit Party has any fiduciary relationship with or duty to it or to the Borrower or any other Loan Party arising out of or in connection with this Agreement and the relationship between the Credit Parties, on one hand, and the Borrower and the other Loan Parties, on the other hand, in connection herewith is solely that of creditor and debtors, and (c) no joint venture exists among the Credit Parties and the Borrower or any of the other Loan Parties.

Section 10.32. *USA Patriot Act Notice*. Each Credit Party that is subject to the USA Patriot Act hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Credit Party to identify the Borrower in accordance with the USA Patriot Act.

*[Signatures Commence on Next Page]*

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have caused this Fourth Amended And Restated Credit Agreement to be executed by their respective duly Authorized Officers as of the date first written above.

WITNESS/ATTEST:

\_\_\_\_\_

**BORROWER:**

**CREATIVE HAIRDRESSERS, INC.**  
A Virginia Corporation

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

WITNESS/ATTEST:

\_\_\_\_\_

**GUARANTORS:**

**RATNER COMPANIES, L.C.**  
A Virginia Corporation

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

WITNESS/ATTEST:

\_\_\_\_\_

**CIELO #3119, L.L.C.**  
A Virginia Corporation

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

[Signatures continue on following page]

Continuation of Signature Pages to *Fourth* Amended And Restated Credit Agreement

WITNESS/ATTEST:

\_\_\_\_\_

**AGENT:**

**HC SALON HOLDINGS, INC.**

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

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

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

**LENDERS:**

**HC SALON HOLDINGS, INC.**

\_\_\_\_\_

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

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

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

**SCHEDULE 1.01.C**

(Commitments and Applicable Percentages)

<b><u>Loan</u></b>	<b><u>Lender</u></b>	<b><u>Amount</u></b>	<b><u>Percentage</u></b>
<b>NM Term Loans</b>	HC Salon Holdings, Inc.	\$5,000,000.00	100%
<b>Roll-Up Loans</b>	HC Salon Holdings, Inc.	\$35,675,235.66	100%
<b>Total Loans</b>	HC Salon Holdings, Inc.	\$40,675,235.66	100%

**SCHEDULE 1.01.R**

(Related Parties)



**SCHEDULE 3.02**

(Capitalization and Ownership)

CREATIVE HAIRDRESSERS, INC.

**SCHEDULE 3.03**

(Subsidiaries)

Creative Hairdressers, Inc.  
Ratner Companies, L.C.

Ratner Companies, L.C.  
None

Cielo #3119, L.L.C.  
None

**SCHEDULE 3.21**

(Material Contracts)

NONE

**SCHEDULE 6.03**

(Indebtedness)

**EXHIBIT B**

**CREATIVE HAIRDRESSERS**  
DIP Budget<sup>(1)</sup>

Scenario Week # Week Ending	FCST	FCST	FCST	FCST	FCST	FCST	Post
	Week 4 WE 05/16/20	Week 5 WE 05/23/20	Week 6 WE 05/30/20	Week 7 WE 06/06/20	Week 8 WE 06/13/20	Week 9 WE 06/20/20	Interim Total
<b>Cash Inflows</b>							
Operating Receipts	-	-	-	-	-	-	-
Other Receipts	-	-	-	-	-	-	-
Visa / MC Settlement	-	-	-	-	-	-	-
Total Cash Inflows	-	-	-	-	-	-	-
<b>Operating Disbursements</b>							
Payroll <sup>(2)</sup>	51,368	-	51,368	-	25,684	-	128,420
Payroll Taxes <sup>(3)</sup>	-	22,015	-	22,015	-	11,007	55,037
Medical Claims <sup>(4)</sup>	-	-	421,000	-	-	-	421,000
Rx Claims <sup>(4)</sup>	-	-	-	-	-	-	-
Medical / Dental / Life / Disability Premium/Admin Costs <sup>(5)</sup>	-	-	105,000	-	-	-	105,000
Commercial Insurance Premiums and Claims <sup>(6)</sup>	-	-	-	-	-	-	-
Rent <sup>(7)</sup>	-	-	-	-	-	-	-
Utilities <sup>(8)</sup>	-	-	75,000	-	-	-	75,000
IT Critical Systems	79,000	61,000	54,000	-	-	-	194,000
Marketing / Data Critical Systems	-	-	-	-	-	-	-
Salon Closure Process <sup>(9)</sup>	141,667	141,667	141,667	-	-	-	425,000
Credit Card Fees - First Data	-	-	-	-	-	-	-
Bank Fees	18,036	-	-	-	-	-	18,036
Inventory / Supplies	57,000	-	-	-	-	-	57,000
Total Operating Disbursements	347,071	224,682	848,035	22,015	25,684	11,007	1,478,494
<b>Operating Cash Flow</b>	<b>(347,071)</b>	<b>(224,682)</b>	<b>(848,035)</b>	<b>(22,015)</b>	<b>(25,684)</b>	<b>(11,007)</b>	<b>(1,478,494)</b>
<b>Deposits / Other Payments</b>							
Unpaid Payroll	-	-	-	-	-	-	-
Unpaid Payroll Taxes	-	-	-	-	-	-	-
Unpaid Life Insurance / PR Deducts	-	-	-	-	-	-	-
Unpaid 401K	-	-	-	-	-	-	-
Unpaid February Commission	-	-	-	-	-	-	-
Utility Escrow <sup>(10)</sup>	-	-	-	-	-	-	-
503(b)(9) Vendors	-	-	-	-	-	-	-
Critical Vendors	-	-	-	-	-	-	-
Other	-	-	-	-	-	-	-
Total Deposits / Other Payments	-	-	-	-	-	-	-
<b>Professional Fees / BK Costs</b>							
Carl Marks (Debtor FA)	-	-	-	-	-	50,000	50,000
Shapiro Sher (Debtor Counsel)	-	-	-	-	-	100,000	100,000
DLA Piper (DIP Lender Counsel)	-	-	-	-	-	-	-
Stanton (PR Firm)	-	-	-	-	-	-	-
Baker Tilly (Auditor) <sup>(11)</sup>	-	-	-	-	-	157,500	157,500
Eckert Seamans (ACA Counsel)	-	-	-	-	-	-	-
Littler (Class Action Counsel)	-	-	-	-	-	-	-
A&G (RE Advisor)	-	-	-	-	-	-	-
Noticing / Claims Agent	-	-	-	-	-	50,000	50,000
US Trustee	-	-	-	-	-	54,331	54,331
UCC Fee	-	-	-	-	-	-	-
UCC Advisor	-	25,000	-	-	-	25,000	50,000
Court Fees	-	-	-	-	-	-	-
Other BK Costs	-	-	-	-	-	-	-
Total Prof Fees / BK Costs	-	25,000	-	-	-	436,831	461,831
<b>Pre-DIP Loan Cash Flow</b>	<b>(347,071)</b>	<b>(249,682)</b>	<b>(848,035)</b>	<b>(22,015)</b>	<b>(25,684)</b>	<b>(447,839)</b>	<b>(1,940,325)</b>
<b>DIP Loan</b>							
Beginning Balance	-	1,950,000	1,950,000	1,950,000	1,950,000	1,950,000	-
Loans (Cash Inflow)	1,950,000	-	-	-	-	-	1,950,000
Payments (Cash Outflow)	-	-	-	-	-	-	-
<b>Ending Balance</b>	<b>1,950,000</b>	<b>1,950,000</b>	<b>1,950,000</b>	<b>1,950,000</b>	<b>1,950,000</b>	<b>1,950,000</b>	<b>1,950,000</b>

**Notes:**

- (1) DIP Budget assumes a hibernated state; this DIP budget does not assume any costs or sales associated with a restarted entity. Assumes sale closes on 05/31.
- (2) Hibernation payroll is assumed to be at 50% payroll for all team members through till the sale date.
- (3) Assumes deferral of the employer portion of payroll taxes deferred per applicable federal guidelines.
- (4) Assumes payment of April Medical and Rx claims.
- (5) Assumes payment of April administrative costs.
- (6) All outstanding and unpaid commercial insurance claims are recovered from the Letter of Credit.
- (7) Assumes no rent for the non-rejected leases throughout the DIP period related to government mandated closures.
- (8) May utilities paid at ME for May (assume a hibernated usage rate; typically \$500K per month for all locations).
- (9) The staff needed and costs associated with retrieving inventory from closed / rejected locations (estimated \$1M of inventory on a cost basis) as well as computer systems and equipment (estimated \$500K of value).
- (10) Two-Weeks of utility payments (assuming \$500K per month at a reduced RR for full footprint).
- (11) Estimated \$150K payable for audit work and tax return preparation (federal and state) where filings are due July 15.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(GREENBELT DIVISION)

In re: \* Chapter 11  
CREATIVE HAIRDRESSERS, INC., \* Case Nos. 20-14583, 20-14584-TJC  
*et al.*<sup>1</sup>, \* (Jointly Administration Requested)  
Debtors. \*

\* \* \* \* \*

**INTERIMFINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN  
POSTPETITION SECURED FINANCING, (II) AUTHORIZING USE OF CASH  
COLLATERAL, (III) GRANTING ADEQUATE PROTECTION TO PREPETITION  
SECURED PARTIES, (IV) SCHEDULING A FINAL HEARING, AND (V) GRANTING  
RELATED RELIEF**

This matter coming before the Court upon the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Secured Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the "Motion") of Creative Hairdressers Inc. ("CHI") as borrower "Borrower",<sup>2</sup> and Debtor Ratner Companies, L.C.

<sup>1</sup> The Debtors in these chapter 11 cases are: (i) Creative Hairdressers, Inc. and (ii) Ratner Companies, L.C.

<sup>2</sup> Capitalized terms used in this InterimFinal Order but not defined herein shall have the meanings ascribed to such terms in the DIP Facility Documents.



as guarantor (the “Guarantor” and together with the Borrower, the “Debtors”), pursuant to Bankruptcy Code sections 105, 361, 362, 363, 364 and 507, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Rule 2002-1, 4001-5 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Maryland (the “Local Rules”), seeking entry of an interim order (~~the~~the “Interim Order”) and a final order (~~the~~this “Final Order”) *inter alia*:

- (i) authorizing the Borrower to enter into that certain Senior Debtor-in-Possession Credit Agreement, in the form of the agreement attached as Exhibit A hereto (as amended, supplemented or otherwise modified from time to time, the “DIP Facility Agreement”), among the Borrower, Guarantor, and HC Salon Holdings, Inc. (the “DIP Lender”), and authorizing the Borrower and the Guarantor to enter into all related documents, orders and agreements (together with the DIP Facility Agreement, the “DIP Facility Documents”);
- (ii) authorizing the Borrower to obtain a senior secured super priority multiple draw term loan facility (as described herein, the “DIP Facility”), and the Guarantor to guaranty the obligations of the Borrower in connection with the DIP Facility, which shall consist of a super priority term loan facility with an aggregate principal amount of up to ~~\$\$~~\$[40,675,235.66 ]and such other financial accommodations, allocated as follows:
  - (a) *New Money Loans.* A super priority priming new money multi draw term loan facility in the principal amount of ~~\$\$~~\$[5,000,000.00] (the “New Money Commitments” and the term loans made thereunder, the “New Money Loans”); which amount includes the New Money Loans made during the period (the “Interim Period”) beginning on the date of entry of the Interim Order and including the earliest to occur of (i) the date of the entry of the Final Order by this Court and (y) the Termination Date (as defined below);
  - (b) *Roll-Up Loans.* The balance of obligations and amounts outstanding (the “Prepetition Loans”) under that certain Third Amended and Restated Credit Agreement (as amended, restated, supplemented or otherwise modified from time to time and together with all schedules and exhibits attached thereto, all agreements, documents, certificates, instruments and/or amendments executed by and/or delivered by or to any party thereto in connection therewith, the “Prepetition Credit Agreement” and the “Prepetition Facility”) to HC Salon Holdings, Inc. (in its capacity as lender under the Prepetition Facility, the “Prepetition Lender”) as successor-in-

interest in respect of the term loans and revolving loans owing to the Prepetition Lender under the Prepetition Facility ~~will behave~~ been rolled-up into Roll-Up Loans on the date of the entry of ~~this~~ the Interim Order, in each case, in accordance with the terms of the DIP Facility Agreement and ~~this~~ the Interim Order and, as later applicable, ~~the~~ this Final Order;

- (c) *Interim Facility.* During the Interim Period (as defined below) the maximum amount available to be drawn ~~shall be~~ was limited to \$3,500,000.00 of the New Money Commitments plus the Roll-Up Loans (the “Interim Facility”), subject to compliance with the terms, conditions and covenants described in the DIP Facility Documents and in accordance with the Approved Budget (as defined in the DIP Facility Agreement and attached as Exhibit B hereto);
- (iii) authorizing and directing the Debtors to use the proceeds of the DIP Facility as expressly provided in the DIP Facility Documents and solely in accordance with the Approved Budget;
- (iv) authorizing the Debtors to execute and deliver the DIP Facility Agreement and the other DIP Facility Documents and to perform such other acts as may be necessary or desirable in connection with the DIP Facility Documents;
- (v) in accordance with the relative priorities as set forth more fully below, and subject to the Carve-Out (as defined below), the following:
  - (a) pursuant to section 364(c)(1) of the Bankruptcy Code, authorizing the Debtors to grant the DIP Lender superpriority allowed administrative expense claim status in the Cases and any Successor Case (as defined herein) in respect of all obligations, joint and several, owing under the DIP Facility Documents to the DIP Lender (including without limitation all “Obligations,” as defined therein, the “DIP Obligations”);
  - (b) pursuant to section 364(c)(2) of the Bankruptcy Code, authorizing the Debtors to grant to the DIP Lender automatically perfected senior security interests in and liens on all of the DIP Collateral (as defined herein), in each case subject to the priorities set forth herein;
  - (c) pursuant to section 364(d) of the Bankruptcy Code, authorizing the Debtors to grant a senior first-priority priming lien on and security interest in all of the DIP Collateral, in each case subject to the priorities set forth herein;
- (vi) authorization for the DIP Lender to terminate (a) the funding commitments under the DIP Facility Agreement, and (b) the Debtors’ sale, use or lease of Cash Collateral (as defined below), each upon the occurrence and

continuance of an “Event of Default” (as defined in the DIP Facility Agreement) on terms specified herein and in the DIP Facility Agreement;

- (vii) ~~subject to entry of the Final Order,~~ granting liens<sub>2</sub> to the DIP Lender, on the proceeds (“Avoidance Action Proceeds”) of the Debtors’ claims and causes of action arising under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law relating to any Designated Contract as defined in the Asset Purchase dated April 23, 2020, or any trade vendor that the purchaser of the Debtors’ assets will conduct business with following the closing of the sale of the Debtors’ business (each, an “Avoidance Action”);
- (viii) authorizing the Debtors to use, among other things, solely in accordance with the Approved Budget, any cash collateral (as that term is defined in section 363(a) of the Bankruptcy Code, the “Cash Collateral”) in which the Prepetition Secured Parties (as defined below) may have an interest and the granting of adequate protection to the Prepetition Secured Parties with respect to any post-petition diminution in value of their interests in the Prepetition Collateral (as defined below) arising from, *inter alia*, the Debtors’ sale, use, or lease of the Prepetition Collateral (including the Cash Collateral) and the priming of the liens of the Prepetition Secured Parties by the DIP Liens (as defined below);
- (ix) ~~subject to the entry of the Final Order,~~ authorizing the waiver of the Debtors’ right to assert (a) any claims to surcharge against the DIP Collateral pursuant to section 506(c) of the Bankruptcy Code, (b) any “equities of the case” claims under section 552(b) of the Bankruptcy Code, and (c) the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral;
- (x) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility Documents, ~~this~~the Interim Order, and ~~as later applicable, the~~this Final Order;
- (xi) the waiver of any applicable stay (including under Rule 6004 of the Bankruptcy Rules) and the provision of immediate effectiveness of ~~this~~the Interim Order, and ~~as later applicable, the~~this Final Order;
- (xii) pursuant to Bankruptcy Rule 4001, that an interim hearing (the “Interim Hearing”) on the Motion be held before this Court to consider entry of ~~this~~the Interim Order to (a)(I) authorize the Borrower to borrow or under the DIP Facility Documents, on an interim basis, in amount not to exceed an amount equal to \$3,500,000.00 plus the amount of Roll-Up Loans authorized on an interim basis and (II) authorize the Prepetition Lender to be deemed to have made Roll-Up Loans hereunder with the proceeds

thereof being applied to the Prepetition Obligations in respect of such Prepetition Lender's then-outstanding Prepetition Loans, subject to the terms and conditions set forth herein; (b) authorize the Debtors' use of Cash Collateral; and (c) grant the liens, priority claims and adequate protection described herein;

- (xiii) pursuant to Bankruptcy Rule 4001, that the Court consider entry of ~~this~~the Interim Order, authorizing that during the Interim Period, and subject to the terms and conditions contained in the DIP Facility Documents, (i) an amount not to exceed an amount equal to \$3,500,000.00 plus the amount of Roll-Up Loans authorized on an interim basis, be made available, and (ii) the DIP Lender shall be deemed to have made Roll-Up Loans hereunder with the proceeds thereof being applied to the Prepetition Obligations in respect of the DIP Lender's then-outstanding Prepetition Loans, subject to the terms and conditions set forth herein;
- (xiv) scheduling a final hearing (the "Final Hearing," and together with the Interim Hearing, the "Hearings,") to consider entry of the Final Order, and in connection therewith, giving and prescribing the manner of notice of the Final Hearing on this Motion; and
- (xv) granting the Debtors such other and further relief as is just and proper;

and the Court having considered the Motion, the exhibits attached thereto, the DIP Facility Documents, and the evidence submitted or adduced and the arguments of counsel made at the ~~Interim Hearing~~Hearings; and *Declaration of Ryan Horvath in Support of Debtors' First Day Motions*; and notice of the ~~Interim Hearing~~Hearings having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), 9014, ~~and~~-Local Rule, 4001-5, and the Interim Order, as applicable; and the ~~Interim Hearing~~Hearings to consider the relief requested in the Motion having been held and concluded; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the ~~interim relief~~-requested relief is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and is essential for the continued

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operation of the Debtors' business; and after due deliberation and consideration, and good and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

A. Petition Date. On April 23, 2020, each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Maryland (Greenbelt Division) (the "Court") commencing the Cases.<sup>3</sup> The Cases are jointly administered for procedural purposes only.

B. Debtor in Possession. The Debtors are continuing in the management and operation of 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.

C. Jurisdiction and Venue. The Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief sought herein are sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 and the applicable Local Rules.

D. Committee Formation. ~~As of the date hereof~~ On May 1, 2020, the Office of the United States Trustee for the District of Maryland (the "U.S. Trustee") ~~has not~~ appointed ~~any~~ statutory committee ~~(each, of unsecured creditors (the~~ "Statutory Committee") in the Cases.

E. Debtors' Stipulations. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 34 herein,

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<sup>3</sup>~~Joint Administration has been requested and is being considered at the Interim Hearing.~~

the Debtors admit, stipulate, acknowledge and agree that (collectively, paragraphs E(i) through E(x) below are referred to herein as the “Debtors’ Stipulations”):

(i) *Prepetition Documents.* As of the Petition Date, the Debtors were parties to the Prepetition Credit Agreement (together with all related documents, guaranties and agreements, as the same may be amended, waived, supplemented or modified from time to time, the “Prepetition Documents”).

(ii) *Prepetition Lien Obligations.* As of the Petition Date, the aggregate amount owed by the Debtors under the Prepetition Facility, without defense, counterclaim or offset of any kind in respect of a Prepetition Document was not less than \$35,675,235.66 outstanding under Prepetition Facility, made available to the Borrower pursuant to that certain Prepetition Credit Agreement (together with any amounts paid or incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Debtors’ obligations pursuant to the Prepetition Documents, the “Prepetition Lien Obligations”).

(iii) *Prepetition Collateral and Prepetition Liens.* As more fully set forth in the Prepetition Credit Agreement, prior to the Petition Date, the Debtors granted first-priority security interests in and liens (collectively, the “Prepetition Liens”) on substantially all of the property of the Debtors (collectively, the “Prepetition Collateral”) to the Prepetition Lender.

(iv) *Prepetition Secured Indebtedness and Prepetition Liens.* The Debtors acknowledge and agree that:

- a. the Prepetition Lien Obligations constitute legal, valid, binding and non-avoidable obligations of the Debtors;
- b. the Prepetition Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable and properly perfected;
- c. ~~Asas~~ of the Petition Date, the Prepetition Liens have priority over any and all other liens, if any, on the Prepetition Collateral; and
- d. as of the Petition Date, the value of the Prepetition Collateral securing the Prepetition Lien Obligations exceeds such Prepetition Lien Obligations.

(v) *No Offsets or Claims.* The Debtors acknowledge and agree that:

- a. ~~None~~ offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to, and no entitlements to equitable relief with respect to any of the Prepetition Liens or the Prepetition Lien Obligations exist, and no portion of the Prepetition Liens or the Prepetition Lien Obligations is subject to any challenge or defense, including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (whether equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law;
- b. the Debtors and their estates have no claims, objections, challenges, and/or causes of action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code and applicable non-bankruptcy law, against any of the Prepetition Secured Parties or any of their affiliates, agents, attorneys, advisors, professionals, officers, directors or employees arising out of, based upon or related to the Prepetition Lien Obligations or the documents evidencing the same;

(vi) *Cash Collateral.* The Debtors represent that all of the Debtors' cash, including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral and is Prepetition Collateral of the Prepetition Secured Parties.



(vii) Interim Borrowings. Pursuant to the Interim Order, the Court authorized among other things (i) the Debtor to (a) execute and deliver the DIP Loan Documents and to incur and perform the DIP Obligations pursuant to the terms and conditions of the DIP Loan Documents and the Interim Order; (b) borrow up to \$[39,175,235.66] under the DIP Facility during the Interim Period upon the entry of the Interim Order and satisfaction of other conditions set forth in the DIP Loan Documents and (c) make the Roll-Up Payment, and (ii) the granting of adequate protection to the Prepetition Secured Parties. On April 28, 2020, the Closing Date under the DIP Loan Agreement occurred and the Debtors were authorized to borrow at the terms and conditions set forth in the DIP Loan Documents and in the Interim Order.

F. Findings Regarding Post-Petition Financing and the Use of Cash Collateral.

(i) *Good cause.* Good cause has been shown for the entry of this ~~Interim~~Final Order.

(ii) *Request for Post-Petition Financing and Use of Cash Collateral.* The Debtors seek authority to enter into the DIP Facility Agreement. The DIP Lender shall have no obligation to make loans or advances under the DIP Facility except to the extent required under the DIP Facility Agreement and no obligation to waive any conditions required thereunder. The Debtors also seek authority to use Cash Collateral on the terms described herein, and in accordance with the Approved Budget, to administer their Cases and fund their operations.

(iii) *Need for Post-Petition Financing and Use of Cash Collateral.* The Debtors' need to use Cash Collateral and to obtain credit as set forth in the DIP Facility Agreement is immediate and critical in order to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to

finance their operations, maintain business relationships, pay employees, protect the value of their assets and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, creditors and equity holders, and the possibility for maximizing the value of their businesses. The Debtors do not have sufficient available sources of working capital and financing to operate their business or to maintain their properties in the ordinary course of business without the DIP Facility and continued use of Cash Collateral. Consummation of the financing contemplated by the DIP Facility Documents and the use of the Prepetition Collateral, including without limitation, the Cash Collateral, pursuant to the terms of this ~~Interim~~Final Order therefore are in the best interests of the Debtors' estates.

(iv) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangements, and capital structure, the Debtors are unable to reasonably obtain post-petition financing from sources other than the DIP Lender on terms more favorable than those set forth in the DIP Facility Documents. The Debtors have been unable to reasonably obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain secured credit from other sources: (a) having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) secured only by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Further, the Prepetition Secured Parties have not consented to the priming of their prepetition liens by lenders (except to the extent provided herein and

under the DIP Facility Documents). Financing on a post-petition basis is not otherwise available without granting the DIP Lender: (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein, (2) superpriority claims, and (3) the other protections set forth in ~~this~~ the Interim Order and this Final Order.

(v) *Use of Proceeds.*

- a. As a condition to entry into the DIP Facility Agreement, the extensions of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Lender requires, and the Debtors have agreed, that proceeds of the DIP Facility and Cash Collateral shall be used in accordance with the terms of the DIP Facility Documents, including the Approved Budget, which shall be subject to (x) such variances as may be permitted by the DIP Facility Agreement (including without limitation the Permitted Variance), (y) ~~this~~ the Interim Order (or ~~the~~ this Final Order as applicable), and (z) the Carve-Out.
- b. The Debtors shall not directly or indirectly pay any expense or other disbursement other than those set forth in the Approved Budget (other than the post-Trigger Date portion of the Carve-Out) outside of the Permitted Variance or otherwise permitted or directed by an order of the Court.
- c. The proceeds of the DIP Facility and Cash Collateral shall be used solely as provided in the DIP Facility Agreement, including, to the extent provided therein, (i) to exchange the Prepetition Loans for Roll-Up Loans (which may be provided on an interim basis) (the "Roll-Up") (ii) to provide working capital from time to time to the extent set forth in the Approved Budget; (iii) for other general corporate purposes of the Debtors to the extent set forth in the Approved Budget; (iv) subject to the Approved Budget (other than with respect to the post-Trigger Date portion of the Carve-Out) or any order governing the compensation of professionals retained in these Cases, for payment of costs and administration of the Cases; and (v) for the payment of such other prepetition obligations in accordance with "first day" orders, which orders shall be in form and substance reasonably satisfactory to the DIP Lender and approved by the Court, in each case in a manner consistent with the Approved Budget, the DIP Facility Agreement, and the terms and conditions contained herein.

(vi) *Willingness to Provide Financing.* The DIP Lender has indicated a willingness to provide financing to the Debtors subject to ~~the entry of this Interim Order,~~ and conditioned upon the entry of the Interim Order and this Final Order, including findings that such financing is essential to the Debtors' estates, that the DIP Lender is extending credit to the Debtors as set forth in the DIP Facility Agreement in good faith, and that the DIP Lender's claims, superpriority claims, security interests, liens, rights, and other protections will have the protections provided in section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of ~~this~~the Interim Order, ~~the~~this Final Order or any other order. As a condition to the entry into the DIP Facility Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the Debtors and the DIP Lender have agreed that proceeds of DIP Collateral and all payments and collections received by the Debtors shall be applied solely as set forth in the DIP Facility Documents.

(vii) *Business Judgment and Good Faith Pursuant to Section 364(e).* The extension of credit under the DIP Facility and the DIP Facility Documents is fair, reasonable, and the best available to the Debtors under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, are supported by reasonably equivalent value and consideration, and were entered into at arm's-length, under no duress, and without undue influence, negligence or violation of public policy or law. The DIP Facility Documents, the DIP Facility and the provisions regarding the use of Cash Collateral were negotiated in good faith and at arm's length among the Debtors and the DIP Lender, under no duress, and without undue influence, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing,

documenting, or obtaining the requisite approvals of the DIP Facility, and the use of Cash Collateral, including in respect of the granting of the DIP Liens and the Adequate Protection Liens (as defined below), any challenges or objections to the DIP Facility or the use of Cash Collateral, and all documents related to any and all transactions contemplated by the foregoing. Use of Cash Collateral and any credit to be extended as set forth in the DIP Facility Documents shall be deemed to have been so allowed, advanced, made, used or extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code, and the DIP Lender is therefore entitled to the protections and benefits of section 364(e) of the Bankruptcy Code and this ~~Interim~~Final Order.

(viii) *Priming of Prepetition Liens.* The priming of the Prepetition Liens on the Prepetition Collateral by the DIP Liens will enable the Debtors to obtain the DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors. The Prepetition Secured Parties consent to such priming liens, subject to receipt of adequate protection of their respective interests in the Prepetition Collateral as set forth herein. The Prepetition Secured Parties have acted in good faith in consenting to the (i) Debtors' use of the Prepetition Collateral, including, without limitation, the Cash Collateral, pursuant to the terms of this ~~Interim~~Final Order, (ii) priming of their Prepetition Liens by the DIP Liens on all Prepetition Collateral, and (iii) entry of this ~~Interim~~Final Order and the granting of the relief set forth herein, and their reliance on the assurances referred to herein is in good faith.

(ix) *Adequate Protection.* The Prepetition Secured Parties are entitled to and shall receive, adequate protection in the form of (I) solely to the extent any portion of

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the Prepetition Lien Obligations remain outstanding, ongoing payment of interest and other amounts due under the Prepetition Documents, pursuant to the terms thereof and notwithstanding the stay resulting from the filing of these chapter 11 cases, through the indefeasible payment of the Prepetition Obligations, including, without limitation, fees and expenses of counsel to the Prepetition Secured Parties; (II) current cash reimbursement of actual and documented fees and expenses and other disbursements of the DIP Lender, including, without limitation, the reasonable documented fees and expenses of DLA Piper LLP (US) whether incurred before or after the Petition Date; and (III) subject to the priorities set forth in paragraphs 14 and 15 below, the Senior Adequate Protection Lien and the Senior Adequate Protection Superpriority Claim (each as defined below). This Court concludes that the adequate protection provided to the Prepetition Secured Parties hereunder for any post-petition diminution in value of the Prepetition Liens on the Prepetition Collateral due to, *inter alia*, the Debtors' sale, use or lease of the Prepetition Collateral, including the Cash Collateral, the imposition of the automatic stay, and the priming of the Prepetition Liens by the DIP Liens, is authorized by sections 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code.

(x) *Sections 506(c) and 552(b)*. ~~Subject to the entry of the Final Order,~~ ~~In~~ light of (i) the agreement of the DIP Lender and the Prepetition Secured Parties to subordinate their liens and superpriority claims, as applicable, to the Carve-Out, and (ii) the Prepetition Secured Parties' agreement to consent to the use of Cash Collateral and to subordinate their Adequate Protection Superpriority Claims and Adequate Protection Liens to the Carve-Out, the DIP Liens and the DIP Superpriority Claim, and (iii) the Approved Budget covering all administrative costs projected by the Debtors, the DIP Lender and the

Prepetition Secured Parties are entitled to a waiver of (a) the provisions of section 506(c) of the Bankruptcy Code, (b) any “equities of the case” claims under section 552(b) of the Bankruptcy Code, and (c) the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral.

(xi) *Notice of Final Hearing.* ~~At Notice of the Final Hearing, the Debtors will seek final approval of the proposed post-petition financing arrangements and use of Cash Collateral pursuant to the Final Order, which shall be in form and substance acceptable to the DIP Lender. Notice of the Final Hearing and Final Order will be~~ has been provided in accordance with ~~this~~the Interim Order and no further notice, ~~except as provided by this Interim Order,~~ shall be required.

(xii) *Immediate Entry.* The Debtors have requested immediate entry of this ~~Interim~~Final Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Bankruptcy Rule 4001-2(b). The authorization granted herein on ~~an interim~~a final basis to use the Prepetition Collateral, including without limitation, the Cash Collateral, to enter into the DIP Facility Documents, and to borrow under the DIP Facility is necessary to avoid immediate and irreparable harm to the Debtors and their estates ~~during the period (the “Interim Period”) beginning on the date hereof through and including the earliest to occur of (i) the date of the entry of the Final Order by this Court and (y) the Termination Date (as defined below).~~ This Court concludes that the entry of this ~~Interim~~Final Order is in the best interests of the Debtors and their estates and creditors because it will, among other things, allow the Debtors to maximize the value of their assets.

(xiii) *Notice.* Notice of the ~~Interim~~Final Hearing and the ~~emergency~~ relief requested in the Motion has been provided by the Debtors, whether by facsimile, email,



overnight courier or hand delivery, to certain parties in interest, including: ~~(ia)~~ the U.S. Trustee; ~~(ib)~~ the Securities and Exchange Commission; ~~(ic)~~ the Internal Revenue Service; ~~(ivd)~~ the parties included on the Debtors' consolidated list of twenty largest unsecured creditors; ~~(ve)~~ counsel to the DIP Lender; ~~(x) all other secured lenders;~~ ~~(xi)f) any party that has filed prior to such date a request for notices under Bankruptcy Rule 2002 with the Debtors' taxing authorities~~ Court; and ~~(xii) financial institutions where~~ proposed counsel for the Debtors hold bank accounts Statutory Committee in accordance with the terms of the Interim Order. Under the circumstances, the notice given by the Debtors of the Motion, the relief requested therein, and the InterimFinal Hearing constitutes appropriate notice thereof and complies with Bankruptcy Rules 4001(b) and (c) and the Local Rules, and no further notice of the relief granted herein is necessary or required.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Motion Approved. The Motion is granted on ~~an interim final~~ basis in accordance with the terms of this InterimFinal Order.
2. Use of Prepetition Collateral Approved. Subject to the terms of the DIP Facility Documents, this InterimFinal Order, and the Approved Budget, the Debtors are hereby authorized to use the Prepetition Collateral (including Cash Collateral).
3. Objections Overruled. All objections to and reservations of rights with respect to the Motion and to the entry of this InterimFinal Order to the extent not withdrawn or resolved are hereby overruled on the merits in their entirety.

**DIP Facility Authorization**

4. Authorization of the DIP Facility Documents. The Debtors are hereby authorized to execute, issue, deliver, enter into, and adopt, as the case may be, the DIP Facility Agreement and the other DIP Facility Documents to be delivered pursuant hereto or thereto or in connection herewith or therewith. The Borrower is hereby authorized to borrow money under the DIP Facility Documents, ~~on an interim basis,~~ and request extensions of credit under the DIP Facility in accordance with the terms of this ~~Interim~~Final Order and the DIP Facility Documents, ~~provided that during the Interim Period an aggregate principal amount of up to \$3,500,000.00 in New Money Loans may be borrowed.~~

5. Roll-Up Loans.

(a) ~~During the Interim Period, the~~The DIP Lender ~~shall be~~is hereby deemed to have made Roll-Up Loans hereunder during the Interim Period with the proceeds thereof being applied to the Prepetition Obligations and the Prepetition Lender's then-outstanding Prepetition Loans.

(b) The Court reserves the right to unwind, after notice and hearing, the post-petition protection provided to the Prepetition Lenders or the pay-down of the Roll-Up, whichever is applicable in the event that there is a timely and successful Challenge to the Prepetition Lenders' claims or liens, or a determination that the pre-petition debt was undersecured as of the Petition Date and the Roll-Up Loans contemplated herein unduly advantaged the Prepetition Lender.<sup>4</sup>

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<sup>4</sup> In accordance with Local Rule 4001-5(a)(4), which provides that "A proposed order approving cross-collateralization or a rollup shall include language that reserves the right of the court to unwind, after notice and hearing, the post-petition protection provided to the pre-petition lender or the pay down of the pre-petition debt, whichever is applicable, in the event that there is a timely and successful challenge to the validity, enforceability, extent or priority of the pre-petition lender's claims or liens, or a determination that the pre-petition debt was undersecured as of the petition date, and the cross-collateralization or rollup unduly advantaged the lender."

6. Authorized Action. 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 that may be necessary or required for performance by the Debtors under the DIP Facility Documents and the creation and perfection of the DIP Liens described in, provided for and perfected by this InterimFinal Order and the DIP Facility Documents. Subject to paragraph 16, the Debtors are hereby authorized to pay, in accordance with this InterimFinal Order and the DIP Facility Documents, the principal, interest, fees, expenses and other amounts described in the DIP Facility Documents as such become due and without need to obtain further Court approval, including, without limitation, origination fees, collateral monitoring fees, commitment fees, maintenance fees, success fees, letter of credit fees, and the fees and disbursements of the DIP Lender's attorneys, advisers, accountants and other consultants. All fees shall ~~behave been~~ fully earned upon entry of ~~this~~the Interim Order and payable in accordance with the DIP Facility Documents.

7. Validity of DIP Obligations. ~~Upon entry of this Interim Order and execution and delivery, the~~The DIP Facility Documents shall represent valid and binding obligations of the Debtors, enforceable against the Debtors and their estates in accordance with their terms, and subject to the terms of this InterimFinal Order. The DIP Facility Documents, the Interim Order and this InterimFinal Order constitute and evidence the validity and binding effect of the DIP Obligations of the Debtors, which DIP Obligations shall be enforceable, jointly and severally, against the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases (each, a "Successor Case"). No obligation, payment, transfer, or grant of a security or other interest to the DIP Lender under the

DIP Facility Documents, the Interim Order or this InterimFinal 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. The DIP Obligations include all loans and any other indebtedness or obligations, contingent or absolute, now existing or hereafter arising, which may from time to time be or become owing by the Debtors to the DIP Lender under the DIP Facility Documents, including without limitation all principal, interest, costs, fees, expenses and other amounts owed pursuant to the DIP Facility Documents.

8. No Obligation to Extend Credit. The DIP Lender shall have no obligation to make loans or advances under the DIP Facility until the conditions precedent to the closing and the making of such extensions of credit under the DIP Facility Documents have been satisfied in full or waived.

9. Use of DIP Facility Proceeds. From and after the Petition Date, the Debtors are authorized to use extensions of credit under the DIP Facility only for the purposes specifically set forth in this Final Order, the Interim Order, the DIP Facility Documents and in compliance with the Approved Budget. The Debtors are authorized, subject to the satisfaction of the conditions set forth in the DIP Facility Documents, to use proceeds of the DIP Collateral and the Prepetition Collateral, subject to the Carve-Out, and to draw upon the DIP Facility (a) to exchange the Prepetition Loans for Roll-Up Loans; (b) to pay fees, costs and expenses incurred in connection with the transactions contemplated by the DIP Facility Agreement; (c) to pay other administration costs incurred in connection with the Cases consistent with the Approved Budget; (d) to pay for other working capital and general corporate purposes of Loan Parties consistent with the Approved Budget and the “first day” orders entered by the Court; and (e) after delivery of a Carve-Out

Trigger Notice, to fund a reserve to pay the Carve-Out. The Roll-Up shall be subject to the Permitted Prior Prepetition Liens set forth in the DIP Facility Agreement and the Carve-Out, the reservation of rights of the Court in paragraph 5 of ~~this~~ the Interim Order and this Final Order, and upon expiration of the Challenge Period (as defined below) without a Challenge Proceeding (as defined below) having been brought, or the final resolution of a Challenge Proceeding brought in compliance with the provisions of this ~~Interim~~ Final Order (where such Challenge Proceeding did not have the effect of successfully impairing any of the Prepetition Obligations or Prepetition Liens), the Debtors' Roll-Up of the Prepetition Facility shall be deemed to be indefeasible, final and not subject to any challenge (excluding the Court's reservation of rights in paragraph 5 of this ~~Interim~~ Final Order), including without limitation any Challenge Proceeding. Notwithstanding the foregoing, in the event that a Challenge Proceeding is initiated within the Challenge Period, only that portion of the Prepetition Obligations that are challenged shall be excluded from the Debtors' Roll-Up of the Prepetition Facility (the "Roll-Up Exclusion Amount"), and further provided that, upon the settlement or final adjudication of any such Challenge Proceeding, the Roll-Up Exclusion Amount shall, subject to the Carve-Out become part of the Roll-Up of the Prepetition Facility to the extent that such Roll-Up Exclusion Amount is found or agreed to be secured by Prepetition Liens.

10. DIP Superpriority Claim. Subject to the Challenge Period with respect to the Roll-Up and subject to the Carve-Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed claims against the Debtors, jointly and severally, with priority over any and all administrative expenses, including, without limitation, any administrative expense claims on account of any postpetition Intercompany Transactions (as defined below), diminution claims (including all Adequate Protection Superpriority 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, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 552(b), 726, 1113, or 1114 of the Bankruptcy Code (the “DIP Superpriority Claims”), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which DIP Superpriority Claims shall be payable from and have recourse to all pre-petition and post-petition property of the Debtors and their estates and all proceeds thereof, subject only to liens secured thereby and the Carve-Out.

**DIP Liens and Collateral.**

11. Effective immediately upon entry of ~~this~~the Interim Order, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and without the necessity of the execution by the Debtors (or recordation or other filing or notice) of security agreements, control agreements, pledge agreements, financing statements, mortgages, schedules or other similar documents, or the possession or control by a DIP Secured Party of any DIP Collateral, the DIP Lender, continuing valid, binding, enforceable, non-avoidable, priming and automatically and properly perfected, *nunc pro tunc* to the Petition Date, post-petition security interests in and liens (collectively, the “DIP Liens”) on any and all property owned and hereafter acquired assets and real and personal property of the Debtors (the “DIP Collateral”), including, without limitation, the following (a) all Prepetition Collateral; (b) all accounts, chattel paper, deposit accounts (including any deposit accounts subject to a control agreement, equipment, general intangibles, instruments, inventory, and investment property and support obligations); (c) commercial tort claims; (d) all books and records pertaining to the other property described in this paragraph; (e) all property of such Debtor held by any secured party, including all property of every description, in the custody of or in transit

to such secured party for any purpose, including safekeeping, collection or pledge, for the account of such Debtor or as to which such Debtor may have any right or power, including but not limited to cash; (f) all other goods (including but not limited to fixtures) and personal property of such Debtor, whether tangible or intangible and wherever located; (g) Avoidance Actions and the proceeds of any Avoidance Actions ~~(subject to the entry of a Final Order);~~ and (h) to the extent not covered by the foregoing, all other assets or property of the Debtors, whether tangible, intangible, real, personal or mixed, and all proceeds and products of each of the foregoing and all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing, any and all proceeds of any insurance, indemnity, warranty or guaranty payable to such Debtor from time to time with respect to any of the foregoing, and in each case to the extent of any Debtor's respective interest therein.

12. Upon the indefeasible and irrevocable repayment of the Prepetition Lien Obligations the Prepetition Liens shall be deemed continuing liens for the benefit of and are deemed assigned the DIP Lender to secure the DIP Obligations. All of the following agreements and other items related to the Prepetition Liens remain in full force and effect and shall inure to the DIP Lender and the Prepetition Secured Parties: any blocked account agreements, deposit account ~~agreements, deposit account~~ control agreements, securities account agreements, credit card acknowledgments or notifications, credit card agreements, landlord agreements, collateral access agreements, warehouse agreements, bailee agreements, customs broker agreements, carrier, consolidator or freight forwarder agreements or filings with the United States Patent and Trademark Office or the Library of Congress with respect to the recordation of an interest in intellectual property that were issued or filed by the Prepetition Secured Parties on any Debtor's assets (real or personal) in connection with the Prepetition Lien Obligations. Each of the security



documents under the Prepetition Credit Agreement shall secure the DIP Obligations *mutatis mutandis*. Any liens, claims or interests subordinated to the Prepetition Liens as of the Petition Date and the Carve-Out shall likewise be deemed subordinate to the DIP Liens and the Carve-Out.

13. DIP Lien Priority.

(a) *DIP Liens.* The DIP Liens shall be junior only to the (i) Permitted Prior Senior Prepetition Liens as set forth in the DIP Facility Agreement, and the (ii) Carve-Out (as applicable), and shall otherwise be senior in priority and superior to the Prepetition Liens, the Permitted Prior Junior Prepetition Liens, the Adequate Protection Liens, and Adequate Protection Superpriority Claims (each as defined herein) and any other security, mortgage, collateral interest, lien or claim on or to any of the DIP Collateral, or (iii) the Banks security interests, liens, indemnities and rights of setoff preserved in the Cash Management Order [Dkt. No. 77]. Notwithstanding anything to the contrary contained herein, with respect to non-residential real property leases, the DIP Collateral shall not include such non-residential real property leases and no liens or encumbrances shall be granted or extended to such leases under this InterimFinal Order, but rather the DIP Collateral and any liens granted under this InterimFinal Order shall include only the economic value of, proceeds of sale or other disposition of, and any other proceeds or products of such leasehold interests.

(b) *Treatment of DIP Liens.* Other than as set forth herein, the DIP Liens shall not be made subject to *pari passu* with any lien or security interest ~~heretofore or~~ hereafter granted in the Cases or any Successor Case. The DIP Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Case, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Cases or any Successor Case. Except

during the Challenge Period with respect to the Roll-Up, the DIP Liens shall not be subject to challenge under sections 510, 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of the Debtors' estates pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

**Adequate Protection**

14. Adequate Protection Liens.

(a) *Prepetition Secured Parties – Senior Adequate Protection Lien.* Pursuant to sections 361, 363(e) and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral, including Cash Collateral, against any diminution in value resulting from the Debtors' use, sale or lease (or other decline in value) of such collateral, the imposition of the automatic stay, the priming of the Prepetition Liens and the subordination to the Carve-Out (collectively, "Diminution in Value"), the Debtors hereby grant to the Prepetition Secured Parties, a valid and perfected replacement and additional security interest in, and lien on (the "Senior Adequate Protection Lien") all DIP Collateral. The Senior Adequate Protection Lien is and shall be valid, binding, enforceable and fully perfected *nunc pro tunc* to the Petition Date (without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements, or other agreements) and shall (i) be subject and subordinate only to the DIP Liens, the Permitted Prior Senior Prepetition Liens set forth in the DIP Facility Agreement, and the Carve-Out; and (ii) otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(b) *Treatment of Adequate Protection Liens.* Other than as set forth herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Case. The Adequate Protection Liens shall be valid and enforceable against any trustee or other estate representative

appointed in the Cases or any Successor Case, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Cases or any Successor Case.

15. Adequate Protection Superpriority Claim.

(a) *Superpriority Claim of Prepetition Secured Lenders.* As further adequate protection of the interests of the Prepetition Secured Parties, is hereby granted an allowed administrative claim against the Debtors' estates under section 503(b) of the Bankruptcy Code with superpriority pursuant to section 507(a) and (b) of the Bankruptcy Code (the "Senior Adequate Protection Superpriority Claim") to the extent that the Senior Adequate Protection Lien is insufficient to protect the Prepetition Secured Parties' interests in the Prepetition Collateral.

(b) *Priority of Senior Adequate Protection Superpriority Claim.* Except as set forth herein, the Senior Adequate Protection Superpriority Claim shall have priority over all administrative expense claims and priority general unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 507(a), ~~546(e), 546(d)~~, 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code (including, without limitation, any administrative expense claims on account of any postpetition Intercompany Transactions); *provided, however*, that the Senior Adequate Protection Superpriority Claim shall be junior to (i) the DIP Superpriority Claim and (ii) the Carve-Out.

16. Costs, Fees, Expenses, and Indemnification.

(a) *DIP Lender.* The Debtors are authorized and directed to pay any and all reasonable out-of-pocket expenses of DIP Lender in connection with the DIP Facility and these

Cases, whether incurred before or after the Petition Date and whether or not the transactions contemplated hereby are consummated or such fees and expenses are set forth in the Approved Budget, including, without limitation, fees and expenses, subject to the Carve-Out, incurred in connection with (i) the preparation, negotiation and execution of the DIP Facility Documents; (ii) the syndication and funding of the DIP Facility; (iii) the creation, perfection or protection of the liens under the DIP Facility Documents (including all search, filing and recording fees); and (iv) the on-going administration of the DIP Facility Documents (including the preparation, negotiation and execution of any amendments, consents, waivers, assignments, restatements or supplements thereto) and the Cases; (v) the enforcement of the DIP Facility Documents; and (vi) any refinancing or restructuring of the DIP Facility in the nature of a “work-out”; and (vii) any legal proceeding relating to or arising out of the DIP Facility or the other transactions contemplated by the DIP Facility Documents, including the Cases. Payment of all such professional fees and expenses shall not be subject to allowance by the Court. Notwithstanding the foregoing, at the same time such invoices are delivered to the Debtors, the professionals for the DIP Lender shall deliver a copy of their respective invoices to counsel for ~~any~~the Statutory Committee and the U.S. Trustee. The invoices for such fees and expenses shall contain time records and sufficient information for the Statutory Committee and the U.S. Trustee to review each for reasonableness, but shall not be required to comply with any particular format and shall not be subject to application or allowance by the Court. Any objections raised by the Debtors, the U.S. Trustee or any Statutory Committee with respect to such invoices within fourteen (14) calendar days of receipt thereof will be resolved by the Court (absent prior consensual resolution thereof). Pending such resolution, the undisputed portion of any such invoice shall be promptly paid by the Debtors.

Such fees and expenses shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever.

(b) *Indemnification of DIP Lender.* The DIP Lender shall have no liability to any third party relating to the DIP Facility Agreement and Debtors' use of the financing provided thereunder, and shall not be deemed to be in control of the operations of Debtors, or to be acting as a "responsible person" or managing agent with respect to the operation or management of Debtors. Debtors shall indemnify and hold harmless the DIP Lender and their respective affiliates and officers, directors, employees, agents and advisors from and against all losses, liabilities, claims, damages or other expenses arising out of or relating to the DIP Facility Agreement and Debtors' use of the financing provided thereunder; *provided, however* that the Debtors shall not be liable for any indemnification to the DIP Lender to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results solely from that of the DIP Lenders' gross negligence, willful misconduct or self-dealing as finally determined by a court of competent jurisdiction. This indemnification shall survive and continue for the benefit of all such persons or entities.

(c) *Prepetition Secured Parties.* As additional adequate protection of the Prepetition Secured Parties' security interests in the Prepetition Collateral, the Debtors are authorized to provide adequate protection in the form of (i) solely to the extent any portion of the Prepetition Lien Obligations remain outstanding after giving effect to the Roll-Up, ongoing payment of interest and other amounts due under the Prepetition Lien Documents; (ii) current cash reimbursement of actual and documented fees and expenses and other disbursements of the DIP Lender whether or not incurred before or after the Petition Date or set forth in the Approved Budget; and (iii) continued maintenance and insurance of the Prepetition Collateral and the DIP

Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Documents, the DIP Facility Agreement and this ~~Interim~~Final Order. Payment of professional fees and expenses of the DIP Lender shall not be subject to allowance by the Court. Notwithstanding the foregoing, at the same time such invoices are delivered to the Debtors, the professionals for the DIP Lender shall deliver a copy of their respective invoices to counsel for any Statutory Committee and the U.S. Trustee. The invoices for such fees and expenses shall contain time records and sufficient information for the Statutory Committee and the U.S. Trustee to review each for reasonableness, but shall not be required to comply with any particular format and shall not be subject to application or allowance by the Court. Any objections raised by the Debtors, the U.S. Trustee or any Statutory Committee with respect to such invoices within fourteen (14) calendar days of receipt thereof will be resolved by the Court (absent prior consensual resolution thereof). Pending such resolution, the undisputed portion of any such invoice shall be promptly paid by the Debtors. Such fees and expenses shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever.

**Provisions Common to DIP Financing and Use of Cash Collateral Authorizations**

17. Carve-Out.

(a) *Carve-Out.* The liens and claims of the DIP Lender shall be subject to (a) the payment of fees under 28 U.S.C. § 1930, (b) the payment of any fees and expenses owing to the clerk of the Court or any agent thereof, (c)(i) the payment of unpaid and outstanding reasonable fees and disbursements of attorneys and other professionals retained by the Company and any statutory committees appointed in the chapter 11 cases under sections 327 or 1103(a) of the Bankruptcy Code (the “Professionals”) actually incurred from the Petition Date through the occurrence of an Event of Default or other Termination or Maturity Date, whether allowed prior to or after delivery by the DIP Lender of a Carve-Out Trigger Notice, solely to the extent allowed

and payable under sections 326, 328, 330 and 331 of the Bankruptcy Code (but excluding success, completion, or other transaction fees) and any interim procedures order, but subject in all respects to the Budget, on a line by-line and professional-by-professional basis, and (ii) allowed professional fees of retained professionals of the Debtors in an aggregate amount of \$50,000 and allowed professional fees of retained professionals of any statutory committees in an amount not to exceed \$50,000, in each case incurred after the first day following delivery by the DIP Lender of the Carve-Out Trigger Notice, to the extent allowed at any time (the "Post- Trigger Carve-Out"). The foregoing provisions (a), (b), and (c), shall be collectively referred to as the "Carve-Out". "Carve Out Trigger Notice" shall mean a written notice delivered by the DIP Lender to lead restructuring counsel to the Debtors, the U.S. Trustee, and counsel to the Committee (if any), stating that (a) the Post-Trigger Carve-Out has been invoked due to the occurrence of and during the continuation of an Event of Default under the DIP Loan Agreement, and (b) acceleration of the DIP Obligations under the DIP Agreement has occurred.

(b) *No Direct Obligation to Pay Allowed Fees; No Waiver of Right to Object to Fees.* Other than the funding of the Carve-Out with the proceeds of the DIP Facility as provided herein and in the DIP Facility Documents and the other DIP Lender shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with these Cases, any Successor Cases, or otherwise. Nothing in this ~~Interim~~Final Order or otherwise shall be construed: (i) to obligate the DIP Lender, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement, other than the Carve-Out; (ii) to increase the Carve-Out if incurred or Allowed Fees are higher in fact than the fees and disbursements of Professional Person set forth in the Approved Budget after the occurrence of the



Trigger Date; (iii) as consent to the allowance of any fees and expenses of Professional Persons; or (iv) to affect the rights of the DIP Lender, the Prepetition Secured Parties or any other party-in-interest to object to the allowance and payment of such fees and expenses.

(c) *Payment of Carve-Out on or after the Triggering Event Date.* Any payment or reimbursement made on or after the occurrence of the Trigger Date in respect of any Allowed Fees (whether out of the Carve-Out Escrow Account or otherwise) 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 otherwise be entitled to the protections granted under this ~~Interim~~Final Order, the DIP Facility Documents, the Bankruptcy Code, and applicable law.

(d) *Payment of Compensation.* Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Professional Persons or shall affect the right of the DIP Lender and the Prepetition Secured Parties to object to the allowance and payment of such fees and expenses. So long as no Termination Event has occurred and is continuing, the Debtors shall be permitted to pay fees and expenses allowed and payable by order (that has not been vacated or stayed, unless the stay has been vacated) under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable, solely to the extent set forth in the Approved Budget and not to exceed the amounts set forth in the Approved Budget, *provided* that any such payment shall be subject to entry of a final order of the Court on final application for allowance of fees and expenses to be filed for each Case Professional (including ordinary course professionals).

18. Modification of DIP Facility Documents. The Debtors are hereby authorized, subject to the DIP Facility Agreement, to implement, in accordance with the terms of the respective

DIP Facility Documents, any non-material modifications of the respective DIP Facility Documents without further order of this Court, or any other modifications to the respective DIP Facility Documents. To the extent that such modification or amendment is material, such material modification or amendment shall only be permitted pursuant to an order of this Court on notice pursuant to Local Rule 2002-1(b) and a hearing. Except as otherwise provided herein, no waiver, modification, or amendment of any of the provisions of the DIP Facility Agreement shall be effective unless set forth in writing, signed on behalf of the Debtors.

19. Use of Proceeds; Budget Maintenance. The proceeds of the DIP Facility and Cash Collateral shall be used solely in accordance with the terms of the DIP Facility Documents, including the Approved Budget (subject to the Permitted Variance and the Carve-Out), ~~and this the~~ Interim Order ~~and this Final Order~~. The Approved Budget shall be updated, modified or supplemented (with the consent of and/or at the request of the DIP Lender) from time to time, solely in accordance with the DIP Facility Agreement.

20. Modification of Automatic Stay. The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this ~~InterimFinal~~ Order, including, without limitation, to (a) permit the Debtors to grant the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens and the Adequate Protection Superpriority Claims, and (b) authorize the Debtors to pay, and the DIP Lender, the Prepetition Secured Parties to retain and apply, payments made in accordance with this ~~InterimFinal~~ Order.

21. Right to Credit Bid. Subject to Section 363(k) of the Bankruptcy Code, the DIP Lender shall have the right to “credit bid” up to the full allowed amount of its claims in connection with any sale of all or any portion of the DIP Collateral, including, without limitation, sale occurring pursuant to section 363 of the Bankruptcy Code or included as part of a restructuring

plan subject to confirmation under section 1129(b)(2)(A)(ii) of the Bankruptcy Code or a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

22. Automatic Perfection of DIP Liens and Adequate Protection Liens.

(a) This InterimFinal Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, taking possession of or control over, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, customs broker agreement or freight forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Lender or the Prepetition Secured Parties to the priorities granted herein.

(b) Notwithstanding the foregoing the Prepetition Secured Parties each 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 of or control over, or take any other action, as they may elect, in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the Prepetition Secured Party chooses 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 it 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 this InterimFinal Order.

(c) The Debtors are authorized to execute and deliver promptly upon demand to the Prepetition Secured Parties all such financing statements, mortgages, control agreements, notices and other documents as the Prepetition Secured Parties may reasonably request. The Debtors are authorized to, and shall, execute and deliver to the Prepetition Secured Parties such agreements, financing statements, mortgages, instruments and other documents as the Prepetition Secured Parties may reasonably request to evidence, confirm, validate, or perfect the DIP Liens or the Adequate Protection Liens; and the failure by the Debtors to execute any documentation relating to the DIP Liens or the Adequate Protection Liens shall in no way affect the validity, enforceability, nonavoidability, perfection, or priority of such liens.

(d) The Prepetition Secured Parties, each in its discretion, may file a photocopy of this ~~Interim~~Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, and accordingly, each officer is authorized to accept and record the photocopy of this ~~Interim~~Final Order, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

(e) Subject to entry of the Final Order and section 1146(a) of the Bankruptcy Code, except as otherwise provided herein, any provision of any lease or other license, contract or other agreement that requires the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign, or otherwise transfer any such leasehold interest, or the proceeds thereof, or other Prepetition Collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Subject to entry of the Final Order, any such provision shall have no force and effect with respect to the granting of post-petition liens on such leasehold interest or the proceeds of any assignment and/or sale thereof by

any Debtor in favor of the Prepetition Secured Parties in accordance with the terms of this InterimFinal Order.

23. Other Automatic Perfection Matters. To the extent that any Prepetition Lender is the secured party under any account control agreements listed as loss payee under any of the Debtors' insurance policies, or is the secured party under the Prepetition Credit Agreement behalf of the DIP Lender, is also deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies, and the secured party under the Prepetition Credit Agreement, and shall have all rights and powers in each case attendant to that position (including, without limitation, rights of enforcement), and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this InterimFinal Order and the DIP Facility Documents.

24. Proceeds of Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in the Cases or any Successor Case, shall obtain credit or incur debt in breach of the DIP Facility Documents at any time prior to the repayment in full of all DIP Obligations and all Prepetition Obligations, including subsequent to the confirmation of any plan of reorganization or liquidation with respect to the Debtors and the Debtors' estates, then all cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Lender to be applied in accordance with this InterimFinal Order and the DIP Facility Documents.

25. Maintenance of DIP Collateral/Cash Management. Until the payment in full in cash of all DIP Obligations, and the termination of the obligation of the DIP Lender to extend credit under the DIP Facility, the Debtors are authorized to (a) maintain and insure the DIP Collateral in amounts, for the risks, and by the entities as required under the DIP Facility

Documents and (b) maintain their cash management system as in effect as of the Petition Date, (i) subject to the DIP Facility Documents; (ii) subject to the Cash Management Order, as may be modified, with the prior written consent of the DIP Lender, by any order that may be entered by this Court and (iii) in a manner which, in any event, shall be reasonably satisfactory to the DIP Lender. ~~Other than as expressly required pursuant to the DIP Facility Agreement, the Cash Management Order or this Interim Order, no modifications to the Debtors' The Debtors shall immediately notify the DIP Lender of any changes in the~~ cash management system existing as of the Petition Date ~~may be made without the prior approval of the DIP Lender.~~

26. Application of Proceeds of Collateral, Payments and Collections. After repayment in full in cash of all DIP Obligations any remaining proceeds of the DIP Collateral shall be applied to the Debtors' remaining outstanding and unpaid obligations, in a manner consistent with the Bankruptcy Code and, except as may be otherwise ordered in one or more orders of this Court, in accordance with the rights and priorities set forth in this ~~Interim~~Final Order.

27. Termination Event. The occurrence of an Event of Default under the DIP Facility Agreement is referred to herein as a "Termination Event."

28. Rights and Remedies Following Termination Event.

(a) *Termination.* Immediately upon the occurrence and during the continuation of a Termination Event, the DIP Lender, with no further action of this Court, may notify the Debtors in writing that a Termination Event has occurred and is continuing (such notice, a "Termination Notice" and the date of any such notice, as further defined in the DIP Facility Agreement, the "Termination Notice Date").

(b) *Notice of Termination.* Any Termination Notice shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to any Statutory Committee (if

one has been formed, or if one has not been formed, the Debtors' consolidated twenty largest creditors), and the U.S. Trustee.. The Remedies Notice Period shall commence on the Termination Notice Date and shall expire five (5) business days after the Termination Notice Date (the "Remedies Notice Period", and the date of the expiration of the Remedies Notice Period, the "Termination Date").

(c) Without limiting the rights and remedies of the other DIP Lender under the DIP Facility Agreement, the DIP Lender, may immediately (I) upon the occurrence of and during the continuation of a Termination Event following the issuance of a Termination Notice or (II) the Termination Date, *inter alia*, (A) declare (x) subject to the Remedies Notice Period, all obligations owing under the DIP Facility Documents to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Debtors, (y) the termination, reduction or restriction of any further commitment to extend credit to the Borrower to the extent any such commitment remains, and (z) terminate the DIP Facility and the DIP Facility Documents as to any future liability or obligation of, any DIP Lender, or any other DIP Secured Party, but without affecting any of the liens or the obligations (any of the actions set forth in the foregoing (x), (y) and (z), a "Termination"); (B) unless the Court orders otherwise during the Remedies Notice Period, declare a termination, reduction or restriction on the ability of the Borrower to use any Cash Collateral and exercise all other rights and remedies provided in the DIP Facility Documents and applicable law.

(d) During the Remedies Notice Period, any party in interest shall be entitled to seek an emergency hearing with this Court for the purpose of contesting a Termination, including whether a Termination Event has occurred and/or is continuing. During the Remedies Notice Period, the Debtors may continue to use the DIP Collateral, including Cash Collateral, in the



ordinary course of business and consistent with the most recent Approved Budget (subject to the Permitted Variance, and to fund the Carve-Out Escrow Amount), but may not enter into any transactions or arrangements (including, without limitation, the incurrence of indebtedness or liens, investments, restricted payments, asset sales, or transactions with non-Debtor affiliates) that are not in the ordinary course of business or otherwise in furtherance of the administration of the Cases.

29. Good Faith.

(a) *Good Faith Under Section 364 of the Bankruptcy Code; No Modification or Stay of this InterimFinal Order.* The DIP Lender have acted in good faith in connection with this InterimFinal Order and their reliance on this InterimFinal Order is in good faith. Based on the findings set forth in this InterimFinal Order and the record made during the Interim Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this InterimFinal Order are hereafter modified, amended or vacated by a subsequent order of the Court, or any other court, the DIP Lender are entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of the DIP Obligations, or any lien, claim or priority authorized or created hereby, *provided* that this InterimFinal Order was not stayed by court order after due notice had been given to the DIP Lender at the time such obligations were incurred or the liens, claims or priorities were authorized and/or created. Any liens or claims granted to the DIP Lender hereunder arising prior to the effective date of any such modification, amendment or vacatur of this InterimFinal Order shall be governed in all respects by the original provisions of this InterimFinal Order, including entitlement to all rights, remedies, privileges and benefits granted herein, *provided* that the Interim Order was not stayed by court order after due notice had been

given to the DIP Lender at the time the obligations were incurred or the liens, claims or priorities were authorized and/or created.

(b) *Prepetition Secured Parties.* The Prepetition Secured Parties have acted in good faith in connection with this InterimFinal Order and their reliance on this InterimFinal Order is in good faith.

30. Proofs of Claim. Any order entered by the Court establishing a bar date for any claims (including without limitation administrative claims) in any of the Cases or any Successor Case shall not apply to any DIP Lender or the Prepetition Secured Parties. The DIP Lender and the Prepetition Secured Parties shall not be required to file proofs of claim or requests for approval of administrative expenses authorized by this InterimFinal Order in any of the Cases or any Successor Case, and the provisions of this InterimFinal Order, and, upon the entry thereof, the Final Order, relating to the amount of the DIP Obligations, the Prepetition Lien Obligations, the Adequate Protection Superpriority Claims, the Adequate Protection Liens, the Prepetition Liens, the DIP Liens and the DIP Superpriority Claim shall constitute a timely filed proof of claim and/or administrative expense request. For the avoidance of doubt, the books and records of the Prepetition Lenders shall be deemed conclusive as to the amount of the claims of each such party.

31. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Lender under the DIP Facility Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Lender, the Prepetition Secured Parties, reasonable access to the Debtors' premises, knowledgeable officers of the Debtors, and their books and records in accordance with the DIP Facility Documents, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested. Notwithstanding the foregoing, the rights of the DIP Lender to enter onto

the Debtors' leased premises shall be limited to (a) any such rights agreed in writing by the applicable landlord pursuant to any separate agreement by and between such landlord and Lender, (b) the rights the DIP Lender has under applicable non-bankruptcy law, if any, and (c) such rights as may be granted or ordered by the Court following notice to the applicable landlords of the leased premises and an opportunity for such landlords to respond and be heard.

32. Intercompany Obligations. To the extent any Debtor owes any obligation or indebtedness to any other Debtor or any subsidiary or affiliate of any Debtor (the "Intercompany Obligations"), such Intercompany Obligations shall be subordinated to the DIP Obligations and the Prepetition Obligations, and the guarantees (if any) thereof, until the DIP Obligations and the Prepetition Obligations are indefeasibly repaid in full. For avoidance of all doubt, any Intercompany Obligations shall be subordinated to the Adequate Protection Superpriority Claims.

33. Prohibited Use of DIP Facility, DIP Collateral, Cash Collateral, Carve-Out, Etc. Without the prior written consent of the DIP Lender, the DIP Facility, the DIP Collateral, and the Cash Collateral may not be used:

- a. for the payment of interest and principal with respect to the Prepetition Indebtedness (as defined in the DIP Facility Agreement) of the Borrower or any other Loan Party (as defined in the DIP Facility Agreement), except for: (i) the Carve-Out; (ii) prepetition employee wages, benefits and related employee taxes as of the Petition Date as authorized by the Court; (iii) prepetition sales, use and real property taxes as authorized by the Court; (iv) prepetition amounts due in respect of insurance financings, premiums and brokerage fees as authorized by the Court; (v) payment of fees and expenses (including fees and expenses of professionals) of the DIP Lender; (vi) other "first day" interim and final orders permitting payment of prepetition claims as authorized by the Court; (vii) cure amounts reasonably acceptable to the DIP Lender under leases and executory contracts assumed with approval of the Court; (viii) the Prepetition Obligations solely to the extent of current cash interest and expenses; and (ix) other Prepetition Indebtedness to the extent authorized by the Court and set forth in the Approved Budget;
- b. subject to this ~~Interim Order~~ (or Final Order, ~~when applicable~~) in connection with or to finance in any way any action, suit, arbitration, proceeding,

application, motion or other litigation of any type adverse to (i)(x) the rights, remedies, claims or defenses of DIP Lender under the DIP Facility Agreement, the other DIP Facility Documents, this ~~Interim Order (or, when applicable, the Final Order)~~ including preventing, hindering or otherwise delaying the exercise of any rights, remedies, claims or defenses by the DIP Lender under the DIP Facility Agreement, the other DIP Facility Documents, this ~~Interim Order (or, when applicable, the Final Order)~~ or (y) the rights, remedies, claims or defenses of the Prepetition Secured Parties under the Prepetition Credit Agreement including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Statutory Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration or similar relief (A) invalidating, setting aside, avoiding or subordinating, in whole or in part, the DIP Obligations, DIP Liens, the Prepetition Obligations, Prepetition Liens (as set forth in the DIP Facility Agreement), (B) for monetary, injunctive or other affirmative relief against the DIP Lender or the Prepetition Secured Parties or their respective collateral; or (C) preventing, hindering or otherwise delaying the exercise by the DIP Lender or the Prepetition Secured Parties of any rights and remedies under this ~~Interim Order or the Final Order~~, the DIP Facility Documents, the Prepetition Credit Agreement or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Court or otherwise) by the DIP Lender, the Prepetition Secured Parties upon any of their respective collateral;

- c. to make any distribution under a plan of reorganization in any Case;
- d. to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body, without prior written consent of the DIP Lender, unless otherwise set forth in the Approved Budget, or unless otherwise ordered by the Court;
- e. to pay any fees or similar amounts to any person who has proposed or may propose to purchase interests of the Debtors (including so-called "Topping Fees," "Exit Fees" and other similar amounts) without prior written consent by the DIP Lender, unless otherwise set forth in accordance with the Approved Budget;
- f. to object to, contest, or interfere with, in any way, the DIP Lender' or the Prepetition Secured Parties' enforcement or realization upon any of the Prepetition Collateral or DIP Collateral once a Termination Event has occurred, except as provided for in this ~~Interim Order or the Final Order~~, or seek to prevent the DIP Lender or the Prepetition Secured Parties from credit bidding in connection with any proposed plan of reorganization or

liquidation or any proposed transaction pursuant to section 363 of the Bankruptcy Code;

- g. to use or seek to use Cash Collateral while the DIP Obligations, the Prepetition Lien Obligations and/or any of the DIP Lender' commitments under the DIP Facility Documents remain outstanding, without the consent of the DIP Lender, other than during the Remedies Notice Period;
- h. to use or seek to use any insurance or tax refund proceeds constituting DIP Collateral other than solely in accordance with the Approved Budget and the DIP Facility Documents;
- i. to incur indebtedness other than in accordance with the Approved Budget or the DIP Facility Documents without the prior consent of the DIP Lender;
- j. to object to or challenge in any way the claims, liens, or interests held by or on behalf of the DIP Lender or the Prepetition Secured Parties *provided, however,* that, if a Statutory Committee is appointed, not more than \$25,000 in the aggregate of proceeds of the Carve Out, any Cash Collateral, or any proceeds of the DIP Facility or the DIP Collateral may be used by such Statutory Committee solely for purposes of investigating such claims, liens, or interests of the Prepetition Secured Parties;
- k. to assert, commence, prosecute or support any claims or causes of action whatsoever, including, without limitation, any Avoidance Action, against the DIP Lender or the Prepetition Secured Parties;
- l. to prosecute an objection to, contest in any manner, or raise any defenses to, the validity, extent, amount, perfection, priority, or enforceability of, or seek equitable relief from, any of the DIP Obligations, the DIP Liens, the Prepetition Obligations, the Prepetition Liens, any other rights or interests of the DIP Lender or the Prepetition Secured Parties;
- m. to sell or otherwise dispose of the DIP Collateral other than as contemplated by the DIP Facility Documents; or
- n. for any purpose otherwise limited by the DIP Facility Agreement.

34. Reservation of Certain Third-Party Rights and Bar of Challenges and Claims. The stipulations and admissions contained in this ~~Interim~~Final Order, including the Debtors' Stipulations, shall be binding on the Debtors in all circumstances. The Debtors' Stipulations shall be binding on the Debtors' estates and each other party in interest, including, without limitation, any Statutory Committee, unless, and solely to the extent that (a) any such party in interest,

including any Statutory Committee, with standing and requisite authority, has timely commenced an adversary proceeding (subject to the limitations set forth in paragraph 35 hereof) against the Prepetition Secured Parties in connection with any matter related to the Prepetition Credit Agreement or the Collateral (a “Challenge Proceeding”) by no later than on or before each of (i) a period of 75 days after the entry of ~~this~~ Interim Order, for parties other than a Statutory Committee, and (ii) 60 days after the date of formation of a Statutory Committee, if a Committee has been appointed (the “Challenge Period”) (for the avoidance of doubt, if a Committee is appointed after the period in sub-clause (i) has expired the Challenge Period shall have run). The Challenge Period may only be extended with the written consent of the Prepetition Secured Parties, or by order of the Court. Upon the expiration of the Challenge Period (the “Challenge Period Termination Date”), without the filing of a Challenge Proceeding:

- a. any and all such Challenge Proceedings and objections by any party (including, without limitation, any Statutory Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed in the Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case), shall be deemed to be forever waived, released and barred,
- b. all matters not subject to the Challenge Proceedings, including, without limitation, all findings, the Debtors’ Stipulations, all waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to the Prepetition Secured Parties’ claims, liens, and interests shall be of full force and effect and forever binding upon the Debtors, the Debtors’ estates and all creditors, interest holders, and other parties in interest in the Cases and any Successor Case;
- c. any and all prepetition claims or causes of action against the Prepetition Secured Parties relating in any way to the Debtors or the Prepetition Credit Agreement shall be forever waived and released by the Debtors, the Debtors’ estates, all creditors, interest holders and other parties in interest in the Cases and any Successor Case;
- d. to the extent not theretofore repaid, the Prepetition Lien Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, reduction, defense or avoidance, for all purposes in these Cases and any subsequent chapter 7 case;

- e. the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected, not subject to defense, counterclaim, recharacterization, subordination or avoidance; and
- f. the obligations under the Prepetition Lien Documents shall not be subject to any other or further challenge by the Debtors, any Statutory 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).

35. If any Challenge Proceeding is timely commenced, the admissions and stipulations contained in this InterimFinal Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive (as provided in this paragraph) on the Debtors, any committee, and any other person or entity, except as to any such findings and admissions that were expressly and successfully challenged (pursuant to a final order) in such Challenge Proceeding. Nothing in this InterimFinal Order vests or confers on any Person (as defined in the Bankruptcy Code), including any Statutory 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 Lien on the Prepetition Collateral. For the avoidance of doubt, any trustee appointed or elected in these Cases shall, until the expiration of the periods provided herein for asserting claims and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph 35 (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtors' estates), be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations, stipulations and waivers of the Debtors in this InterimFinal Order.

36. No Third Party Rights. Except as explicitly provided for herein, this ~~Interim~~Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

37. Limitations on Charging Expenses. Upon entry of the Final Order, no costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the DIP Lender or the DIP Collateral or the Prepetition Secured Parties or the Prepetition Liens pursuant to sections 105 or 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 each of the DIP Secured Party, and/or any Prepetition Secured Party that is adversely affected thereby, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders. Notwithstanding anything in the DIP Facility or this Order to the contrary, upon a final order of this Court a professional person employed by the Debtors pursuant to section 327 of the Bankruptcy Code may surcharge and be paid from the DIP Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code and any amounts so allowed by final order of this Court shall not be subject to the DIP Superpriority Claims granted herein.

38. Section 552(b). ~~Subject to the entry of the Final Order, the~~The “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Lender or, ~~subject to the entry of the Final Order,~~ the Prepetition Secured Parties, with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral or the DIP Collateral.

39. No Marshaling/Applications of Proceeds. Upon entry of the Final Order, neither the DIP Lender nor the Prepetition Secured Parties shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral.



40. Discharge Waiver. The Debtors expressly stipulate, and the Court finds and adjudicates that, none of the DIP Obligations, the DIP Superpriority Claims or the DIP Liens shall be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been paid in full in cash on or before the effective date of a confirmed plan of reorganization. Except as otherwise agreed to by the DIP Lender, the Debtors shall not propose or support any plan or sale of all or substantially all of the Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the payment in full, in cash of all DIP Obligations.

41. Rights Preserved. Other than as expressly set forth in this ~~Interim~~Final Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Lender and the Prepetition Secured Parties are preserved. Nothing contained herein shall be deemed to be a finding by this Court or an acknowledgement by the Prepetition Secured Parties that the adequate protection granted herein does in fact adequately protect the Prepetition Secured Parties against any post-petition diminution in value of the Prepetition Collateral.

42. Release. Subject to ~~the entry of the Final Order and~~ paragraphs 34 and 35 and as further set forth in the DIP Facility Documents, the Debtors, on behalf of themselves and their estates (including any successor trustee or other estate representative in these Cases or any Successor Case) and any party acting by, through, or under any of the Debtors or any of their estates, hereby stipulate and agree that they forever and irrevocably (a) release, discharge, waive, and acquit any other, current or future DIP Lender, and the former, current, and future Prepetition Secured Parties, and each of their respective participants and each of their respective affiliates, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders,

managers, consultants, accountants, attorneys, affiliates, successors, assigns and predecessors in interest (collectively, and in each case in their capacities as such, the “Released Parties”), from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Facility, the DIP Facility Documents, the Prepetition Credit Agreement, or the transactions and relationships contemplated hereunder or thereunder, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, perfection, or avoidability of the liens or secured claims of the Prepetition Secured Parties, and the DIP Lender, and (b) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and nonavoidability of the Prepetition Obligations, the Prepetition Liens, the DIP Obligations, and the DIP Liens. For the avoidance of doubt, the foregoing release shall not constitute a release of any rights arising under the DIP Facility Documents.

43. No Waiver by Failure to Seek Relief. The failure or delay of the DIP Lender or the Prepetition Secured Parties to seek relief or otherwise exercise their respective rights and remedies under this InterimFinal Order, the Prepetition Credit Agreement, the DIP Facility Agreement, the DIP Facility Documents, or applicable law, as the case may be, shall not constitute a waiver of any

of the rights hereunder, thereunder, or otherwise of the DIP Lender or the Prepetition Secured Parties.

44. Binding Effect of InterimFinal Order. Immediately upon entry by the Court (notwithstanding any applicable law or rule to the contrary) and Closing, the terms and provisions of this InterimFinal Order, including the liens granted herein shall, *nunc pro tunc* to the Petition Date, become valid and binding upon and inure to the benefit of the Debtors, the DIP Lender, the Prepetition Secured Parties, all other creditors of the Debtors, any Statutory Committee or any other court appointed committee appointed in the Cases, the U.S. Trustee and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Cases, any Successor Case, or upon dismissal of the Cases or any Successor Case.

45. No Modification of Interim Order. The Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Lender, (i) any modification, stay, vacatur or amendment to this InterimFinal Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in sections 503(b), 507(a) or 507(b) of the Bankruptcy Code) in the Cases or any Successor Case, equal or superior to the Senior Adequate Protection Superpriority Claims, other than the Carve-Out and the DIP Superpriority Claim; (b) without the prior written consent of the DIP Lender, (i) any order allowing use of Cash Collateral other than ~~this~~the Interim Order and ~~the~~this Final Order; and (ii) any lien on any of the DIP Collateral with priority equal or superior to the Senior Adequate Protection Lien (other than the DIP Lien); and (c) without the prior written consent of the DIP Lender, any lien on any of the Prepetition Collateral

with priority equal to or superior to the Junior Adequate Protection Lien (other than the DIP Lien, the Permitted Prior Liens, the Carve-Out, the Senior Adequate Protection Lien, the Prepetition Senior Liens. The Debtors irrevocably waive any right to seek any material amendment, modification or extension of this InterimFinal Order without the prior written consent, as provided in the foregoing, of the DIP Lender no such consent shall be implied by any other action, inaction or acquiescence of the Prepetition Secured Parties or the DIP Lender.

46. InterimFinal Order Controls. This InterimFinal Order shall constitute this Court's findings of fact and conclusions of law based upon the record of these Chapter 11 Cases at the InterimFinal Hearing and shall upon its entry by this Court take effect and be fully enforceable *nunc pro tunc* to the Petition Date. There shall be no stay of execution or effectiveness of this InterimFinal Order, notwithstanding anything to the contrary in the Bankruptcy Rules or other applicable law; any applicable stay is hereby waived. In the event of any inconsistency between the terms and conditions of the DIP Facility Documents or this InterimFinal Order, the provisions of this InterimFinal Order shall govern and control.

47. Survival. The provisions of this InterimFinal Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in the Cases; (b) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing the Cases or any Successor Case; or (d) pursuant to which the Court abstains from hearing the Cases or any Successor Case. The terms and provisions of this InterimFinal Order, including the claims, liens, security interests and other protections granted to the Prepetition Secured Parties and the DIP Lender pursuant to this InterimFinal Order and/or the Prepetition Credit Agreement (other than as modified hereby), notwithstanding the entry of any such order, shall continue in the Cases, in any Successor Case, or following dismissal of the Cases

or any Successor Case, and shall maintain their priority as provided by this InterimFinal Order until all DIP Obligations and all Prepetition Obligations have been paid in full.

48. Cooperation Among the Parties. Except in the event not reasonably practicable, the Debtors shall provide copies of all substantive motions, applications, other pleadings, and proposed forms of order with respect thereto (all of which shall be in form and substance reasonably acceptable to the DIP Lender) to the DIP Lender not less than five business days prior to the filing of any such substantive motions, applications, other pleadings, and proposed forms of order with respect thereto with the Court.

49. Preservation of Rights Granted Under this InterimFinal Order.

(a) Except as expressly provided herein or in the DIP Facility Documents, no claim or lien having a priority senior to or *pari passu* with that granted by this InterimFinal Order to the DIP Lender shall be granted while any portion of the DIP Obligations remains outstanding, and the DIP 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.

(b) Unless all DIP Obligations and the Prepetition Obligations shall have been indefeasibly paid in full, the Debtors shall not seek, and it shall constitute an Event of Default under the DIP Facility Agreement if any of the Debtors seek, or if there is entered (i) any stay, vacatur, rescission or modification of ~~this~~the Interim Order or ~~the~~this Final Order without the prior written consent of the DIP Lender and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Lender (ii) an order converting these Cases to cases under chapter 7 of the Bankruptcy Code or dismissing any of these Cases, or (iii) unless otherwise

approved by the DIP Lender, an order granting a change of venue with respect to these Cases or any related adversary proceeding. If an order dismissing any of these Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, (x) the Adequate Protection Superpriority Claims and other administrative claims granted under ~~this~~ Interim Order and 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~~ Interim Order and this Final Order until all DIP Obligations and all Prepetition Obligations shall have been paid and satisfied in full (and that such DIP Superpriority Claims, Adequate Protection Superpriority Claims, the other administrative claims granted under ~~this~~ Interim Order and 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, to the extent it has jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

(c) If any or all of the provisions of this ~~Interim~~ Final Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect (i) the validity, priority or enforceability of any DIP Obligations or the Adequate Protection incurred prior to the actual receipt of written notice by the DIP Lender, of the effective date of such reversal, stay, modification or vacatur, or (ii) the validity, priority, or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of Collateral (including, without limitation, Cash Collateral), any DIP Obligations, or any Adequate Protection incurred by the Debtors to the other DIP Lender and/or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Lender and/or the Prepetition Lender, as the case may be, of such reversal, stay,

modification or vacatur shall be governed in all respects by the original provisions of this ~~Interim~~Final Order, and the DIP Lender and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this ~~Interim~~Final Order, and pursuant to the DIP Facility Documents with respect to all such uses of the DIP Collateral (including, without limitation, the Cash Collateral), all DIP Obligations, and all Adequate Protection.

(d) Nothing contained in this ~~Interim~~Final Order shall limit the Debtor's fiduciary duties.

~~50. — Final Hearing. The Final Hearing to consider entry of the Final Order and approval of the DIP Facility on a final basis is scheduled for May 11, 2020 at 12:00 AM Eastern Time before the Honorable Thomas J. Catliota, United States Bankruptcy Judge, at the United States Bankruptcy Court for the District of Maryland (Greenbelt Division), Federal Courthouse, 6500 Cherrywood Lane, Suite 300, Greenbelt, Maryland 20770, or by such other means as the Court directs.~~

~~51. — Notice of Final Hearing: Within three (3) Business Days of the date of the entry of this Interim Order, the Debtors shall serve, by United States mail, first class postage prepaid, a copy of the Motion and this Interim Order upon: (a) the U.S. Trustee; (b) the Securities and Exchange Commission; (c) the Internal Revenue Service; (d) the parties included on the Debtors' consolidated list of twenty largest unsecured creditors; (e) counsel to the DIP Lender; (f) any party that has filed prior to such date a request for notices under Bankruptcy Rule 2002 with the Court; and (g) proposed counsel for any Statutory Committee.~~

~~52. — Objection Deadline: Objections, if any, to the relief sought in the Motion shall be in writing, shall set forth with particularity the grounds for such objections or other statement of~~

~~position, shall be filed with the clerk of the Court, and personally served upon: (a) proposed counsel to the Debtors, (b) the U.S. Trustee; (c) proposed counsel to any Statutory Committee; and (d) counsel to the DIP Lender, so that such objections are filed with the Court and received by said parties on or before 4:00 p.m. Eastern Time on May 8, 2020 with respect to entry of the Final Order.~~

53-50. Retention of Jurisdiction. The Court shall retain jurisdiction to enforce this Interim Order according to its terms to the fullest extent permitted by applicable law.

cc: Joel I. Sher, Esquire  
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**END OF ORDER**