

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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	:	
In re:	:	Chapter 11
	:	
ONE AVIATION CORPORATION, <i>et al.</i>,¹	:	Case No. 18-12309 (CSS)
	:	
Debtors.	:	Jointly Administered
	:	
	:	Related Docket Nos. 50, 208, 304, 308, 370, 385,
	:	388, & 393
	:	Objection Deadline: To Be Determined
	:	Hearing Date: To Be Determined

**DEBTORS' EMERGENCY MOTION FOR ENTRY OF A FINAL ORDER
(I) AUTHORIZING DEBTORS TO (A) OBTAIN ADDITIONAL POSTPETITION
FINANCING AND (B) UTILIZE CASH COLLATERAL, (II) GRANTING LIENS
AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS, (III) GRANTING
ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, (IV)
MODIFYING EXISTING FINAL DIP FINANCING ORDER, (V) MODIFYING
AUTOMATIC STAY, AND (VI) GRANTING RELATED RELIEF**

ONE Aviation Corporation and its affiliated debtors and debtors in possession (collectively, the “Debtors”) ² in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) file this motion (this “Motion”) for entry of an order (the “Senior DIP Order”), substantially in the form attached hereto as **Exhibit A**, on an emergency basis: (i) authorizing, but not directing, the Debtors to (a) enter into that certain Senior DIP Loan Term Sheet, dated as of August 28, 2020, by and among DWC Pine Investments I, LTD (“DW”), SEF OA LLC (the “Buyer”), as the

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The debtors’ corporate headquarters is located at 3520 Spirit Drive SE, Albuquerque, NM 87106.

² Capitalized terms used but not defined herein have the meaning ascribed to them in the Existing Final DIP Order (as defined below).

proposed assignee of DW (collectively, although the Senior DIP Facility will be funded by the Buyer and not DW, both DW and the Buyer are referred to herein as the “Senior DIP Lender”, as applicable),³ and the Debtors party thereto (as may be amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and the terms of the Senior DIP Order, the “Senior DIP Facility Agreement” attached as **Exhibit 1** to the Senior DIP Order), and execute and deliver all other agreements, documents, instruments, and/or amendments executed and/or delivered from time to time in connection therewith (collectively with the Senior DIP Facility Agreement, all exhibits thereto, and all other loan documents, and the Senior DIP Order, the “Senior DIP Facility Documents”), (b) obtain postpetition financing on a senior secured superpriority priming basis as contemplated by the Senior DIP Facility Documents, (c) perform all such other and further acts as may be required in connection with the Senior DIP Facility Documents, and (d) use cash collateral and the proceeds of the loans under the Senior DIP Facility Documents; (ii) granting liens and superpriority administrative expense claims to the Senior DIP Lender; (iii) granting adequate protection to the Prepetition Secured Parties in a manner substantially consistent with the Existing Final DIP Order (as defined below and as amended and restated by the Senior DIP Order); (iv) modifying the Existing Final DIP Order (as defined below); and (v) modifying the automatic stay imposed under section 362 of title 11 of the United States Code (the “Bankruptcy Code”) to the extent necessary to implement and effectuate the terms of the Senior DIP Order.

In support of this Motion, the Debtors rely upon and incorporate herein by reference the *Declaration of James Patrick Carroll in Support of the Debtors’ Additional DIP Financing and*

³ “Senior DIP Lender” shall mean both the Buyer and DW until such time that the Senior DIP Facility has been assigned to the Buyer, which is expected to occur after entry of the Senior DIP Order.

Sale Motions and Motion to Shorten (the “Carroll Declaration”), filed concurrently herewith. In further support of the Motion, the Debtors respectfully represent as follows:

Preliminary Statement⁴

1. The Debtors have been in bankruptcy for nearly 22 months, and now come before the Court with two options: seek new financing to replace their intransigent DIP / prepetition lender or face conversion of their cases to chapter 7. Now with a willing buyer and lender in hand, the Debtors have the opportunity to get back on track with a value-maximizing transaction and avoid the impending and value-destructive liquidation option. Accordingly, the Debtors request that the Court approve, on an emergency basis, access to an initial \$1,000,000 draw (the “Initial Draw”) on a \$9,750,000 superpriority senior secured priming delayed-draw term loan (the “Senior DIP Facility”) in accordance with the terms of the proposed budget (the “Senior DIP Budget”), attached as **Exhibit 2** to the Senior DIP Order. In addition, the Debtors are requesting entry of the Senior DIP Order, authorizing the Debtors to access the remaining \$1,750,000 in new money under the Senior DIP Facility in accordance with the terms and conditions of the Senior DIP Facility Documents. The Senior DIP Facility, including the Initial Draw, is critical to ensure that the Debtors can make payroll after September 4, 2020 and to fund these Chapter 11 Cases through a sale process, and conclude these cases in a way that preserves the recoveries that key parties in interest would receive under the Debtors’ previously confirmed Plan.

2. Concurrently herewith, the Debtors have filed their Sale Motion⁵ seeking, among other things, approval for the Debtors to enter into an asset purchase agreement (the “APA”),

⁴ Capitalized terms used in this Preliminary Statement but not otherwise defined elsewhere in this Motion have the meaning given to them in the Confirmation Order (as defined below).

⁵ “Sale Motion” means the *Debtors’ Motion for Entry of: (A) Order (I) Approving Form and Manner of Notice in Connection With Sale of Assets of the Debtors, (II) Scheduling Sale Hearing, (III) Approving Bid Protections, (IV) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (V) Granting Related Relief; and (B) Order (I) Approving Purchase Agreement,*

which sets forth the terms of a going concern sale of the Debtors' business to the Buyer (the "Sale"). The Sale is expected to close by no later than October 15, 2020 (the "Closing Date"), subject to the Buyer's ability to extend the Closing Date up to 15 days (the "Extended Closing Date"). To bridge the gap period between the Debtors' projected timeline for consummation of the Sale, the lynchpin for continuing operations and preserving the value of the Debtors' estates, the Debtors need immediate access to liquidity. The Sale will put the Debtors in the position to undertake a transition that is substantially similar to the previously confirmed Plan.

3. As explained more fully in the Sale Motion, the proceeds of the Sale will be used to fund up to \$7,000,000 in cash plus, among other things, a \$75,000 wind-down amount, up to \$1,500,000 for payment of accrued and expected Professional Fee Claims, and the negotiated amounts reflected in the confirmed Plan of \$825,000 to holders of Allowed ONE Aviation General Unsecured Claims, \$50,000 for the Claims Reconciliation Expense Fund, \$225,500 for holders of Allowed Kestrel Secured Claims, and \$700,000 for holders of Allowed Senior Subordinated Secured Note Claims.

4. The Senior DIP Facility, which makes the Sale possible, consists of (i) new money term loans in an aggregate principal amount not to exceed \$2,750,000 to fund the Debtors' operational expenses and the Debtors' remaining stay in chapter 11 (the "Senior New Money DIP Loans"), and (ii) term loans in an aggregate principal amount not to exceed \$7,000,000, which shall be a roll-up of a portion of DW's loans under the Prepetition First Lien Credit Agreement (the "Senior Roll-Up Loans"), with the roll-up of such Senior Roll-Up Loans to be effective upon entry of the Senior DIP Order. Subject to the Court's entry of the Senior

(II) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (III) Granting Related Relief, filed concurrently herewith.

DIP Order (as well as the Sale Procedures and Scheduling Order contemplated by the Sale Motion), and following the Buyer's payment of \$7,000,000 to acquire DW's senior debt position along with the right to make the Senior New Money DIP Loans, the Buyer will acquire DW's secured debt via an assignment and step into DW's position as a Prepetition First Lien Lender and the Senior DIP Lender.

5. Without access to the Initial Draw, the Debtors and their advisers have determined that the Debtors will likely be unable to continue their business operations after September 4, 2020 requiring the lay off potentially all 64 employees of the Debtors and a piecemeal sale of their assets under chapter 7 of the Bankruptcy Code.⁶ Simply put, the Debtors' operations require liquidity, and the Debtors do not currently have a liquidity source. The Debtors' operations will grind to a halt without the liquidity contemplated by the proposed Senior DIP Facility.⁷

6. As detailed below, Citiking International US LLC ("Citiking" or the "Existing DIP Lender") has not—and cannot—fulfill its Plan obligations, despite repeated promises to the contrary and its countless attempts to renegotiate agreed settlements memorialized in the Plan and Confirmation Order. The Debtors have faced a nearly year-long failure of the Existing DIP Lender to comply with its obligations to finalize the exit-facility documents and to fund the confirmed Plan (including providing exit financing), which has prevented the effectiveness of the Plan.

7. The emergency nature of this Motion and the necessity of the Senior DIP Facility are also the result of the Debtors having to respond to unfortunate events far beyond their

⁶ Carroll Decl. ¶ 31.

⁷ Carroll Decl. ¶ 21.

control. The reduction in air travel as a result of the novel coronavirus pandemic, and the measures undertaken to combat the spread of the virus, including restrictions on air travel and the grounding of flights, have negatively impacted demand for aircraft maintenance services, which has significantly reduced the Debtors' income. The lack of liquidity coupled with the market uncertainty in the aviation industry has made finding additional financing virtually impossible, especially given the Debtors' existing capital structure and minimal interest in the Debtors' business after years of marketing to investors.

8. Citiking had the sole power to avoid being primed by simply meeting its Plan funding obligations. The unusual facts of these Chapter 11 Cases also warrant the priming feature of the Senior DIP Facility. First, the priming is consensual as to DW (a Prepetition First Lien Lender) and the Buyer (as assignee of a DW's First Lien Credit Agreement Claims) because they consent to the priming of the collateral securing their First Lien Credit Agreement Claims. Second, priming the collateral securing Citiking's DIP Claims and First Lien Credit Agreement Claims is warranted as a consequence of Citiking's conduct over the past 11 months. By breaching its obligations under the PSA and Letter Agreement (each as defined below) with DW, a minimum of \$9,650,000 in principal amount of Citiking's DIP Claims (plus interest accruing thereon) is now subordinate to the Senior DIP Lender's existing First Lien Credit Agreement Claims. Moreover, apart from the priming feature of the Senior DIP Facility, the Senior DIP Facility Documents (including the Senior DIP Order) do nothing to alter the validity of Citiking's existing liens with respect to the Debtors' collateral.

9. The Senior DIP Order also retains the adequate protection package provided to the Prepetition Secured Parties (including Citiking) under the Existing Final DIP Order and the other Junior DIP Facility Documents in the form of, among other things, adequate protection

liens on the Debtors' assets and superpriority claims. But most importantly, the Senior DIP Facility itself provides a compelling form of adequate protection by ensuring the continued operation of the business in the ordinary course to consummate a going-concern Sale, moreover, the Sale will preserve the settlement recoveries provided in the confirmed Plan greatly benefiting junior lenders and unsecured creditors. The Debtors have also worked carefully to ensure that other fundamental protections previously negotiated under the Existing Final DIP Order are retained in the Senior DIP Order (including the Carve Out and the Carve-Out Escrow Accounts). A redline of the Senior DIP Order to the Existing Final DIP Order is attached hereto as **Exhibit B**.

10. The Senior DIP Facility contains a number of terms favorable to the Debtors as compared to Junior DIP Facility. Among other things, the Senior DIP Facility is a relatively simple delayed draw term loan papered by a short term sheet and without the attendant complexities of a revolving facility like the Junior DIP Facility. The Senior DIP Facility will make cash immediately available, in accordance with the Senior DIP Budget, to address the Debtors' near-term cash needs and will support the Debtors' ongoing business operations through the closing of the Sale. Additionally, the pricing, fees, and payment terms on the Senior DIP Facility are incredibly favorable to the Debtors—specifically, the Senior DIP Facility will bear interest at the rate of 5% per annum and has aggregate fees of 0.5% of the committed amount under the Senior DIP Facility, with such interest and fees to accrue to the balance of the Senior DIP Facility and not be paid until maturity.

11. The Debtors do not believe they would have access to sufficient funds to operate their business without access to the Senior DIP Facility as they forge a path toward the Sale. Further, going outside of the Debtors' capital structure to bring in replacement DIP financing of

the size needed to pay off the Junior DIP Facility in full is not a viable option for reasons discussed above. Thus, given the obvious benefit to the Debtors' estates of the Senior DIP Facility and the relatively small priming debt that the Debtors are incurring, in contrast to the severe degradation of the Debtors' assets that would undoubtedly occur if the Debtors could not obtain additional financing, the Court should grant the Motion.

12. For all of these reasons above and as set forth herein, the Debtors submit that the relief requested in the Motion, including entry into the Senior DIP Facility, reflects their sound business judgment and represents the best option to maximize the value of their estates.

Jurisdiction and Venue

13. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008 and Local Rule 9013-1(f), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

14. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

15. The bases for the relief requested herein are sections 105, 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code, rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 2002-1(b) and 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

BACKGROUND

I. General

16. On October 9, 2018 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

17. The Chapter 11 Cases have been consolidated for procedural purposes only and are being jointly administered pursuant to Bankruptcy Rule 1015(b). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases. On October 22, 2018, the Office of the United States Trustee appointed the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) pursuant to section 1102(a) of the Bankruptcy Code.

18. As discussed in the *Declaration of Michael Wyse in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 2] (the “First Day Declaration”) and the Carroll Declaration, the Debtors comprise a private company that combines Eclipse Aerospace, Inc. and Kestrel Aircraft Company, Inc. products and personnel to research and develop, produce, deliver, service, upgrade, and provide technical support to a number of twin-turboprop very light jets and single turboprop-engined aircrafts. The Debtors generate revenue from the following business lines: aircraft sales; aircraft parts sales; training programs; upgrades (including large upgrades and structural maintenance); service (including general service, inspections, and product improvements); and refurbishment. The aircraft refurbishment line of business allows the Debtors to capture value and revenue from their current fleet of jets through updating certain features of older jets and through the resell of aircraft into the secondary market. Additional factual background information about the Debtors, including their business operations, their

corporate and capital structure, and the events leading to the Chapter 11 Cases, is set forth in detail in the First Day Declaration.

II. Prepetition Agreements Between DW and Citiking

19. Initially, DW held 75% of the Debtors' senior secured term loan and revolving credit facility (the "Prepetition First Lien Credit Agreement"). On November 10, 2017, DW acquired the other 25% (so that it held 100% for a moment in time) and then DW immediately assigned 50% of its interest in the Prepetition First Lien Credit Agreement to Citiking (the "First Debt Assignment"). On July 10, 2018, DW contingently assigned the remaining 50% of its interest in the Prepetition First Lien Credit Agreement to Citiking (the "Second Debt Assignment"). The parties accomplished the Second Debt Assignment through a series of agreements, including, among others: (a) that certain Purchase and Sale Agreement for Distressed Trades dated July 10, 2018 (the "PSA"), which obligates Citiking to pay DW the purchase price for the Second Debt Assignment in three installments (on July 10, 2018, August 24, 2018, and October 8, 2018, respectively); and (b) that certain Continuing Obligations Agreement dated July 10, 2018 (the "Continuing Obligations Agreement"), which provides that upon an event of default (including for, among other things, Citiking's failure to make the payments required under the PSA), DW had the right to elect to repurchase the debt transferred under the Second Debt Assignment and to subordinate any debt that the Debtors owe to Citiking (including debt owed on account of debtor in possession financing) at least by the face amount of the repurchased debt.⁸ Citiking subsequently did default on its purchase obligations with respect to the debt transferred under the Second Debt Assignment on two separate occasions, and DW repurchased that debt on January 18, 2019.

⁸ Continuing Obligations Agmt. ¶ 6.

20. On July 25, 2019, DW and Citiking entered into that certain Letter Agreement (the “Letter Agreement”), which reaffirmed DW’s and Citiking’s rights and obligations under the Second Debt Assignment, including as set forth in the PSA and the Continuing Obligations Agreement. At the time that the parties executed the Letter Agreement, Citiking owed DW not less than \$12,150,000 for the Second Debt Assignment (and today owes a minimum of \$9,650,000 of principal amounts (plus interest accruing thereon), having paid \$2,500,000 in October 2019) and, pursuant to the Letter Agreement, DW and Citiking agreed to a series of payments over time with the remaining debt to be rolled into an exit financing facility under the Plan that would be repaid by the reorganized Debtors (which, upon emergence, would have been 100% owned by Citiking pursuant to the confirmed Plan).⁹

21. As explained below, Citiking (a) breached its obligations under the Letter Agreement by, among other things, failing to make the required payments to DW or to declare the Plan effective within the time permitted by the Letter Agreement,¹⁰ (b) as a result of its breach of the Letter Agreement, continued to be in breach of the PSA and the Continuing Obligations Agreement due to its failure to pay the purchase price of the Second Debt Assignment,¹¹ and (c) failed to work in good faith to consummate the transactions set forth in the Plan or to fund administrative expense claims and the distributions as provided for under the Plan.¹² A copy of the Continuing Obligations Agreement, Letter Agreement, and the PSA (collectively, the “DW Agreements”) are attached hereto as **Exhibit C**.

⁹ Letter Agmt. ¶ 5 (i)-(v).

¹⁰ *Id.* ¶ 5(ii)-(iv).

¹¹ *Id.* ¶ 9; Purchase Agmt. ¶ 8; Continuing Obligations Agmt. ¶ 5.

¹² Plan §§ 2.2(b), 9.1.2; Letter Agmt. ¶ 5 (i)-(v).

III. The Confirmed Plan

22. On the Petition Date, the Debtors filed their joint plan of reorganization, which the Court ultimately confirmed as amended and modified [Docket No. 707-1] (the “Plan”) by entry of an order on September 18, 2019 [Docket No. 707] (the “Confirmation Order”). The delay in confirmation of the Plan was due to, among other reasons, negotiating a number of settlements with parties in interests in the face of Citiking’s recalcitrance in coming to the negotiating table.¹³ Unfortunately, Citiking’s inability to engage in meaningful discussions, finalize documents and meet its funding obligations, has persisted even after confirmation of the Plan.

23. For the effective date of the Plan to occur, the Plan and Confirmation Order require Citiking to fund various settlements and distributions to parties in interest, including pre-negotiated \$825,000 to holders of Allowed ONE Aviation General Unsecured Claims, \$50,000 for the Claims Reconciliation Expense Fund, \$225,500 for holders of Allowed Kestrel Secured Claims, \$700,000 for holders of Allowed Senior Subordinated Secured Note Claims, as well as pay accrued and outstanding administrative expense claims.¹⁴ But Citiking funded a fraction of these amounts only when necessary to stave off objections or conversion of the Chapter 11 Cases. The Plan obligates Citiking to provide the reorganized Debtors with exit financing and provides that the New ABL / Term Loan Facility Documents (as defined in the Plan) will be in form and substance acceptable to the Debtors, Citiking, and DW.¹⁵ None of the exit financing documents have been finalized. As a result, Citiking has not provided any of the

¹³ This included having to abandon temporarily the plan process and pivot a sale process in June 2019. *See* Docket Nos. 561, 633.

¹⁴ *See, e.g.*, Plan §§ 1.91, 9.1.6, 9.1.8, 9.1.10; Confirmation Order ¶ 131.

¹⁵ Plan § 9.1.2.

required exit financing, and told senior management of the Debtors that it is now unable to do so.¹⁶

24. The most recent and illustrative example of Citiking's behavior in the Chapter 11 Cases occurred just recently. In May 2020, after Citiking's continued refusal to meet its Plan obligations, the Creditors' Committee filed a motion to convert the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code [Docket No. 831] (the "Conversion Motion"). At the eleventh hour, shortly before the June 4, 2020 hearing on the Conversion Motion, Citiking reassured the Debtors that it would work to finalize the outstanding documents, meet its Plan funding obligations, and actually funded accrued and unpaid United States Trustees fees.¹⁷ Although the Debtors were relieved these acts avoided conversion of the Chapter 11 Cases, beyond the United States Trustee payment and some light comments to draft documents, ultimately Citiking did not do anything further.¹⁸ Nevertheless, at a July 27, 2020 status hearing, the Debtors were still laboring under the sincere belief that the threat of case conversion had finally pushed Citiking to act and that it would work to bring the Plan effective within approximately two weeks.¹⁹ But, as it has done so many times before, Citiking has either been unresponsive or failed to deliver on its repeated promises.²⁰ This is unfortunate, given the Court's warning at the July 2020 status hearing that it would seriously consider other options, including potentially converting the Chapter 11 Cases, if there was not substantial progress towards the Plan going effective by September 2, 2020.²¹

¹⁶ Carroll Decl. ¶ 16.

¹⁷ *Id.* ¶ 17.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

25. The looming threat of a chapter 7 liquidation highlights the urgency with which the Debtors need relief provided under the Senior DIP Order. Summarizing the subsequent year since confirmation of the Plan, Citiking has only attempted to recut deals that were already memorialized in the confirmed Plan and merely provided a fraction of the required funding periodically in a transparent attempt to try and gain leverage over parties in interest.²² After repeated assurances from Citiking over the weeks and months following entry of the Confirmation Order and the persistent efforts of the Debtors and other parties in interest to do everything in their power to finalize the documents and issues within their control for the occurrence of the effective date of the Plan, Citiking has finally admitted on two separate occasions via conference calls with members of the Debtors' management and counsel that it cannot meet its funding obligations under the Plan to go effective.²³ There is also a general doubt that Citiking can make any other future payments in the Chapter 11 Cases.²⁴

IV. The Junior DIP Facility

26. On the Petition Date, the Debtors sought the Court's approval of the junior secured superpriority revolving loan facility (as described below, the "Junior DIP Facility"). The Junior DIP Facility provided the Debtors with access to (a) \$8,000,000 in new money term loans and (b) a roll-up loan of an aggregate principal amount equal to approximately \$11,130,000 in Prepetition First Lien Credit Claims. On November 27, 2018, the Court entered an order approving the Junior DIP Facility on a final basis [Docket No. 208] (the "Existing Final DIP Order") on the terms set forth in that certain Credit and Security Agreement, dated as of July 20,

²² Carroll Declaration ¶ 18.

²³ *Id.*

²⁴ *Id.*

2012, by and among Citiking and the Debtors party thereto (the “Junior DIP Facility Agreement”).

27. While the Junior DIP Facility provided the Debtors with valuable liquidity in the early stages of the Chapter 11 Cases to continue funding the development of projects and to meet operational expenses, including the payment of certain postpetition vendors and certain permitted prepetition claims, it was never intended to support the Debtors in chapter 11 for two years. The original maturity date of the Junior DIP Facility was January 31, 2019. The Junior DIP Facility Agreement provided that the Debtors had to achieve certain milestone as conditions precedent for effectuating the Junior DIP Facility.²⁵ These milestones have been extended numerous times either by notices or confirmatory emails²⁶ to accommodate primarily Citiking’s repeated delays in negotiating documents and effectuating settlements necessary to confirm the Plan.²⁷

28. Following these numerous extensions, the Debtors are anticipating having to lay off all their 64 employees after September 4, 2020 when they are projected to run out of cash to fund payroll.²⁸ Due to Citiking’s failure to provide the crucial exit financing following the Court’s entry of the Confirmation Order almost 12 months ago, the Debtors now require immediate access to the Senior DIP Facility to preserve their business.²⁹

29. Moreover, obtaining a *pari passu* or priming DIP facility most likely constitutes a “Termination Event” under the Existing Final DIP Order and the DIP Facility Documents.³⁰ Even worse for the Debtors, filing this Motion may terminate the Debtors’ right to use cash

²⁵ Junior DIP Facility Agreement ¶¶ 6.20(b) & (c).

²⁶ See Docket Nos. 308, 370 385, 388, 393.

²⁷ Carroll Declaration ¶ 20.

²⁸ *Id.* ¶ 21.

²⁹ *Id.*

³⁰ See Existing Final DIP Order ¶¶ 22, 25, 26, 43; Junior DIP Facility Agreement ¶¶ 6.12(b), 7.1.

collateral if Citiking brings meritless claims in response to the Motion being filed. Therefore, the Court's entry of the Senior DIP Order on an emergency basis is critical to the Debtors' continued use of cash collateral to finance its business operations.

30. Entry of the Senior DIP Order must explicitly override the Existing Final DIP Order in order to avoid a Termination Event and a paydown of the Junior DIP Facility with proceeds of the Senior DIP Facility under the Existing Final DIP Order,³¹ while recognizing that the Junior DIP Facility, and Citiking's existing DIP liens and obligations thereunder are still valid. As mentioned above, the Debtors are in desperate need of liquidity and any decrease in the amount of their already dwindling resources will all but ensure their liquidation.

V. The Sale and Financing Process

31. Recognizing that Citiking either would not or could not consummate the transactions required under the confirmed Plan and given the Debtors' dire projected cash flow shortage, the Debtors were left with no choice but to pursue an alternative transaction that would both preserve recoveries for their stakeholders and provide the required immediate liquidity. Only after diligently exhausting all other viable options, including corresponding with industry experts and the Debtors' various contacts in the aviation field in search for a viable financing option, the Debtors finally decided that the APA and entry into the Senior DIP Facility Agreement was the best available option.³² The Debtors kept their advisers apprised and actively involved in this process, and later with the help of their advisers negotiated the proposed APA and the Senior DIP Facility Documents.³³ The APA and the Senior DIP Facility are the result of

³¹ See Existing Final DIP Order ¶¶ 22, 25, 26, 43.

³² Carroll Declaration ¶ 24.

³³ *Id.*

a vigorous arm's length negotiation between the Debtors and their advisors, on the one hand, and the Buyer and the Senior DIP Lender and each of their own advisors, on the other hand.³⁴

32. Pursuant to the terms of the APA, the Sale shall occur no later than October 15, 2020, provided that the Debtors and the Buyer may extend the closing deadline by up to 15 days, which conforms with the size and timing of the Senior DIP Facility and Senior DIP Budget. In accordance with the terms of the APA, the Sale Motion also seeks approval of certain customary bid protections for the Buyer.

33. The Sale is supported by DW, the Debtors' most senior lender by virtue of the subordination of Citiking under the PSA. To be clear, however, the proceeds of the Senior DIP Facility also fund a sale that benefits the Debtors' junior lenders and unsecured creditors. As part of the Purchase Price, the Buyer will provide cash consideration that includes the accrued and unpaid and the expected Professional Fee Claims as of the date of closing in an amount not to exceed \$1,500,000. The Purchase Price also includes additional cash components of (a) \$825,000 for the holders of ONE Aviation General Unsecured Claims, (b) \$700,000 for holders of Allowed Senior Subordinated Secured Note Claims, (c) \$225,000 for holders of Allowed Kestrel Secured Claims, (d) \$50,000 for the Claims Reconciliation Fund, and (e) \$75,000 for a general wind down fund. As a result, the Sale, pursuant to the APA, preserves settlement recoveries provided for under the confirmed Plan.

34. To complete the Sale process, and thereby preserve the value of their estates and the respect the Plan distributions referenced above, the Debtors negotiated additional liquidity and the runway provided by the Senior DIP Facility. The Buyer, DW, and the Debtors all worked closely to negotiate the proposed Senior DIP Budget, and the Debtors believe that the

³⁴ Carroll Declaration ¶ 24.

Senior DIP Budget is feasible and will enable consummation of the Sale.³⁵ The Senior DIP Facility, if approved, will address funding shortfalls leading up until the consummation of the Sale and permit the restructuring process to move forward.³⁶

VI. COVID-19

35. The economic downturn surrounding the novel coronavirus pandemic (“COVID-19”) has created a further urgency to the Debtors’ cash needs that simply could not have been anticipated. While all industries have been impacted by the COVID-19 pandemic, the aviation industry in particular has been devastated. The reduction in air travel as a result of COVID-19, and the federal, state, and local measures undertaken to combat the spread of the virus, including restrictions on air travel and the grounding of flights have reduced demand for the Debtors’ aircraft maintenance services, which has dried up the Debtors’ income relatively quickly.³⁷ The Senior DIP Facility provides the only lifeline to support the Debtors’ business through these uncertain times by providing the Debtors with the funding necessary to complete a value maximizing transaction embodied in the Sale.³⁸

Relief Requested

36. By this Motion, the Debtors respectfully request that the Court grant the following relief as provided in the proposed Senior DIP Order, which amend and restate the Existing Final DIP Order per the following:

- (a) authorizing each of the Debtors (other than ONE Aviation Corporation) (collectively, the “Debtor Borrowers,” and individually, each a “Debtor Borrower”), and ONE Aviation Corporation as Guarantor, each as a debtor and debtor-in-possession, to enter into:

³⁵ Carroll Declaration ¶ 28.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

- i. that certain Senior DIP Facility Agreement attached to the Senior DIP Order as **Exhibit 1**, among the Debtor Borrowers and SEF OA LLC, as the assignee of DWC Pine Investments I, Ltd. (the “Senior DIP Lender”), and authorizing the Debtor Borrowers to enter into all related documents, orders and agreements (together with the Senior DIP Facility Agreement, the “Senior DIP Facility Documents”); and
 - ii. that certain Junior DIP Facility Agreement, in the form of the agreement attached as **Exhibit 1** to that certain *Final Order (I) Authorizing Debtor Borrowers to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(C)(L), 364(C)(2), 364(C)(3), 364(D)(L) And 364(E), (B) Grant Senior Liens and Superpriority Administrative Expense Status, and (C) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 And 364; and (III) Granting Related Relief*, entered on November 27, 2018 (the “Existing Final DIP Order”), among the Debtor Borrowers and Citiking International US LLC (the “Existing DIP Lender”), and authorizing the Debtor Borrowers to enter into all related documents, orders and agreements (together with the Junior DIP Facility Agreement, the “Junior DIP Facility Documents”) and attached to the Senior DIP Order as **Exhibit 2**;
- (b) authorizing the Debtor Borrowers to obtain a super-senior secured super priority multi-draw term loan facility (as described in the Senior DIP Order, the “Senior DIP Facility”), which shall consist of a superpriority revolving loan facility with commitments to lend up to approximately \$9.75 million, and such other financial accommodations, allocated as follows:
- i. *Senior New Money Loans*. A superpriority priming new money multi-draw term loan facility with commitments to lend up to approximately \$2.75 million (the “Senior New Money Commitments” and the revolving loans made thereunder, the “Senior New Money Loans”);
 - ii. *Senior Roll-Up Loans*. The Prepetition First Lien Obligations (as defined below) owed to DW under that certain Credit and Security Agreement, dated as of July 20, 2012 (as amended or otherwise modified prior to the date hereof, the “Prepetition First Lien Credit Agreement,” and the loans thereunder the “Prepetition First Lien Loans”), by and among Debtor Borrowers Eclipse Aerospace, Inc. and Brigadoon Aircraft

Maintenance, LLC, as borrowers thereunder (collectively, the “Prepetition First Lien Debtor Borrowers” and each a “Prepetition First Lien Debtor Borrower”), One Aviation Corporation as guarantor thereunder (the “Prepetition First Lien Guarantor”), the lenders thereto and their predecessors, successors and assigns (collectively, the “Prepetition First Lien Lenders”), Cantor Fitzgerald Securities, as administrative agent and collateral agent for the Prepetition First Lien Lenders (in such capacity, the “Prepetition First Lien Agent” and together with the Prepetition First Lien Lenders, the “Prepetition First Lien Parties”), up to the principal amount of \$7.0 million, (with such obligations to be assigned to SEF OA LLC (*i.e.*, the Senior DIP Lender) upon entry of the Senior DIP Order (the “Senior Roll-Up Loans”) under the Senior DIP Facility, effective upon entry of this Senior DIP Order, in accordance with the terms of the Senior DIP Facility Agreement and the Senior DIP Order;

- (c) authorizing the Debtor Borrowers to obtain the Junior DIP Facility (as described in the Senior DIP Order), which shall consist of a superpriority revolving loan facility with commitments to lend up to approximately \$19.1 million, and such other financial accommodations, allocated as follows:
 - i. *Junior New Money Loans.* A superpriority priming new money revolving facility with commitments to lend up to approximately \$8.0 million (the “Junior New Money Commitments” and the revolving loans made thereunder, the “Junior New Money Loans”);
 - ii. *Junior Roll-Up Loans.* The Prepetition First Lien Obligations (as defined below) owed to the Junior DIP Lender under the Prepetition First Lien Credit Agreement in the amount of approximately \$11.13 million, including but not limited to any amounts described in the Senior DIP Order in paragraph F(x) and any fees and expenses owing to the Prepetition First Lien Agent, will be rolled-up into roll-up loans (the “Junior Roll-Up Loans”) under the Junior DIP Facility, effective upon entry of the Senior DIP Order, in accordance with the terms of the Junior DIP Facility Agreement and the Senior DIP Order; and
- (d) authorizing and directing the Debtor Borrowers to use the proceeds of the Senior DIP Facility and the Junior DIP Facility (collectively, the “DIP Facilities”) as expressly provided in the Senior DIP Facility Documents and solely in accordance with the Senior DIP Budget attached to the

Senior DIP Order as **Exhibit 3**;

- (e) authorizing the Debtor Borrowers to execute and deliver the Senior DIP Facility Agreement and the Junior DIP Facility Agreement (collectively, the “DIP Facility Agreements”) and the other Senior DIP Facility Documents and Junior DIP Facility Documents (collectively, the “DIP Facility Documents”) and to perform such other acts as may be necessary or desirable in connection with the DIP Facility Documents;
- (f) in accordance with the relative priorities as set forth more fully below, and subject to the Carve-Out (as defined below), the following:
 - i. pursuant to section 364(c)(1) of the Bankruptcy Code, authorizing the Debtor Borrowers to grant the Senior DIP Lender and the Junior DIP Lender (collectively, the “DIP Lenders”) superpriority allowed administrative expense claim status in the Cases and any Successor Case (as defined below) in respect of all respective obligations, joint and several, owing under the DIP Facility Documents to the DIP Lenders (including without limitation all “Obligations” or “Senior DIP Obligations”, as defined therein, the “DIP Obligations”);
 - ii. pursuant to section 364(c)(2) of the Bankruptcy Code, authorizing the Debtors to grant to the DIP Lenders automatically perfected senior security interests in and liens on all of the DIP Collateral (as defined below), in each case subject to the priorities set forth in the Senior DIP Order;
 - iii. pursuant to section 364(d) of the Bankruptcy Code, authorizing the Debtor to grant to the Senior DIP Lender a senior first-priority priming lien on and security interest in all of the DIP Collateral and to the Existing DIP Lender a second-priority priming lien on and security interest in (subject only to the lien of the Senior DIP Lender) all of the DIP Collateral, in each case subject to the priorities set forth in the Senior DIP Order;
- (g) authorizing (a) the Senior DIP Lender to terminate the respective funding commitments under the Senior DIP Facility Agreement, and (b) the Senior DIP Lender to terminate the Debtor Borrowers’ 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 Senior DIP Facility Agreement and as set forth in the Senior DIP Order) on terms specified in the Senior DIP Order and in the Senior DIP Facility Agreement;
- (h) granting liens to the DIP Lenders (first priority to the Senior DIP Lender

and second priority to the Existing DIP Lender) on the proceeds (“Avoidance Action Proceeds”) of the Debtor Borrowers’ 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 (each, an “Avoidance Action”);

- (i) authorizing the Debtor Borrowers, among other things, to use for any of the Debtor Borrowers or for any of the other Debtors, solely in accordance with the Senior DIP 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 Debtor Borrowers' 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);
- (j) 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;
- (k) 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 and the Senior DIP Order;
- (l) the waiver of any applicable stay (including under Rule 6004 of the Bankruptcy Rules) and the provision of immediate effectiveness of the Senior DIP Order;
- (m) pursuant to Bankruptcy Rule 4001, that a final hearing (the “Final Hearing”) on the Motion be held before this Court to consider entry of this Senior DIP Order to (a) authorize the Debtor Borrowers to borrow under the Senior DIP Facility Documents, on a final basis, in an amount not to exceed an amount equal to the Senior DIP Facility; (b) authorize the Debtor Borrowers' use of Cash Collateral; (c) grant the liens, priority claims, and adequate protection described in the Senior DIP Order; and (d) authorize on a final basis the “roll-up” of the Senior Roll-Up Loans into the Senior DIP Facility; and
- (n) granting the Debtor Borrowers such other and further relief as is just and proper.

Compliance with Local Rule 4001-2(a)(i)

37. Local Rule 4001-2(a)(i) requires that certain provisions contained in the financing documents and/or form of order be highlighted, and that the Debtors must provide justification for the inclusion of such provisions. As noted above, most of the provisions in the proposed Senior DIP Order are substantially similar to the Existing Final DIP Order and redline of the two orders is attached hereto as **Exhibit B**. The Debtors have also highlighted the provisions in the summaries below.

Summary of Principal Terms of the Senior DIP Facility

38. As required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B) and Local Rule 4001-2, the following is a concise summary of the material terms of the proposed Senior DIP Facility, together with references to the applicable sections of the relevant source documents.³⁹ The Debtors believe that the following provisions are justified and necessary in the context and circumstances of these Chapter 11 Cases.

Summary of Material Terms		Location
Borrower Bankruptcy Rule 4001(c)(1)(B)	Each of the Debtors other than ONE Aviation Corporation	Senior DIP Order, ¶ i
Guarantor Bankruptcy Rule 4001(c)(1)(B)	ONE Aviation Corporation	Senior DIP Order, ¶ i
Senior DIP Lender Bankruptcy Rule 4001(c)(1)(B)	SEF OA LLC, as the assignee of DWC Pine Investments I, Ltd.	Senior DIP Order, ¶ i
Parties with an Interest in Cash Collateral	Prepetition Secured Parties	Senior DIP Order, ¶ E(iii)(d)

³⁹ The summaries contained in this Motion are qualified in their entirety the documents referenced herein. To the extent anything in this motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in this summary chart but not otherwise defined have the meanings ascribed to them in the Senior DIP Facility Documents or the Senior DIP Order, as applicable.

Summary of Material Terms		Location
Bankruptcy Rule 4001(c)(1)(B)		
Senior DIP Term Facility/Borrowing Limits and Availability Bankruptcy Rule 4001(c)(1)(B)	<p>Subject to closing conditions and reasonable documentation to be agreed, including, without limitation, the Senior DIP Order (collectively, the “<u>Senior DIP Documentation</u>”), the Senior DIP Lender shall be the sole lender in connection with the Senior DIP Facility. The proceeds of the loans made under the Senior DIP Facility (collectively, the “<u>Senior DIP Loans</u>”) shall be used by the Company, after entry of the Senior DIP Order:</p> <p class="list-item-l1">(i) in an amount up to \$2,750,000.00, to be used in accordance with the budget attached as <u>Annex 3</u> thereto (the “<u>Budget</u>”) for certain limited purposes in connection with the sale of the Debtors’ assets (the “<u>Senior New Money Loans</u>”); and</p> <p class="list-item-l1">(ii) in an amount up to \$7,000,000.00, to repay, in the form of a “roll-up”, prepetition loan amounts (and interest thereon) funded by DWC Pine Investments I, Ltd. and assigned to SEF OA LLC, in the aggregate principal amount of up to \$7,000,000.00 (collectively, the “<u>Senior Roll-up Loans</u>”).</p> <p>The Senior New Money Loans will be made in multiple draws from time to time in amounts of at least \$250,000 (or if higher, in increments of \$50,000, or if less than \$250,000, the remaining undrawn portion thereof) (or in such other amounts acceptable to the Senior DIP Lender in its sole and absolute discretion), subject to (x) receipt of two (2) business days’ prior written notice of a borrowing request, and (y) the absence of any Event of Default (as defined below) or any event, circumstance or condition, that with the passage of time, would become an Event of Default, and (z) satisfaction of the Conditions Precedent (as defined below) (in each case except to the extent the Senior DIP Lender otherwise agrees in its sole and absolute discretion); <u>provided, however,</u></p>	Senior DIP Facility Agreement, ¶ 1

	Summary of Material Terms	Location
	<p>none of the limitations in this paragraph shall apply to the Senior Roll-Up Loans.</p> <p>As used therein, the term “<u>Senior DIP Obligations</u>” shall mean all principal, interest, fees, costs, expenses, charges and other amounts owing to the Senior DIP Lender in respect of the Senior DIP Facility.</p>	
<p>Interest Rate Bankruptcy Rule 4001(c)(1)(B)</p>	<p>Interest on the Senior DIP Obligations shall be payable monthly in arrears, on the last business day of each month, either in cash or by automatically capitalizing any interest not paid in cash by adding it to the outstanding principal amount of the Senior DIP Obligations monthly at 11:59 p.m. ET on the last calendar day of each month.</p> <p>The outstanding principal amount of all Senior DIP Obligations shall bear interest at the sum of 5% per annum.</p> <p>After the occurrence and during the continuance of an Event of Default (as defined below), all outstanding Senior DIP Obligations shall bear an additional 2.00% per annum of interest, which additional interest will be payable on demand.</p> <p>Calculation of interest shall be on the basis of the actual days elapsed in a year of 360 days.</p>	<p>Senior DIP Facility Agreement, § 2</p>
<p>Fees Bankruptcy Rule 4001(c)(1)(B)</p>	<p>The term “<u>Fees</u>” means, collectively:</p> <p>(a) A Closing Fee equal to 0.25% of the total commitments in respect of Senior New Money Loans under the Senior DIP Facility, payable at maturity of the Senior DIP Facility.</p> <p>(b) An Exit Fee equal to 0.25% of the total commitments in respect of Senior New Money Loans under the DIP Facility, payable at maturity of the Senior DIP Facility.</p> <p>All Fees will be non-refundable and, if calculated on a per annum basis, shall use a 360-day year and actual days elapsed.</p>	<p>Senior DIP Facility Agreement, § 3</p>

Summary of Material Terms		Location
Budget Bankruptcy Rule 4001(c)(1)(B)	The proceeds of the DIP Facilities and Cash Collateral shall be used solely in accordance with the terms of the DIP Facility Documents, including the Senior DIP Budget (subject to any Permitted Variance and the Carve-Out), and the Senior DIP Order. The Senior DIP Budget shall be updated, modified or supplemented (with the consent of and/or at the request of the Senior DIP Lender) from time to time, solely in accordance with the Senior DIP Facility Agreement.	Senior DIP Order, ¶ 18; Senior DIP Facility Agreement, § 1(i); Annex 3
Closing Date Bankruptcy Rule 4001(c)(1)(B)	Upon (1) the signing of the Senior DIP Facility Agreement by the Senior DIP Lender and the Debtors, and (2) entry of the Senior DIP Order.	Senior DIP Facility Agreement, Preamble
Maturity Date Bankruptcy Rule 4001(c)(1)(B)	<p>The term “Maturity Date” means the earliest of (a) November 1, 2020 (or such later date to which Senior DIP Lender consents in writing in its sole and absolute discretion) and (b) acceleration of the Senior DIP Loans upon or following the occurrence of an Event of Default.</p> <p>All Senior DIP Obligations shall be payable in cash on the Maturity Date subject to the Senior DIP Lender (or its assignees) agreeing, in its sole and absolute discretion, either (i) to credit bid the Senior DIP Obligations in connection with acquiring the property, assets and/or stock of the Debtors, or (ii) to allow the Senior DIP Obligations to be refinanced through the issuance of debt securities issued by or loans made to an entity which is the successful bidder for any of the Debtors’ assets and/or stock.</p>	Senior DIP Facility Agreement, §7;
Senior DIP Liens/ Superpriority Administrative Claim Status Bankruptcy Rule 4001(c)(1)(B)	<p>In accordance with the relative priorities as set forth more fully below, and subject to the Carve-Out (as defined below), the following:</p> <p>(a) pursuant to section 364(c)(1) of the Bankruptcy Code, authorizing the Debtor Borrowers to grant the Senior DIP Lender and the Existing DIP Lender (collectively, the “<u>Senior DIP Lenders</u>”) superpriority</p>	Senior DIP Order, ¶¶ v, 9-10, 12

	Summary of Material Terms	Location
	<p>allowed administrative expense claim status in the Cases and any Successor Case (as defined therein) in respect of all respective obligations, joint and several, owing under the DIP Facility Documents to the DIP Lenders (including without limitation all “Obligations” or “Senior DIP Obligations”, as defined therein, the “<u>DIP Obligations</u>”);</p> <p>(b) pursuant to section 364(c)(2) of the Bankruptcy Code, authorizing the Debtor to grant to the DIP Lenders automatically perfected senior security interests in and liens on all of the DIP Collateral (as defined therein), in each case subject to the priorities set forth therein;</p> <p>(c) pursuant to section 364(d) of the Bankruptcy Code, authorizing the Debtors to grant to the Senior DIP Lender a senior first-priority priming lien on and security interest in all of the DIP Collateral and to the Existing DIP Lender a second-priority priming lien on and security interest in (subject only to the lien of the Senior DIP Lender) all of the DIP Collateral, in each case subject to the priorities set forth therein;</p> <p>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 Debtor Borrowers, 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 Debtor Borrowers, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the</p>	

	Summary of Material Terms	Location
	<p>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), 507(b), 552(b), or 726 of the Bankruptcy Code (the “<u>DIP Superpriority Claims</u>”), 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 Debtor Borrowers and their estates and all proceeds thereof, subject only to liens secured thereby and the Carve-Out. The DIP Superpriority Claims held by the Senior DIP Lender shall be senior and prior in all respects to the DIP Superpriority Claims held by the Junior DIP Lender.</p> <p>Effective immediately upon entry of this Senior DIP 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 any DIP Lender of any DIP Collateral, the DIP Lenders are hereby granted, continuing valid, binding, enforceable, non-avoidable, priming and automatically and properly perfected, <i>nunc pro tunc</i> to the Petition Date, post-petition security interests in and liens (collectively, the “<u>DIP Liens</u>”) on any and all property owned and hereafter acquired assets and real and personal property of the Debtors (the “<u>DIP Collateral</u>”), 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 which shall be deemed to be for the benefit of the DIP Lenders), documents (as defined in the UCC),</p>	

	Summary of Material Terms	Location
	<p>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 DIP Lender, including all property of every description, in the custody of or in transit to any DIP Lender 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) 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. The DIP Liens held by the Senior DIP Lender (the "<u>Senior DIP Liens</u>") shall be senior and prior in all respects to the DIP Liens held by the Junior DIP Lender (the "<u>Junior DIP Liens</u>").</p> <p>The Junior DIP Liens shall be junior only to the (i) the Senior DIP Liens, (ii) Permitted Prior Senior Prepetition Liens, (iii) any valid, perfected, unavoidable liens or security interests in existence as of the Petition Date, or that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b) and (iv) the Carve-Out, and shall otherwise be senior in priority and superior to the Prepetition Liens, the Adequate Protection Liens, and</p>	

	Summary of Material Terms	Location
	<p>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. The Senior DIP Liens shall be junior only to the Carve-Out, and shall otherwise be senior in priority and superior to all Permitted Prior Senior Prepetition Liens, liens or security interests in existence as of the Petition Date, or that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b), 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; provided always that the Junior DIP Liens shall be junior to the Senior DIP Liens.</p> <p>Other than as set forth herein, the DIP Liens shall not be made subject to or <i>pari passu</i> 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, and/or upon the dismissal of any of the Cases or any Successor Case. 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 Debtor Borrowers' estates pursuant to section 551 of the Bankruptcy Code shall be <i>pari passu</i> with or senior to the DIP Liens; provided always that the Senior DIP Liens shall be senior to the Junior DIP Liens</p>	
<p>Prepayments Bankruptcy Rule 4001(c)(1)(B)</p>	<p>Mandatory: The following mandatory prepayments of the Senior DIP Facility are required:</p> <p>(a) <u>Asset Sales</u>: Immediately following the receipt by any Debtor, prepayments in an amount equal to 100% of the proceeds (net of reasonable transaction-related expenses determined acceptable by the Senior DIP</p>	<p>Senior DIP Facility Agreement § 4</p>

	Summary of Material Terms	Location
	<p>Lender, amounts then incurred in respect of the Carve-Out (solely to the extent that a Carve-Out Trigger Notice has then been delivered in accordance with the Senior DIP Order) (as each term is defined in the Existing Final DIP Order)) of the sale or other disposition of any property or assets of any Debtor outside the ordinary course of business, including, without limitation, pursuant to any sale pursuant to the sale process established in connection with the Bid Procedures Motion (as defined below).</p> <p>(b) <u>Insurance Proceeds</u>: Immediately following the receipt by any Debtor, prepayments in an amount equal to 100% of the insurance and condemnation proceeds (net of reasonable transaction-related expenses determined acceptable by Senior DIP Lender, amounts then incurred in respect of the Carve-Out (solely to the extent that a Carve-Out Trigger Notice has then been delivered in accordance with the Senior DIP Order)) received on account of any loss of or damage to any property or assets of any Debtor.</p>	
Senior DIP Milestones Bankruptcy Rule 4001(c)(1)(B)	<p>The Senior DIP Order shall provide that the Debtors will implement their Chapter 11 Cases in accordance with the milestones as reflected in <u>Annex 1</u> attached to the Senior DIP Facility Agreement (the “<u>Senior DIP Milestones</u>”).</p> <p>The Debtors may extend a Senior DIP Milestone only with the express written consent of the Senior DIP Lender.</p>	Senior DIP Facility Agreement § 14; Annex 1
Events of Default Bankruptcy Rule 4001(c)(1)(B)	<p>In addition to customary events of default for post-petition loans, the occurrence of any of the following events, unless waived in writing (including by email) by the Senior DIP Lender shall constitute an event of default (each an “<u>Event of Default</u>”) under the Senior DIP Documentation and with respect to use of Cash Collateral:</p> <p>(a) filing of any motion by any Debtor seeking to obtain credit or incur indebtedness, or the obtaining of credit and incurrence of indebtedness, by any Debtor that is: (i) secured by a security interest, mortgage or other lien on all or any portion of the</p>	Senior DIP Facility Agreement, § 11

	Summary of Material Terms	Location
	<p>Collateral which is equal or senior to any security interest, mortgage, or other lien in favor of the Senior DIP Lender described in the Senior DIP Facility Agreement, or (ii) entitled to administrative priority status which is equal or senior to claims of the Senior DIP Lender (other than the Carve-Out) described in the Senior DIP Facility Agreement;</p> <p>(b) institution of any judicial proceeding by any Debtor seeking to challenge the validity of any portion of the Senior DIP Documentation, the Senior DIP Obligations, or the applicability or enforceability of same or which seeks to void, avoid, limit, subordinate or otherwise adversely affect any security interest created by or in relation to the Senior DIP Documentation;</p> <p>(c) the entry of an order (i) amending, supplementing, staying, vacating or otherwise modifying the Senior DIP Order, or (ii) converting or dismissing the Debtors' Chapter 11 Cases; in each case, without the prior written consent (including by email) of the Senior DIP Lender in its sole and absolute discretion, which consent shall not be implied by any other action, inaction or acquiescence;</p> <p>(d) the entry of an order dismissing any Debtor's Chapter 11 Case or converting any such case to a chapter 7 case;</p> <p>(e) any breach by any Debtor of any provision of the Senior DIP Order, after expiration of any applicable cure period;</p> <p>(f) any disruption of the business operations of any Debtor that has a material adverse effect after the date hereof other than as a result of the COVID-19 pandemic;</p> <p>(g) the appointment of an interim or permanent trustee in any Debtor's Chapter 11 Case or the appointment of a receiver or an examiner in such Chapter 11 Case with expanded powers to operate or manage the financial affairs, the business, or reorganization of any Debtor;</p> <p>(h) the payment of, or application for authority to pay, any pre-petition claim without the Senior DIP Lender's prior written consent (including by email) or unless otherwise permitted under the Budget or the first day orders;</p> <p>(i) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the Senior DIP Lender, its claims or its Collateral (other than with respect to the payment of the Carve-Out);</p>	

	Summary of Material Terms	Location
	<p>(j) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any creditor to foreclose upon or enforce a lien or other interest in any Collateral with an aggregate value in excess of \$200,000;</p> <p>(k) (i) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Bid Procedures Order (as defined therein) or any order approving a sale in connection therewith, in any material respect, or any material violation by the Debtors of any term or condition set forth in the Bid Procedures Order (after giving effect to any applicable cure period) in each case without the prior written consent (including by email) of the Senior DIP Lender or the filing by any Debtor or any motion or application seeking the entry of any such order without the prior written consent (including by email) of the Senior DIP Lender, or (ii) the termination of any definitive asset purchase agreement approved by the Bankruptcy Court to remain in full force and effect at all times in all respects until the closing thereof (without any amendments or other modifications thereto as to which the Senior DIP Lender has not given its prior written consent (including by email));</p> <p>(l) failure of the Debtors, to timely comply with any Senior DIP Milestones (as defined below) or the failure of the Debtors to incorporate the Senior DIP Milestones into the Bid Procedures Motion (as defined below);</p> <p>(m) in the event the Senior DIP Lender elects by written notice to the Debtors to require execution of a formal promissory note or Senior DIP Credit Agreement, and the Debtors fail to enter into the Senior DIP Credit Agreement reasonably appropriate for the circumstances within ten (10) business days of receiving a substantially final draft of the proposed promissory note Senior DIP Credit Agreement from the Senior DIP Lender;</p> <p>(n) any Debtor proposes or supports, directly or indirectly, any plan of reorganization or sale of all or substantially all of such Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the indefeasible payment in full in cash, upon the consummation of such plan of reorganization</p>	

Summary of Material Terms	Location
	<p>or such sale, of all Senior DIP Obligations;</p> <p>(o) the granting (or any Debtor seeking entry) of any order that provides any bid protections to any party, including without limitation, any break-up fee or any expense reimbursement, without the written consent of Senior DIP Lender; or</p> <p>(p) the closing of any sale or sales under the Bid Procedures Order without concurrently paying, in full and in cash, all Senior DIP Obligations.</p>
<p>Remedies on Occurrence of Termination Event Bankruptcy Rule 4001(b)(1)(B)(iii)</p>	<p>Immediately upon the occurrence and during the continuance of any Event of Default (following the expiration of any applicable grace period), Senior DIP Lender may, subject to the terms of the Senior DIP Order and upon written notice to counsel for the Company, the Office of the United States Trustee and counsel to the appointed Official Committee of Unsecured Creditors (subject to the provisions of the immediately following paragraph with respect to any enforcement action by the Senior DIP Lender against any Collateral): (i) (a) declare all or any portion of the Senior DIP Obligations to be immediately due and payable; (b) declare the termination, reduction or restriction of any further commitment to extend credit to the Debtors, to the extent any such commitment remains; (c) terminate the Senior DIP Facility and the Senior DIP Loan Documents as to any future liability or obligation of the Senior DIP Lender, but without affecting any of the Senior DIP Obligations, the Senior DIP Liens (as defined in the Senior DIP Order), Senior DIP Super-Priority Claims (as defined in the Senior DIP Order) or the other Senior DIP Protections (as defined in the Senior DIP Order); (ii) declare a termination, reduction, or restriction on the ability of the Debtors to use any Cash Collateral; and/or (iii) subject to the next paragraph, exercise all default-related rights and remedies, without further order of or application or motion to the Bankruptcy Court, and without restriction or restraint by any stay under Sections 362 or 105 of the Bankruptcy Code or otherwise.</p> <p>In addition, upon the occurrence of any Event of Default (following the expiration of any applicable grace period), and subject to the terms of the Senior DIP Order and following the giving of five (5)</p>

Senior DIP Facility Agreement, ¶ 12; Senior DIP Order ¶ 27

	Summary of Material Terms	Location
	<p>business days' prior written notice to counsel for the Company, the Office of the United States Trustee and counsel to the appointed Official Committee of Unsecured Creditors, the Senior DIP Lender shall have relief from the automatic stay to foreclose on all or any portion of the Collateral, collect accounts receivable and apply the proceeds thereof to the Senior DIP Obligations (subject to payment in full in cash of the Carve-Out), occupy the Debtors' premises to sell or otherwise dispose of the Collateral or otherwise exercise remedies against the Collateral permitted by applicable non-bankruptcy law. During such five business day notice period, the Debtors, the Office of the United States Trustee and the Official Committee of Unsecured Creditors shall be entitled to any emergency hearing with the Bankruptcy Court for the sole purpose of contesting whether an Event of Default has occurred and is continuing. Unless during such period the Bankruptcy Court determines that an Event of Default has not occurred or is not continuing, then (i) the automatic stay, as to the Senior DIP Lender, shall be automatically terminated at the end of such notice period, without further notice, hearing or order, (ii) neither Section 105 nor any other provision of the Bankruptcy Code shall be utilized to preclude or restrict the Senior DIP Lender from exercising its default-related rights and remedies, and (iii) the Debtor shall cooperate with the Senior DIP Lender to effect an orderly liquidation of its Collateral on terms and conditions acceptable to the Senior DIP Lender in its sole and absolute discretion.</p> <p>Without limiting the foregoing, upon the request of the Senior DIP Lender following the occurrence and during the continuance of any Events of Default, the Debtors shall use commercially reasonable efforts to sell all or such portion of the Collateral as the Senior DIP Lender shall specify and on such terms and conditions and pursuant to such bidding procedures as are acceptable to the Senior DIP Lender in its sole and absolute discretion, and remit the proceeds therefrom to the Senior DIP Lender for application to the Senior DIP Obligations (subject to payment in full in cash of</p>	

	Summary of Material Terms	Location
	<p>the Carve-Out), and in connection with the foregoing, the Debtors shall file and use commercially reasonable efforts to pursue one or more motions under Section 363 of the Bankruptcy Code, in form and substance satisfactory to the Senior DIP Lender, for the entry of order(s) of the Bankruptcy Court (in form and substance satisfactory to the Senior DIP Lender) approving bidding procedures (acceptable to the Senior DIP Lender in its sole and absolute discretion) governing each such sale of Collateral and approving each such sale of Collateral that has been approved by the Senior DIP Lender in its sole and absolute discretion.</p> <p>Immediately upon the occurrence and during the continuation of a Termination Event, the Senior DIP Lender, with no further action of this Court, may notify the Debtor Borrowers in writing that a Termination Event has occurred and is continuing (such notice, a “<u>Termination Notice</u>” and the date of any such notice, the “<u>Termination Notice Date</u>”)</p> <p>Any Termination Notice shall be given by electronic mail (or other electronic means) to counsel to the Debtor Borrowers, counsel to the Committee, the U.S. Trustee, and the notice parties for the Prepetition Second Lien Parties. The Remedies Notice Period shall commence on the Termination Notice Date and shall expire five (5) business days after the Termination Notice Date (the “<u>Remedies Notice Period</u>,” and the date of the expiration of the Remedies Notice Period, the “<u>Termination Date</u>”).</p> <p>Without limiting the rights and remedies of the Senior DIP Lender under the Senior DIP Facility Agreement, the Senior 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,</p>	

Summary of Material Terms	Location
	<p><i>inter alia</i>, (A) declare (x) subject to the Remedies Notice Period, all obligations owing under the Senior 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 Debtor Borrowers, (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 Senior DIP Facility and the Senior DIP Facility Documents as to any future liability or obligation of the Senior DIP Lender but without affecting any of the liens or the obligations (any of the actions set forth in the foregoing (x), (y) and (z), a “<u>Termination</u>”); (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 Senior DIP Facility Documents and applicable law.</p>
<p>Use of Senior DIP Proceeds, DIP Proceeds, and Cash Collateral Bankruptcy Rule 4001(b)(1)(B)(iii)</p>	<p>From and after the Petition Date, the Debtor Borrowers are authorized to use extensions of credit under the DIP Facilities only for the purposes specifically set forth in this Final A&R Order, the DIP Facility Documents and in compliance with the Approved Budget. The Debtor Borrowers 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 to (a) exchange the revolving portion of Prepetition First Lien Loans for Junior Roll-Up Loans; and to exchange \$7 million of the Prepetition First Lien Loans held by the Senior DIP Lender (with such Prepetition First Lien Loans of DW to be assigned to SEF OA LLC (<i>i.e.</i>, the Senior DIP Lender) following the entry of this Final A&R Order and Buyer’s payment of \$7,000,000 to acquire DW’s Prepetition First Loans along with the rights under the Senior DIP Facility) (inclusive, as appropriate, of any Junior Roll-Up Loans held by the Senior</p>

Senior DIP Order, ¶ 8

Summary of Material Terms		Location
	DIP Lender) for Senior Roll-Up Loans; (b) to pay fees, costs and expenses of the DIP Lenders (<i>i.e.</i> , SEF OA LLC and Citiking) incurred in connection with the transactions contemplated by the DIP Facility Agreements; (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 Debtor Borrowers and their subsidiaries 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 of the Junior Roll-Up Loans and the Senior Roll-Up Loans shall be subject to the Carve-Out and the reservation of rights of parties in interest in paragraph 38 of this Final A&R Order, but are hereby deemed to be indefeasible, final and not subject to any challenge.	
Adequate Protection Bankruptcy Rule 4001(b)(1)(B)(iv); 4001(c)(1)(B)(ii)	The Prepetition First Lien Agent and Prepetition First Lien Parties are entitled to and shall receive, adequate protection in the form of (I) current cash reimbursement of actual and documented fees and expenses and other disbursements of the Prepetition First Lien Parties, limited to King & Spaulding LLP, one firm to serve as local counsel to SEF OA LLC, Richards Kibbe & Orbe LLP and Ashby & Geddes, P.A. whether incurred before or after the Petition Date; and (II) subject to the priorities set forth in paragraphs 13 and 14 below, the Senior Adequate Protection Lien and the Senior Adequate Protection Superpriority Claim (each as defined below), (III) a funded escrow account (the “ Funded Escrow ”) in the sum of \$50,000 to secure any contingent indemnification obligation under the Prepetition First Lien Credit Documents, and (IV) the right to receive certain information and reports from the Debtor Borrowers with respect to the business, results of operation and financial condition of the Debtor Borrowers and their subsidiaries, as may be requested by the Prepetition	Senior DIP Order, ¶ F(x)

Summary of Material Terms		Location
	First Lien Agent. The Prepetition Second Lien Parties are entitled to and shall receive adequate protection in the form of, and subject to the priorities set forth in paragraphs 13 and 14 below, the Junior Adequate Protection Lien (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, <i>inter alia</i> , the Debtor Borrowers' 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.	
Carve-Out Bankruptcy Rule 4001(c)(1)(B)	The term " <u>Carve-Out</u> " shall mean an amount equal to the sum of (i) all fees required to be paid to the clerk of the Court or any claims and noticing agent acting in such capacity and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code <i>plus</i> interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) fees and expenses of up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); and (iii) allowed and unpaid claims for unpaid fees, costs, and expenses (the " <u>Allowed Fees</u> ") incurred by persons or firms retained by the Debtor Borrowers or the Committee whose retention is approved by the Bankruptcy Court pursuant to section 327, 328, and 1103 of the Bankruptcy Code (collectively, the " <u>Professional Persons</u> "), subject to the terms of any other final or other compensation order entered by the Bankruptcy Court that are incurred or earned (A) at any time before delivery by the DIP Lenders of a Carve-Out Trigger Notice (as defined below) (the " <u>Pre-Trigger Date Fees</u> "), whether allowed by the	Senior DIP Order, ¶ 16

	Summary of Material Terms	Location
	<p>Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice, subject to any limits imposed by the Senior DIP Budget to be distributed the Senior DIP Order, or otherwise on fees permitted to be incurred in connection with any permitted investigations of claims and defenses against any Prepetition Secured Parties; and (B) starting the first day after the delivery of written notice (which may be by electronic mail) (the “<u>Carve-Out Trigger Notice</u>”) of an Event of Default (such date on which the Event of Default occurs, the “<u>Trigger Date</u>”) and the continuation thereof to the Debtor Borrowers, the Debtor Borrowers’ counsel, the U.S. Trustee, and counsel for the Committee in an aggregate amount not to exceed \$750,000 (the “<u>Post-EoD Carve-Out Amount</u>”); <i>provided</i>, that nothing therein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in clauses (i), (ii), (iii)(A) or (iii)(B) above, on any grounds. Notwithstanding the foregoing, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (a) the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the Prepetition First Lien Parties or the holders of the indebtedness under the Prepetition First Lien Credit Agreement (whether in such capacity or otherwise) or (ii) challenging the amount, validity, perfection, priority, or enforceability of or asserting any defense, counterclaim, or offset to, the obligations and the liens and security interests granted under the DIP Facility Documents or the indebtedness under the Prepetition First Lien Credit Agreement (whether in such capacity or otherwise), including , in each case, without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549,</p>	

Summary of Material Terms		Location
	550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (b) attempts to modify any of the rights granted to the DIP Lenders, the Prepetition First Lien Lenders, or the Prepetition First Lien Agent; (c) attempts to prevent, hinder, or otherwise delay any of the DIP Lenders' or the Prepetition First Lien Lenders' assertion, enforcement or realization upon any Collateral in accordance with the DIP Loan Documents and the Senior DIP Order; (d) paying any amount on account of any claims arising before the commencement of the Cases unless such payments are approved by an order of the Bankruptcy Court; or (e) after delivery of a Carve-Out Trigger Notice, any success, completion, back-end or similar fees.	
Modification of the Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of the Senior DIP Order, including, without limitation, to (a) permit the Debtor Borrowers to grant the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and the Adequate Protection Superpriority Claims, and (b) authorize the Debtor Borrowers to pay, and the DIP Lenders and the Prepetition First Lien Parties and to retain and apply, payments made in accordance with the Senior DIP Order.	Senior DIP Order, ¶ 19
Indemnification and Expenses Bankruptcy Rule 4001(c)(1)(B)(iv)	(a) The Debtor Borrowers are authorized to pay any and all reasonable out-of-pocket expenses of the DIP Lenders (<i>i.e.</i> , SEF OA LLC and Citiking) in connection with the DIP Facilities, 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 Senior DIP 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 creation, perfection or protection of the liens under the DIP Facility Documents (including	Senior DIP Order, ¶ 15

Summary of Material Terms	Location
	<p>all search, filing and recording fees); (iii) 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; (iv) the enforcement of the DIP Facility Documents; (v) any refinancing or restructuring of the DIP Facilities in the nature of a “work-out”; and (vi) any legal proceeding relating to or arising out of the DIP Facilities 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 Debtor Borrowers, the professionals for the DIP Lenders shall deliver a copy of their respective invoices to counsel for the Committee and the U.S. Trustee. The invoices for such fees and expenses shall not be required to comply with any U.S. Trustee guidelines related to the payment of fees and expenses of retained estate professionals, shall include sufficient information to determine the reasonableness of such fees and expenses, and shall not be subject to application or allowance by the Court. Any objections raised by the Debtor Borrowers, the U.S. Trustee, or the Committee with respect to such invoices within ten (10) business 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 Debtor Borrowers. Such fees and expenses shall not be subject to any offset, defense, claim, counterclaim, or diminution of any type, kind or nature whatsoever. Notwithstanding anything in the Senior DIP Order to the contrary, the Debtor Borrowers shall not be permitted to pay any of the expenses, costs, or fees of the Junior DIP Lender until such time as the Senior DIP</p>

	Summary of Material Terms	Location
	<p>Facility (including the Senior Roll-Up Loans) has been repaid in full.</p> <p>(b) The DIP Lenders shall have no liability to any third party, and shall not be deemed to be in control of the operations of the Debtor Borrowers or the other Debtors, or to be acting as a “responsible person” or managing agent with respect to the operation or management of the Debtor Borrowers or the other Debtors. The Debtor Borrowers shall indemnify and hold harmless the DIP Lenders, 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 Agreements and Debtor Borrowers’ use of the financing provided thereunder. This indemnification shall survive and continue for the benefit of all such persons or entities.</p> <p>(c) As additional adequate protection of the Prepetition First Lien Parties’ security interests in the Prepetition Collateral, the Debtor Borrowers are authorized to provide adequate protection in the form of (i) current cash reimbursement of actual and documented fees and expenses and other disbursements of the Prepetition First Lien Parties, whether incurred before or after the Petition Date or set forth in the Senior DIP Budget, (ii) the Funded Escrow account to be maintained by the Debtor Borrowers for the benefit of the Prepetition First Lien Lenders in the sum of \$50,000 to secure any contingent indemnification obligation under the Prepetition First Lien Credit Documents, 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 First Lien Documents, the DIP Facility Agreements and the Senior DIP Order. Payment of professional fees and expenses of the Prepetition First Lien Parties shall not be subject to allowance by the Court.</p>	

Summary of Material Terms		Location
	Notwithstanding the foregoing, at the same time such invoices are delivered to the Debtor Borrowers, the professionals for the Prepetition First Lien Parties shall deliver a copy of their respective invoices to counsel for the Committee and the U.S. Trustee. The invoices for such fees and expenses shall not be required to comply with any U.S. Trustee guidelines related to the payment of fees and expenses of retained estate professionals, shall include sufficient information to determine the reasonableness of such fees and expenses, and shall not be subject to application or allowance by the Court. Any objections raised by the Debtor, the U.S. Trustee or the Committee with respect to such invoices within ten (10) business 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 Debtor Borrowers. Such fees and expenses shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever. Notwithstanding anything in the Senior DIP Order to the contrary, the Debtor Borrowers shall not be permitted to pay any of the expenses, costs, or fees of the Junior DIP Lender until such time as the Senior DIP Facility (including the Senior Roll-Up Loans) has been repaid in full.	
Lien on Avoidance Actions Bankruptcy Rule 4001(c)(1)(B)(iv)	Granting liens to the DIP Lenders (first priority to the Senior DIP Lender and second priority to the Existing DIP Lender) on the proceeds (“ <u>Avoidance Action Proceeds</u> ”) of the Debtor Borrowers' 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 (each, an “ <u>Avoidance Action</u> ”).	Senior DIP Order, ¶ viii
Waiver of Marshaling Doctrine and Equities of Case	Upon entry of the Senior DIP Order, neither the DIP Lenders nor the Prepetition First Lien Parties shall be subject to the equitable doctrine of	Senior DIP Order, ¶ 36

Summary of Material Terms		Location
Exception Bankruptcy Rule 4001(c)(1)(B)(iv)	“marshaling” or any other similar doctrine with respect to any of the DIP Collateral.	
Amendments Bankruptcy Rule 4001(c)(1)(B)(iv)	The Debtor Borrowers and the DIP Lenders are hereby authorized, subject to the DIP Facility Agreements, 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 therein, (i) no waiver, modification, or amendment of any of the provisions of the Senior DIP Facility Agreements shall be effective unless set forth in writing, signed on behalf of the Debtor Borrowers and the Senior DIP Lender and (ii) no waiver, modification, or amendment of any of the provisions of the Junior DIP Facility Agreements shall be effective unless set forth in a writing, signed on behalf of the Debtor Borrowers and the Junior DIP Lender and consented to by the Senior DIP Lender.	Senior DIP Order ¶ 17
Miscellaneous Bankruptcy Rule 4001(c)(1)(B)(iv)	No waiver, modification or amendment of the terms of the Senior DIP Facility Agreement shall be valid unless such waiver, modification or amendment is in writing and has been signed by the Debtors and the Senior DIP Lender. No waiver of any of the provisions of the Senior DIP Facility Agreement shall be deemed or constitute a waiver of any other provision of the Senior DIP Facility Agreement, whether or not similar, nor shall any waiver be deemed a continuing waiver.	Senior DIP Facility Agreement, § 15
Governing Law Bankruptcy Rule 4001(c)(1)(B)(iv)	State of New York, except as governed by the Bankruptcy Code.	Senior DIP Facility Agreement, § 15

Local Rule 4001-2 Concise Statements		Location
Cross Collateralization Local Rule 4001-2(a)(i)(A)	N/A.	N/A
Stipulations Local Rule 4001-2(a)(i)(B)	<p>In the Senior DIP Order, the Debtor Borrowers stipulate to certain facts, including, among other things:</p> <p>i. As of the Petition Date, Eclipse Aerospace, Inc. and Brigadoon Aircraft Maintenance, LLC, as borrowers, and ONE Aviation Corporation, as guarantor, were parties to the Prepetition First Lien 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 “<u>Prepetition First Lien Documents</u>”).</p>	Senior DIP Order, ¶ E

	<p>ii. As of the Petition Date, the aggregate principal amount owed by the Prepetition First Lien Debtor Borrowers and Prepetition First Lien Guarantor under the Prepetition First Lien Loan Documents, without defense, counterclaim or offset of any kind in respect of the Prepetition First Lien Documents, was not less than \$59.72 million, consisting of not less than \$11.13 million in principal amount of revolving credit obligations under the senior secured revolving credit facility (the “<u>Prepetition First Lien Revolving Facility</u>”) and not less than \$48.59 million in principal amount outstanding under the senior secured term loan facility (the “<u>Prepetition First Lien Term Facility</u>”) and together with the Prepetition First Lien Revolving Facility, the “<u>Prepetition First Lien Facility</u>”), both made available to the Prepetition First Lien Debtor Borrowers pursuant to that certain Prepetition First Lien Credit Agreement (together with any additional amounts paid or incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition First Lien Documents, including, but not limited to, the amounts described in paragraph F(x) of the Senior DIP Order and any fees and expenses owing to the Prepetition First Lien Agent, and including all “Obligations” as further defined in the DIP Facility Agreement, and the amount of interest at the Default Rate (as such terms are defined in the Prepetition First Lien Documents), the “<u>Prepetition First Lien Obligations</u>”).</p> <p>iii. <i>Prepetition Second Lien Series A-1 Note Documents.</i> As of the Petition Date, Eclipse Aerospace, Inc. was a party to the following subordinated secured notes (as each may be amended, waived, supplemented or modified from time to time, the “<u>Prepetition Second Lien Series A-1 Notes</u>”) together with all related documents, guaranties and agreements, if any, as the same may be amended, waived, supplemented or modified</p>	
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	<p>from time to time, collectively, the “<u>Prepetition Second Lien A-1 Note Documents</u>”):</p> <ul style="list-style-type: none"> ○ Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Holland Family Trust (as holder) (“<u>Holland Family Trust</u>”) issued in the aggregate principal amount of \$5,564,625.00 with an interest rate of 3.75% and due on October 20, 2017; ○ Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Alfred Mann Living Trust (as holder) (“<u>Alfred Mann Living Trust</u>”) issued in the aggregate principal amount of \$2,555,027.78 with an interest rate of 3.75% and due on October 20, 2017; ○ Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Global Eclipse, LLC (as holder) (“<u>Global Eclipse</u>”) issued in the aggregate principal amount of \$4,113,212.50 with an interest rate of 3.75% and due October, 2017; <p>iv. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the James H. Clutter (as holder) (“<u>Clutter</u>”, and together with the Holland Family Trust, Alfred Mann Living Trust and Global Eclipse, collectively, the “<u>Prepetition Second Lien Note Holders</u>” and together with the Prepetition First Lien Parties, collectively, the “<u>Prepetition Secured Parties</u>”) issued in the aggregate principal amount of \$3,091,458.33 with an interest rate of 3.75% and due October, 2017;</p> <p>v. As of the Petition Date, Eclipse Aerospace, Inc. was a party to the following subordinated secured</p>	
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	<p>notes (as each may be amended, waived, supplemented or modified from time to time, the “<u>Prepetition Second Lien Series A-2 Notes</u>” (and together with the Prepetition Second Lien Series A-1 Notes, collectively, the “<u>Prepetition Second Lien Notes</u>”) together with all related documents, guaranties and agreements, if any, as the same may be amended, waived, supplemented or modified from time to time, collectively, the “<u>Prepetition Second Lien A-2 Note Documents</u>” and together with the Prepetition Second Lien A-1 Note Documents, collectively, the “<u>Prepetition Second Lien Documents</u>”) (together, the Prepetition Second Lien Documents and the Prepetition First Lien Documents, as the same may be amended, waived, supplemented or modified from time to time, the “<u>Prepetition Loan Documents</u>”):</p> <ul style="list-style-type: none"> ○ Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Holland Family Trust dated 1/12/2004 (as holder) (as defined therein, “<u>Holland Family Trust</u>”) issued in the aggregate principal amount of \$12,246,646.93 with an interest rate of 3.75% and due on October 20, 2017; ○ Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Alfred E. Mann Living Trust dated 04/09/99 (as holder) (as defined therein, the “<u>Alfred Mann Living Trust</u>”) issued in the aggregate principal amount of \$8,394,299.11 with an interest rate of 3.75% and due on October 20, 2017; ○ Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Alfred E. Mann Living Trust (as holder) (as defined therein, the “<u>Alfred</u> 	
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Local Rule 4001-2 Concise Statements	Location
	<p><u>Mann Living Trust</u>”) issued in the aggregate principal amount of \$1,288,632.71 with an interest rate of 3.75% and due on October 20, 2017.</p> <p>vi. As of the Petition Date, Eclipse Aerospace, Inc. was indebted to the Prepetition Second Lien Note Holders, in the aggregate principal amount of approximately \$15,324,323.61 with respect to the obligations under the Prepetition Second Lien A-1 Note Documents and approximately \$21,929,578.75 with respect to the obligations under the Prepetition Second Lien A-2 Note Documents (together with any amounts paid or incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition Second Lien Documents, including all “Obligations” as further defined in the Prepetition Second Lien Documents, the “<u>Prepetition Second Lien Obligations</u>”).</p> <p>vii. As of the Petition Date, Eclipse Aerospace, Inc. was party to that Amended and Restated Intercreditor and Subordination Agreement, dated as of April 20, 2015, executed by each of the Prepetition Second Lien Note Holders, The Bank of New York Mellon, N.A., as collateral agent for the Prepetition Second Lien Note Holders, and Wilmington Trust, National Association, as administrative agent for the Prepetition First Lien Lenders, and as the same may be amended, restated, supplemented, waived and/or otherwise modified from time to time in accordance with the terms thereof and of this Agreement (the “<u>Existing Intercreditor and Subordination Agreement</u>”). Pursuant to the Existing Intercreditor and Subordination Agreement, among other things, the Prepetition Second Lien Obligations are subordinated to the Prepetition First Lien Obligations.</p>

Local Rule 4001-2 Concise Statements	Location
<p>viii. As more fully set forth in the Prepetition First Lien Documents, prior to the Petition Date, the Prepetition First Lien Debtor Borrowers granted first-priority security interests in and liens (collectively, the “<u>Prepetition First Liens</u>”) on substantially all of the property of the Prepetition First Lien Debtor Borrowers (collectively, the “<u>Prepetition Collateral</u>”) to the Prepetition First Lien Agent on behalf of the Prepetition First Lien Lenders to secure repayment of the Prepetition First Lien Obligations. As more fully set forth in the Prepetition Second Lien Documents and to the extent applicable, prior to the Petition Date, Eclipse Aerospace, Inc. granted, to the extent valid and applicable, second lien security interests in and liens (the “<u>Prepetition Second Liens</u>” and, together with the Prepetition First Liens, the “<u>Prepetition Liens</u>”) on the Prepetition Collateral owned by Eclipse Aerospace, Inc. to the Prepetition Second Lien Note Holders to secure payment of the Prepetition Second Lien Obligations. The priority of the Prepetition Liens is subject to the terms of the Existing Intercreditor and Subordination Agreement; provided, however that upon entry of the Senior DIP Order, the portion of the Prepetition First Lien Obligations “rolled-up” into the Senior DIP Facility (<i>i.e.</i> the Senior Roll-Up Loans) shall no longer be subject to the Existing Intercreditor and Subordination Agreement and the rights and priorities of the Senior DIP Lender related to such Senior Roll-Up Loans shall be governed exclusively by the terms of the Senior DIP Order.</p> <p>ix. The Debtor Borrowers acknowledge and agree that:</p> <ul style="list-style-type: none"> ○ the Prepetition First Lien Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtor Borrowers; 	

	Local Rule 4001-2 Concise Statements	Location
	<ul style="list-style-type: none"> ○ the Prepetition First Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable and properly perfected; ○ as of the Petition Date, the Prepetition First Liens have priority over any and all other liens on the Prepetition Collateral, including, without limitation, the Prepetition Second Liens, subject only to certain liens otherwise permitted by the Prepetition First Lien Documents (to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition First Liens as of the Petition Date) (the “<u>Permitted Prior Senior Prepetition Liens</u>”); and ○ as of the Petition Date, the Prepetition Second Liens were junior to the Prepetition First Liens and the Permitted Prior Senior Prepetition Liens. <p>x. The Debtor Borrowers acknowledge and agree that:</p> <ul style="list-style-type: none"> ○ 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 First Liens or the Prepetition First Lien Obligations exist, and no portion of the Prepetition First Liens or the Prepetition First 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; and ○ the Debtor Borrowers and their estates have no claims, objections, challenges, and/or causes of action, including without limitation, avoidance claims under chapter 5 	

Local Rule 4001-2 Concise Statements		Location
	<p>of the Bankruptcy Code and applicable non-bankruptcy law, against any of the Prepetition First Lien Parties or any of their affiliates, agents, attorneys, advisors, professionals, officers, directors or employees arising out of, based upon or related to the Prepetition First Lien Documents or Prepetition First Lien Obligations.</p> <p>xi. The Debtor Borrowers represent that all of the Debtor Borrowers' 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.</p>	
Effect of Stipulations Local Rule 4001-2(a)(i)(B)	The stipulations in paragraph E of the Senior DIP Order are effective upon entry of the Senior DIP Order.	Senior DIP Order, ¶ E
Section 506(c) Waiver Local Rule 4001-2(a)(i)(C) Section 552(b)(1) Waiver Local Rule 4001-2(a)(i)(H)	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	Senior DIP Order, ¶¶ (x), F(xi), 36-38
Lien on Avoidance Actions (Chapter 5 Causes of Action) Bankruptcy Rule 4001(c)(1)(B)(iv)	Granting liens to the DIP Lenders (first priority to the Senior DIP Lender and second priority to the Junior DIP Lender) on the proceeds (" <u>Avoidance Action Proceeds</u> ") of the Debtor Borrowers' 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 (each, an " <u>Avoidance Action</u> ").	Senior DIP Order, ¶ (viii)
Provisions Deeming	Upon closing of the DIP Facility and entry of the Final Order, the outstanding revolver portion of the Prepetition	Senior DIP Order ¶ 8;

Local Rule 4001-2 Concise Statements		Location
Prepetition Debt to be Postpetition Debt Local Rule 4001-2(a)(i)(E)	First Lien Loans shall be replaced and refinanced by the DIP Obligations.	Senior DIP Facility Agreement, §9
Disparate Treatment of Professionals Under Carve-Out Local Rule 4001-2(a)(i)(F)	N/A	N/A
Non-Consensual Priming Liens Local Rule 4001-2(a)(i)(G)	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 Senior DIP Facility Documents)	Senior DIP Order, ¶F(iv)

Basis for Relief

39. The continued success of Debtors' business and reorganization efforts relies, on the ability to obtain the Senior DIP Facility. After September 4, 2020, the Debtors will not be able to make payroll, potentially leaving their 64 employees out of work. Granting authority to enter into the Senior DIP Facility would not only mean the preserving the Debtors' assets and business from a value-destructive chapter 7 liquidation, but it also will furnish the Debtors with sufficient liquidity to continue their operations and consummate the Sale.

40. The Debtors have determined that it is in the best interests of the estates to enter into the Senior DIP Facility Agreement. The terms of the Senior DIP Facility are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties. The Debtors were unable to obtain adequate unsecured credit allowable as an unsecured claim or superpriority administrative expense because all of the Debtors' assets are subject to liens. At this stage in the Chapter 11 Cases and given the current economic

environment, the Debtors' only realistic option for additional financing was from the Senior DIP Lender on a priming basis to fund a going-concern Sale that preserves recoveries for key stakeholders under the confirmed Plan. Accordingly, the Debtors submit that entry into the Senior DIP Facility Agreement is in the best interests of the Debtors' estates and their creditors and the relief requested herein should be granted.

I. The Senior DIP Facility Is Necessary to Preserve the Value of the Debtors' Estates and Is in the Best Interests of Creditors.

41. For the reasons set forth herein, the Debtors have an immediate need for additional postpetition financing to continue operating their business in the ordinary course and preserve the value of their assets. Without the Senior DIP Facility, the Debtors will not be able to fund the day-to-day operating expenses of their business necessary to maintain the value of the Debtors assets, including payment of wages to employees necessary to sustain the going concern value of the Debtors' assets and funds required to satisfy other general corporate and working capital requirements and fund the administrative costs of the Chapter 11 Cases. Indeed, absent sufficient funds to support the Debtors' operations, the value of the Debtors' assets and operations will quickly erode, to the detriment of the Debtors' estates and stakeholders.⁴⁰

42. The Debtors' time in chapter 11 has extended beyond their initial expectation when they entered into the Junior DIP Facility as a result of the multiple issues, mainly those solely within the Existing DIP Lender's control. But the Senior DIP Facility provides a clear path forward by funding a sale process that will result in recoveries to key creditor stakeholders who would otherwise obtain nothing in a chapter 7 conversion.

⁴⁰ See *In re Farmland Indus., Inc.*, 294 B.R. 855, 885 (Bankr. W.D. Mo. 2003) (approving postpetition financing and noting that "[w]ithout the continued financing, the Debtors would likely be forced into a Chapter 7 or 11 liquidation, to the detriment of all creditors").

II. The Debtors Should Be Authorized to Obtain the Senior DIP Facility Through the Senior DIP Facility Documents.

A. The Terms of the Senior DIP Facility Are Fair, Reasonable, and Appropriate, and Reflect the Debtors' Business Judgment.

43. The terms and conditions of the Senior DIP Facility and the Senior DIP Budget are fair, reasonable, and appropriate in the circumstances presented, and were negotiated by the parties in good faith and at arm's length. Bankruptcy courts routinely defer to a debtor's business judgment in considering whether to approve the debtor's request to obtain postpetition financing.⁴¹ In determining whether the business judgment standard is met, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances."⁴²

44. As the Court found with respect to the Junior DIP Facility Documents, the Debtors exercised their reasonable business judgment in determining that the Senior DIP Facility provided is the best financing option available under the present circumstances, and the Debtors have satisfied the legal requirements to incur the Senior DIP Facility on the terms and conditions set forth in the Senior DIP Facility Agreement. After thorough analysis by the Debtors, the Debtors believe that the Senior DIP Facility Documents and the Senior DIP Budget contain terms that are fair, reasonable, and in the best interests of the Debtor and its estate, and are the product of good faith and arm's length negotiations. The Senior DIP Facility provides

⁴¹ See e.g., *Trans World Airlines, Inc. v. Travellers Int'l AG (In re Trans World Airlines, Inc.)*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (quoting order approving post-petition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *Ames Dep't Stores, Inc.*, 115 B.R. at 40 (The court should defer to debtor's "reasonable business judgment . . . so long as the financing agreement does not . . . leverage the bankruptcy process" and its purpose is to benefit the estate rather than another party-in-interest.).

⁴² *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); see also *In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code.") (citation omitted).

postpetition financing on more favorable terms than any other reasonably available alternative. The funds provided by the Senior DIP Facility will assist in allowing the Debtors to meet ongoing operational and administrative expenses as the Debtors execute their restructuring strategy of a going-concern Sale, and the Debtors believe the Senior DIP Budget is adequate and reasonable. Accordingly, the Debtors respectfully submit that it should be authorized to enter into the Senior DIP Facility Documents and obtain access to the Senior DIP Facility on the terms described herein.

B. The Debtors Should Be Authorized to Obtain the Senior DIP Facility on a Senior Secured and Superpriority Basis.

45. Section 364 of the Bankruptcy Code allows a debtor to obtain (a) unsecured credit in the ordinary course of business, (b) unsecured credit outside the ordinary course of business, (c) credit with specialized priority or with certain security interests, and (d) secured credit by granting a senior or *pari passu* lien on already encumbered property. In other words, section 364 is “structured with an escalating series of inducements . . .” that may be offered to attract postpetition financing.⁴³ Accordingly, if a debtor cannot obtain postpetition financing on an unsecured basis under sections 364(a) and (b), the bankruptcy court may authorize a debtor to obtain postpetition

46. Courts consider various factors in determining whether a debtor may obtain postpetition financing under section 364(c) of the Bankruptcy Code, including whether (i) the debtor is unable to obtain secured credit under section 364(b), (ii) the credit transaction is necessary to preserve the assets of the estate, (iii) the terms of the transaction are fair, reasonable and adequate given the circumstances of the debtor-borrower and the proposed lender, (iv) entry

⁴³ *Sapir v. CPQ Colorchrome Corp. (In re Photo Promotion Assocs., Inc.)*, 87 B.R. 835, 839 (Bankr. S.D.N.Y. 1988), *aff’d*, 881 F.2d 6 (2d Cir. 1989).

into the financing constitutes an exercise of the debtor's sound and reasonable business judgment, and (v) the financing was negotiated in good faith and at arm's length between the debtor and the lender.⁴⁴ To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis.⁴⁵ "The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable."⁴⁶ When few lenders are likely to be able and willing to extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing."⁴⁷

47. The Debtors have been operating in chapter 11 since October 2018—nearly two years—and virtually all of the Debtors' assets are encumbered by lines and security interests that either existed prepetition or that the Court granted pursuant to the Existing Final DIP Order. Without access to the Senior DIP Facility, the Debtors will almost certainly be forced to convert the Chapter 11 Cases and liquidate their assets.⁴⁸ Given the Debtors' current capital structure, including the obligations on account of the Junior DIP Facility, COVID-19's impact on the airline industry, and Citiking's refusal to provide exit financing, the only option was to seek the

⁴⁴ *In re Farmland Indus., Inc.*, 294 B.R. 855, 879–81 (Bankr. W.D. Mo. 2003); *see also In re Aqua Assocs.*, 123 B.R. 192, 195–96 (Bankr. E.D. Pa. 1991) (applying factors 1-3).

⁴⁵ *Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986).

⁴⁶ *Id.*

⁴⁷ *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received).

⁴⁸ Carroll Declaration ¶ 31.

Senior DIP Facility on the terms described herein in connection with a going-concern sale of the Debtors' business.⁴⁹

48. All of these factors have resulted in the Debtors being unable to procure sufficient additional debtor in possession financing in the form of either unsecured credit under Bankruptcy Code sections 364(a) or (b), solely in exchange for the grant of an administrative expense or superpriority administrative expense claim or on a junior lien basis under section 364(c) of the Bankruptcy Code.

49. Based on the foregoing, the Debtors submit that the requirement of section 364 of the Bankruptcy Code that alternative credit on more favorable terms be unavailable to the Debtors is satisfied.⁵⁰

C. The Debtors Should Be Authorized to Obtain the Senior DIP Facility By Priming Liens.

50. If the incentives available under section 364(c) of the Bankruptcy Code are insufficient to attract post-petition financing, a bankruptcy court may authorize post-petition credit under section 364(d) secured by a senior or *pari passu* lien on encumbered property (i.e., a “priming” lien) without consent from the affected lienholders if (i) the debtor cannot otherwise obtain credit and (ii) the interests of the existing lienholders are adequately protected.⁵¹ As set forth herein, the Senior DIP Facility satisfies both factors.

51. First, as set forth above, the Debtors do not believe that they would have been able to obtain credit on more favorable terms, not only due to the Debtors' position in the

⁴⁹ Carroll Declaration ¶ 32.

⁵⁰ See, e.g., *Bray v. Shenandoah Fed. Savs. & Loan Ass'n*, 789 F.2d at 1088 (Section 364 of the Bankruptcy Code “imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.”).

⁵¹ See 11 U.S.C. § 364(d)(1); *In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 630–31 (Bankr. S.D.N.Y. 1992); *Aqua Assocs.*, 123 B.R. at 196 (listing the above factors and also requiring that the “credit transaction” be “necessary to preserve assets of the estate”).

Chapter 11 Cases, but also due to the existing DIP Liens and prepetition liens already encumbering all of the Debtors' assets.

52. Second, a debtor may obtain postpetition credit that is "secured by a senior or equal lien on property of the estate that is subject to a lien only if" the debtor, among other things, provides "adequate protection" to those parties whose liens are primed.⁵² Adequate protection is evaluated on a case-by-case basis and may be provided in various forms, including payment of adequate protection fees, payment of interest, or granting of replacement liens or administrative claims.⁵³

53. As noted above, the liens and other protections afforded to the Prepetition Secured Parties (including Citiking) are substantially the same protections approved by the Court through the Existing Final DIP Order. As described in the motion to approve the Junior DIP Facility, the Existing Final DIP Order provides a multi-faceted package of adequate protection to ensure that the Prepetition Secured Parties being primed by the Junior DIP Facility and such parties were compensated to the extent of any diminution in the value of their respective Prepetition Collateral. Substantially the same adequate protection is being offered here (adequate protection liens and superpriority administrative expense claims) with the caveat that the Debtors are incurring in the form of the \$9,750,000 Senior DIP Facility. But the relatively small size of the Senior SIP Facility in comparison to the outstanding Junior DIP Facility and Prepetition First Lien Credit Obligations outweigh any prejudice caused by the priming given the going-concern value to be realized from the Sale and the piecemeal liquidation that would result if this Motion is not granted. The Debtors believe that this alone adequately protects parties in

⁵² See 11 U.S.C. § 364(d)(1)(B).

⁵³ See *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("[T]he determination of adequate protection is a fact specific inquiry . . . left to the vagaries of each case . . .") (citation and quotation omitted).

interest. For these and the additional reasons that a portion of Citiking's debt is already subordinate to the Senior DIP Lender by virtue of the DW Agreements and because Citiking has the sole ability to avoid the priming Junior DIP Facility by complying with its Plan obligations, the Debtors also submit that the Citiking is minimally prejudiced as well. Thus, despite its priming features, the Debtors' entry into the Senior DIP Facility is in the best interest of all of their stakeholders, is necessary to preserve the value of the estates, and is a sound exercise of the Debtors' reasonable business judgment.

D. The Proposed Roll-Up of the Senior DIP Lender's Portion of the Prepetition First Lien Credit Agreement Claims Is Appropriate.

54. Repayment of the Prepetition First Lien Credit Agreement Claims held by the Senior DIP Lender in accordance with the Senior DIP Order is necessary, as the Senior DIP Lender has not otherwise consented to the use of its cash collateral and is not otherwise willing to enter into the Senior DIP Facility unless such Prepetition First Lien Credit Agreement Claims in the amount of the Senior Roll-Up Loans are paid in full. Moreover, the Senior Roll-Up Loans are an appropriate cost to fund a going concern sale of a highly leveraged company like the Debtors. Finally, courts in this and other districts routinely approve additional or replacement debtor in possession financing agreements containing roll-ups where the debtor was not able to obtain debtor in possession financing under other conditions.⁵⁴

III. The Senior DIP Lender Should Be a Deemed Good-Faith Lender under Section 364(e) of the Bankruptcy Code.

55. Section 364(e) of the Bankruptcy Code, which protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the

⁵⁴ See, e.g., *In re Appvion, Inc.*, Case No. 17-12082 (KJC) (Bankr. D. Del. Apr. 4, 2018 *In re Ryckman Creek Res., LLC*, Case No. 16-10292 (KJC) (Bankr. D. Del. Sept. 8, 2017); *In re SunEdison*, No. 16-10992 (SMB) (Bankr. S.D.N.Y. May 1, 2017).

authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal, was designed to “encourage lenders to extend credit to debtors by eliminating the risk that any lien securing the loan will be modified on appeal.”⁵⁵

56. The Debtors believe that the terms and conditions of the Senior DIP Facility are fair and reasonable and the best possible terms on which the Debtors could obtain additional postpetition financing. The terms and conditions relating to the Senior DIP Facility and the Senior DIP Budget, were negotiated in good faith and at arm’s length with all parties represented by experienced counsel. Accordingly, the Senior DIP Lender should be provided with the benefit and protection of section 364(e) of the Bankruptcy Code, such that if any of the provisions of the Senior DIP Facility are later modified, vacated, stayed, or terminated by subsequent order of this or any other Court, the Senior DIP Lender will be fully protected with respect to any amounts previously disbursed.

IV. Failure to Obtain Immediate Access to the Senior DIP Facility Would Cause Immediate and Irreparable Harm.

57. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the Court may conduct a preliminary, expedited hearing

⁵⁵ *Keltic Fin. Partners, LP v. Foreside Mgmt. Co. (In re Foreside Mgmt. Co.)*, 402 B.R. 446, 451 (B.A.P. 1st Cir. 2009) (citing *Shapiro v. Saybrook Mfg. Co. (In re Saybrook Mfg. Co.)*, 963 F.2d 1490, 1493 (11th Cir. 1992)); see also *White Rose Food v. General Trading (In re Clinton St. Food Corp.)*, 170 B.R. 216, 220 (S.D.N.Y. 1994) (noting that section 364(e)’s purpose “is to overcome parties’ reluctance to lend to a bankrupt firm . . .”); *Fleet Nat’l Bank v. Doorcrafters (In re N. Atl. Millwork Corp.)*, 155 B.R. 271, 279 (Bankr. D. Mass. 1993) (“The purpose of Section 364(e) is to allow good-faith lenders to rely upon conditions at the time they extend credit and to encourage lenders to lend to bankruptcy entities.”).

on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate.

58. The Debtors seek expedited approval of relief requested in this Motion in light of the immediate and irreparable harm that the Debtors' estate will incur unless they obtain the financing necessary to sustain their business. In examining requests for relief, courts apply the same business judgment standard applicable to other decisions, such as the decision by the Debtors to execute the Junior DIP Facility Documents.⁵⁶ Applying this standard here, the Debtors' request for authorization to enter into the Senior DIP Facility, and for entry of the Senior DIP Order in the time periods and for the financing amounts requested herein, is appropriate and consonant with the Debtors' sound business judgment. Absent sufficient funds to support the Debtors' operating business, the Debtors' business and assets will quickly erode to the detriment of the Debtors' estates and creditors, jobs will be lost, and the only alternative would be to convert the cases to chapter 7 and liquidate assets piecemeal, which would ultimately be value-destructive. Therefore, immediate approval of the Senior DIP Order is necessary to enable the Debtors to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest. Accordingly, the Debtors respectfully request that the Senior DIP Order be approved in all respects and the terms and provisions of the Senior DIP Order be deemed binding, and that after a hearing, the Senior DIP Order will be approved in all respects and the terms and provisions of the Senior DIP Order will be implemented and binding.

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

⁵⁶ See, e.g., *Ames Dep't Stores*, 115 B.R. at 36, *Simasko*, 47 B.R. at 449.

59. The relief requested herein contemplates a modification of the automatic stay to permit the Debtors to grant the liens and superpriority claims described herein to the Senior DIP Lender, to permit the Senior DIP Lender (as permitted under the Senior DIP Facility Documents) to perform such acts as may be requested to assure the perfection and priority of such liens, and to permit the Debtors and the Senior DIP Lender to take any other actions necessary and appropriate to implement the terms of the Senior DIP Facility. Stay modifications of this kind are standard features for access to DIP financing, and in the Debtors' business judgment, are reasonable under the circumstances.⁵⁷ As such, the Court should modify the automatic stay to the extent contemplated by the Senior DIP Order.

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

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

Notice

61. Notice of this Motion will be provided to the following parties or their counsel (if known): (i) the Office of the United States Trustee for the District of Delaware; (ii) the Senior DIP Lender; (iii) the Existing DIP Lender; (iv) the Debtors' prepetition lenders; (v) the Committee; (vi) the Internal Revenue Service; (vii) the Buyer; and (viii) those parties who have formally filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In

⁵⁷ See, e.g., *In re Exide Holdings, Inc.*, Case No. 20-11157 (CSS) (Bankr. D. Del. May 21, 2020) [Docket No. 123]; *In re Checkout Holding Corp.*, Case No. 18-12794 (KG) (Bankr. D. Del. Jan. 17, 2019) [Docket No. 222]; *In re Mattress Firm, Inc.*, Case No. 18-12241 (CSS) (Bankr. D. Del. Oct. 9, 2018) [Docket No. 184]; *In re NORDAM Grp., Inc.*, Case No. 18-11699 (MFW) (Bankr. D. Del. July 25, 2018) [Docket No. 85]; *In re Claire's Stores, Inc.*, Case No. 18-10584 (MFW) (Bankr. D. Del. Mar. 20, 2018) [Docket No. 130]; *In re Charming Charlie, LLC*, Case No. 17-12906 (CSS) (Bankr. D. Del. Dec. 13, 2017) [Docket No. 93].

light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

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WHEREFORE the Debtors respectfully request that the Court enter the Senior DIP Order, granting the Debtors: (i) the relief requested herein; and (ii) such other and further relief as the Court may deem proper.

Dated: August 28, 2020
Wilmington, Delaware

/s/ Jaime Luton Chapman

Robert S. Brady (No. 2847)
M. Blake Cleary (No. 3614)
Sean M. Beach (No. 4070)
Jaime Luton Chapman (No. 4936)
Jordan E. Sazant (No. 6515)

YOUNG CONAWAY STARGATT & TAYLOR, LLP

Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

- and -

Chris L. Dickerson (admitted *pro hac vice*)
Brendan M. Gage (admitted *pro hac vice*)
Nathan S. Gimpel (admitted *pro hac vice*)

PAUL HASTINGS LLP

71 South Wacker Drive, Suite 4500
Chicago, Illinois 60606
Telephone: (312) 499-6000
Facsimile: (302) 499-6100

- and -

Todd M. Schwartz (admitted *pro hac vice*)

PAUL HASTINGS LLP

1117 South California Avenue
Palo Alto, California 94304
Telephone: (650) 320-1800
Facsimile: (650) 320-1900

Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed Senior DIP Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X	
	:	
In re:	:	Chapter 11
	:	
ONE AVIATION CORPORATION, <i>et al.</i>,¹	:	Case No. 18-12309 (CSS)
	:	
	:	
Debtors.	:	Jointly Administered
	:	RE: Docket No. _____

**AMENDED AND RESTATED FINAL ORDER (I) AUTHORIZING
DEBTOR BORROWERS TO (A) OBTAIN POST-PETITION FINANCING
PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1)
AND 364(e), (B) GRANT SENIOR LIENS AND SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, AND (C) UTILIZE CASH COLLATERAL
PURSUANT TO 11 U.S.C. § 363; (II) GRANTING ADEQUATE PROTECTION TO
PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363
AND 364; AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of ONE Aviation Corporation and its affiliated debtors as debtors in possession (collectively, the “**Debtors**” and “**Debtors in Possession**”) in the above-captioned cases (the “**Cases**”), pursuant to Bankruptcy Code sections 105, 361, 362, 363, 364 and 507, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Rule 2002-1, and 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), seeking entry of a final order (this “**Final A&R Order**”) *inter alia*:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The Debtors’ corporate headquarters is located at 3250 Spirit Drive SE, Albuquerque, NM 87106.

² Capitalized terms used in this Final A&R Order but not defined herein shall have the meanings ascribed to such terms in the DIP Facility Documents, which shall include the Senior DIP Loan Term Sheet (in each case, as defined below).

- (i) authorizing each of the Debtors other than ONE Aviation Corporation (collectively, the “**Debtor Borrowers**,” and individually, each a “**Debtor Borrower**”), and ONE Aviation Corporation as Guarantor, each as a debtor and debtor-in-possession, to enter into

- (a) that certain Senior DIP Loan Term Sheet, dated as of August 28, 2020, in the form of the agreement attached as **Exhibit 1** hereto (as amended, supplemented or otherwise modified from time to time, the “**Senior DIP Facility Agreement**”), among the Debtor Borrowers and SEF OA LLC, as the assignee of DWC Pine Investments I, Ltd. (the “**Senior DIP Lender**”), and authorizing the Debtor Borrowers to enter into all related documents, orders and agreements (together with the Senior DIP Facility Agreement, the “**Senior DIP Facility Documents**”);

and

- (b) that certain Senior Secured Superpriority Debtor-in-Possession Credit and Security Agreement, dated as of October 9, 2018 (as amended, supplemented or otherwise modified from time to time, the “**Junior DIP Facility Agreement**”), in the form of the agreement attached hereto as **Exhibit 1** to that certain *Final Order (I) Authorizing Debtor Borrowers to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), (B) Grant Senior Liens and Superpriority Administrative Expense Status, and (C) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; and (III) Granting Related Relief*, entered on November 27, 2018 (the “**Existing Final DIP Order**”), among the Debtor Borrowers and Citiking International US LLC (the “**Junior DIP Lender**”), and authorizing the Debtor Borrowers to enter into all related documents, orders and agreements (together with the Junior DIP Facility Agreement, the “**Junior DIP Facility Documents**”), attached hereto as **Exhibit 2**;

- (ii) authorizing the Debtor Borrowers to obtain a super-senior secured super priority multi-draw term loan facility (as described herein, the “**Senior DIP Facility**”), which shall consist of a superpriority revolving loan facility with commitments to lend up to approximately \$9.75 million, and such other financial accommodations, allocated as follows:

- (a) *Senior New Money Loans.* A superpriority priming new money multi-draw term loan facility with commitments to lend up to approximately \$2.75 million (the “**Senior New Money Commitments**” and the revolving loans made thereunder, the “**Senior New Money Loans**”); and
 - (b) *Senior Roll-Up Loans.* The Prepetition First Lien Obligations (as defined below) owed to DWC Pine Investments I, Ltd. under that certain Credit

and Security Agreement, dated as of July 20, 2012 (as amended or otherwise modified prior to the date hereof, the “**Prepetition First Lien Credit Agreement**,” and the loans thereunder the “**Prepetition First Lien Loans**”), by and among Debtor Borrowers Eclipse Aerospace, Inc. and Brigadoon Aircraft Maintenance, LLC, as borrowers thereunder (collectively, the “**Prepetition First Lien Debtor Borrowers**” and each a “**Prepetition First Lien Debtor Borrower**”), One Aviation Corporation as guarantor thereunder (the “**Prepetition First Lien Guarantor**”), the lenders thereto and their predecessors, successors and assigns (collectively, the “**Prepetition First Lien Lenders**”), Cantor Fitzgerald Securities, as administrative agent and collateral agent for the Prepetition First Lien Lenders (in such capacity, the “**Prepetition First Lien Agent**” and together with the Prepetition First Lien Lenders, the “**Prepetition First Lien Parties**”), in the principal amount of \$7.0 million (with such Prepetition First Lien Loans of DWC Pine Investments I, LTD (“**DW**”) to be assigned to SEF OA LLC (*i.e.*, the Senior DIP Lender) following the entry of this Final A&R Order and Buyer’s payment of \$7,000,000 to acquire DW’s Prepetition First Loans along with the rights under the Senior DIP Facility) (the “**Senior Roll-Up Loans**”) under the Senior DIP Facility, effective upon entry of this Final A&R Order, in accordance with the terms of the Senior DIP Facility Agreement and this Final A&R Order; and

- (iii) authorizing the Debtor Borrowers to obtain a junior secured super priority revolving loan facility (as described herein, the “**Junior DIP Facility**”), which shall consist of a superpriority revolving loan facility with commitments to lend up to approximately \$19.1 million, and such other financial accommodations, allocated as follows:
 - (a) *Junior New Money Loans.* A superpriority priming new money revolving facility with commitments to lend up to approximately \$8.0 million (the “**Junior New Money Commitments**” and the revolving loans made thereunder, the “**Junior New Money Loans**”);
 - (b) *Junior Roll-Up Loans.* The Prepetition First Lien Obligations (as defined below) owed to the Junior DIP Lender under the Prepetition First Lien Credit Agreement in the amount of approximately \$11.13 million, including but not limited to any amounts described herein in paragraph F(x) and any fees and expenses owing to the Prepetition First Lien Agent, will be rolled-up into roll-up loans (the “**Junior Roll-Up Loans**”) under the Junior DIP Facility, effective upon entry of this Final A&R Order, in accordance with the terms of the Junior DIP Facility Agreement and this Final A&R Order; and
- (iv) authorizing and directing the Debtor Borrowers to use the proceeds of the Senior DIP Facility and the Junior DIP Facility (collectively, the “**DIP Facilities**”) as expressly provided in the Senior DIP Facility Documents and solely in

accordance with the budget attached hereto as **Exhibit 3** (the “**Approved Budget**”);

- (v) authorizing the Debtor Borrowers to execute and deliver the Senior DIP Facility Agreement and the Junior DIP Facility Agreement (collectively, the “**DIP Facility Agreements**”) and the other Senior DIP Facility Documents and Junior DIP Facility Documents (collectively, the “**DIP Facility Documents**”) and to perform such other acts as may be necessary or desirable in connection with the DIP Facility Documents;
- (vi) 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 Debtor Borrowers to grant the Senior DIP Lender and the Junior DIP Lender (collectively, the “**DIP Lenders**”) superpriority allowed administrative expense claim status in the Cases and any Successor Case (as defined herein) in respect of all respective obligations, joint and several, owing under the DIP Facility Documents to the DIP Lenders (including without limitation all “Obligations” or “Senior DIP 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 Lenders 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 to the Senior DIP Lender a senior first-priority priming lien on and security interest in all of the DIP Collateral and to the Junior DIP Lender a second-priority priming lien on and security interest in (subject only to the lien of the Senior DIP Lender) all of the DIP Collateral, in each case subject to the priorities set forth herein;
- (vii) authorizing (a) the Senior DIP Lender to terminate the respective funding commitments under the Senior DIP Facility Agreement, and (b) the Senior DIP Lender to terminate the Debtor Borrowers’ 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 Senior DIP Facility Agreement) on terms specified herein and in the Senior DIP Facility Agreement;
- (viii) granting liens to the DIP Lenders (first priority to the Senior DIP Lender and second priority to the Junior DIP Lender) on the proceeds (“**Avoidance Action Proceeds**”) of the Debtor Borrowers’ 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 (each, an “**Avoidance Action**”);

- (ix) authorizing the Debtor Borrowers, among other things, to use for any of the Debtor Borrowers or for any of the other Debtors, 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 Debtor Borrowers’ 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);
- (x) 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;
- (xi) 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 and this Final A&R Order;
- (xii) the waiver of any applicable stay (including under Rule 6004 of the Bankruptcy Rules) and the provision of immediate effectiveness of this Final A&R Order,;
- (xiii) pursuant to Bankruptcy Rule 4001, that a final hearing (the “**Final Hearing**”) on the Motion be held before this Court to consider entry of this Final A&R Order to (a) authorize the Debtor Borrowers to borrow under the DIP Facility Documents, on a final basis, in an amount not to exceed an amount equal to the DIP Facility; (b) authorize the Debtor Borrowers’ use of Cash Collateral; and (c) grant the liens, priority claims, and adequate protection described herein;
- (xiv) 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 Final Hearing; and *Declaration of James Patrick Carroll in Support of the Debtors’ Additional DIP Financing and Sale Motions and Motion to Shorten*; and notice of the Final Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), 9014, and Local Rule 2002-1, 4001-1(a), and 5005-4; and the Final Hearing 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 final relief requested is necessary to avoid immediate and irreparable harm to the Debtor Borrowers, the other Debtors, and their respective estates, and otherwise is fair and reasonable and in the best interests of the Debtor Borrowers, the other Debtors, their respective 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 AND DETERMINED that:

A. Petition Date. On October 9, 2018, 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 Delaware (the "**Court**") commencing the Cases. On November 27, 2018, the Court entered the Existing Final DIP Order.

B. Debtors 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 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012, over these proceedings, and over the persons and property affected hereby. 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 October 22, 2018, the Office of the United States Trustee for the District of Delaware (the "**U.S. Trustee**") appointed an official committee of unsecured creditors (the "**Committee**").

E. *Debtor Borrowers' Stipulations.* After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in paragraph 38 herein, the Debtor Borrowers admit, stipulate, acknowledge and agree that (collectively, paragraphs E(i) through E(x) below are referred to herein as the “**Debtor Borrowers' Stipulations**”):

(i) *Prepetition First Lien Documents.* As of the Petition Date, Eclipse Aerospace, Inc. and Brigadoon Aircraft Maintenance, LLC, as borrowers, and ONE Aviation Corporation, as guarantor, were parties to the Prepetition First Lien 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 First Lien Documents**”).

(ii) *Prepetition First Lien Obligations.* As of the Petition Date, the aggregate principal amount owed by the Prepetition First Lien Debtor Borrowers and Prepetition First Lien Guarantor under the Prepetition First Lien Loan Documents, without defense, counterclaim, or offset of any kind in respect of the Prepetition First Lien Documents, was not less than \$59.72 million, consisting of not less than \$11.13 million in principal amount of revolving credit obligations under the senior secured revolving credit facility (the “**Prepetition First Lien Revolving Facility**”) and not less than \$48.59 million in principal amount outstanding under the senior secured term loan facility (the “**Prepetition First Lien Term Facility**”) and together with the Prepetition First Lien Revolving Facility, the “**Prepetition First Lien Facility**”), both made available to the Prepetition First Lien Debtor Borrowers pursuant to that certain Prepetition First Lien Credit Agreement (together with any additional amounts paid or incurred or accrued but

unpaid prior to the Petition Date in accordance with the Prepetition First Lien Documents, including, but not limited to, the amounts described herein in paragraph F(x) and any fees and expenses owing to the Prepetition First Lien Agent, and including all “Obligations” as further defined in the DIP Facility Agreement, and the amount of interest at the Default Rate (as such terms are defined in the Prepetition First Lien Documents), the “**Prepetition First Lien Obligations**”).

(iii) *Prepetition Second Lien Series A-1 Note Documents.* As of the Petition Date, Eclipse Aerospace, Inc. was a party to the following subordinated secured notes (as each may be amended, waived, supplemented or modified from time to time, the “**Prepetition Second Lien Series A-1 Notes**” together with all related documents, guaranties and agreements, if any, as the same may be amended, waived, supplemented or modified from time to time, collectively, the “**Prepetition Second Lien A-1 Note Documents**”):

- a. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Holland Family Trust (as holder) (“**Holland Family Trust**”) issued in the aggregate principal amount of \$5,564,625.00 with an interest rate of 3.75% and due on October 20, 2017;
- b. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Alfred Mann Living Trust (as holder) (“**Alfred Mann Living Trust**”) issued in the aggregate principal amount of \$2,555,027.78 with an interest rate of 3.75% and due on October 20, 2017;
- c. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Global Eclipse, LLC (as holder) (“**Global Eclipse**”) issued in the aggregate principal amount of \$4,113,212.50 with an interest rate of 3.75% and due October, 2017;

- d. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the James H. Clutter (as holder) (“**Clutter**”, and together with the Holland Family Trust, Alfred Mann Living Trust and Global Eclipse, collectively, the “**Prepetition Second Lien Note Holders**” and together with the Prepetition First Lien Parties, collectively, the “**Prepetition Secured Parties**”) issued in the aggregate principal amount of \$3,091,458.33 with an interest rate of 3.75% and due October, 2017;

(iv) *Prepetition Second Lien Series A-2 Note Documents.* As of the Petition Date, Eclipse Aerospace, Inc. was a party to the following subordinated secured notes (as each may be amended, waived, supplemented or modified from time to time, the “**Prepetition Second Lien Series A-2 Notes**” (and together with the Prepetition Second Lien Series A-1 Notes, collectively, the “**Prepetition Second Lien Notes**”) together with all related documents, guaranties and agreements, if any, as the same may be amended, waived, supplemented or modified from time to time, collectively, the “**Prepetition Second Lien A-2 Note Documents**” and together with the Prepetition Second Lien A-1 Note Documents, collectively, the “**Prepetition Second Lien Documents**”) (together, the Prepetition Second Lien Documents and the Prepetition First Lien Documents, as the same may be amended, waived, supplemented or modified from time to time, the “**Prepetition Loan Documents**”):

- a. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Holland Family Trust dated 1/12/2004 (as holder) (as defined herein, “Holland Family Trust”) issued in the aggregate principal amount of \$12,246,646.93 with an interest rate of 3.75% and due on October 20, 2017;
- b. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Alfred E. Mann Living Trust dated 04/09/99 (as holder) (as defined herein, the “Alfred Mann Living Trust”) issued in the aggregate principal amount of \$8,394,299.11 with an interest rate of 3.75% and due on October 20, 2017;

- c. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Alfred E. Mann Living Trust (as holder) (as defined herein, the “Alfred Mann Living Trust”) issued in the aggregate principal amount of \$1,288,632.71 with an interest rate of 3.75% and due on October 20, 2017.

(v) *Prepetition Second Lien Obligations.* As of the Petition Date, Eclipse Aerospace, Inc. was indebted to the Prepetition Second Lien Note Holders, in the aggregate principal amount of approximately \$15,324,323.61 with respect to the obligations under the Prepetition Second Lien A-1 Note Documents and approximately \$21,929,578.75 with respect to the obligations under the Prepetition Second Lien A-2 Note Documents (together with any amounts paid or incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition Second Lien Documents, including all “Obligations” as further defined in the Prepetition Second Lien Documents, the “**Prepetition Second Lien Obligations**”).

(vi) *Intercreditor and Subordination Agreement.* As of the Petition Date, Eclipse Aerospace, Inc. was party to that Amended and Restated Intercreditor and Subordination Agreement, dated as of April 20, 2015, executed by each of the Prepetition Second Lien Note Holders, The Bank of New York Mellon, N.A., as collateral agent for the Prepetition Second Lien Note Holders, and Wilmington Trust, National Association, as administrative agent for the Prepetition First Lien Lenders, and as the same may be amended, restated, supplemented, waived and/or otherwise modified from time to time in accordance with the terms thereof and of this Agreement (the “**Existing Intercreditor and Subordination Agreement**”). Pursuant to the Existing Intercreditor and Subordination Agreement, among other things, the Prepetition Second Lien Obligations are subordinated to the Prepetition First Lien Obligations.

(vii) *Prepetition Collateral and Prepetition Liens.* As more fully set forth in the Prepetition First Lien Documents, prior to the Petition Date, the Prepetition First Lien Debtor Borrowers granted first-priority security interests in and liens (collectively, the “**Prepetition First Liens**”) on substantially all of the property of the Prepetition First Lien Debtor Borrowers (collectively, the “**Prepetition Collateral**”) to the Prepetition First Lien Agent on behalf of the Prepetition First Lien Lenders to secure repayment of the Prepetition First Lien Obligations. As more fully set forth in the Prepetition Second Lien Documents and to the extent applicable, prior to the Petition Date, Eclipse Aerospace, Inc. granted, to the extent valid and applicable, second lien security interests in and liens (the “**Prepetition Second Liens**” and, together with the Prepetition First Liens, the “**Prepetition Liens**”) on the Prepetition Collateral owned by Eclipse Aerospace, Inc. to the Prepetition Second Lien Note Holders to secure payment of the Prepetition Second Lien Obligations. The priority of the Prepetition Liens is subject to the terms of the Existing Intercreditor and Subordination Agreement; provided, however, that upon entry of this Final A&R Order, the portion of the Prepetition First Lien Obligations “rolled-up” into the Senior DIP Facility (*i.e.*, the Senior Roll-Up Loans) shall no longer be subject to the Existing Intercreditor and Subordination Agreement, and the rights and priorities of the Senior DIP Lender related to such Senior Roll-Up Loans shall be governed exclusively by the terms of this Final A&R Order.

(viii) *Prepetition Secured Indebtedness and Prepetition Liens.* The Debtor Borrowers acknowledge and agree that:

- a. the Prepetition First Lien Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtor Borrowers;

- b. the Prepetition First Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable, and properly perfected;
- c. as of the Petition Date, the Prepetition First Liens have priority over any and all other liens on the Prepetition Collateral, including, without limitation, the Prepetition Second Liens, subject only to certain liens otherwise permitted by the Prepetition First Lien Documents (to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition First Liens as of the Petition Date (the “**Permitted Prior Senior Prepetition Liens**”)); and
- d. as of the Petition Date, the Prepetition Second Liens were junior to the Prepetition First Liens and the Permitted Prior Senior Prepetition Liens.

(ix) *No Offsets or Claims.* The Debtor Borrowers 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 First Liens or the Prepetition First Lien Obligations exist, and no portion of the Prepetition First Liens or the Prepetition First 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; and
- b. the Debtor Borrowers 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 First Lien Parties or any of their affiliates, agents, attorneys, advisors, professionals, officers, directors or employees arising out of, based upon or related to the Prepetition First Lien Documents or Prepetition First Lien Obligations.

(x) *Cash Collateral.* The Debtor Borrowers represent that all of the Debtor Borrowers’ 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.

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 A&R Order.

(ii) *Request for Post-Petition Financing and Use of Cash Collateral.* The Debtor Borrowers seek authority to enter into the DIP Facility Agreements. The DIP Lenders shall have no obligation to make loans or advances under the DIP Facilities except to the extent required under the DIP Facility Agreements and no obligation to waive any conditions required thereunder. The Debtor Borrowers 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 Debtor Borrowers' need to use Cash Collateral and to obtain credit as set forth in the DIP Facility Agreements 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 Debtor Borrowers 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 Facilities and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtor Borrowers and the other Debtors, their respective subsidiaries, their estates, creditors and equity holders, and the possibility for maximizing the value of their businesses. The Debtor Borrowers 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 Facilities 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 A&R 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 Debtor Borrowers are unable to reasonably obtain post-petition financing from sources other than the DIP Lenders on terms more favorable than those set forth in the DIP Facility Documents. The Debtor Borrowers have been unable to reasonably obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtor Borrowers 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 Debtor Borrowers and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtor Borrowers 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 Lenders: (1) perfected security interests in and liens on (each as provided herein) all of the Debtor Borrowers' existing and after-acquired assets with the priorities set forth herein; (2) superpriority claims; and (3) the other protections set forth in this Final A&R Order.

(v) *Use of Proceeds.*

- a. As a condition to entry into the DIP Facility Agreements, the extensions of credit under the DIP Facilities and the authorization to use Cash Collateral, the Senior DIP Lender requires, and the Debtor Borrowers have agreed, that proceeds of the DIP Facilities 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 Agreements (including without limitation the Permitted Variance), (y) this Final A&R Order, and (z) the Carve-Out.
- b. The Debtor Borrowers 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 unless otherwise permitted or directed by an order of the Bankruptcy Court.
- c. The proceeds of the DIP Facilities and Cash Collateral shall be used solely as provided in the DIP Facility Agreements, including, to the extent provided therein, (i) to exchange the revolving portion of Prepetition First Lien Loans for Junior Roll-Up Loans, (ii) to exchange \$7 million of the Prepetition First Lien Loans held by the Senior DIP Lender (with such Prepetition First Lien Loans of DW to be assigned to SEF OA LLC (*i.e.*, the Senior DIP Lender) following the entry of this Final A&R Order and Buyer's payment of \$7,000,000 to acquire DW's Prepetition First Loans along with the rights under the Senior DIP Facility) (inclusive, as appropriate, of any Junior Roll-Up Loans held by the Senior DIP Lender) for Senior Roll-Up Loans; (iii) to provide working capital and letters of credit from time to time to the extent set forth in the Approved Budget; (iv) for other general corporate purposes of the Debtor Borrowers and other Debtors to the extent set forth in the Approved Budget; (v) 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 (vi) for the payment of such other prepetition obligations in accordance with orders of this Court, which orders shall be in form and substance reasonably satisfactory to the Senior DIP Lender and approved by the Court, in each case in a manner consistent with the Approved Budget, the Senior DIP Facility Agreement, and the terms and conditions contained herein.

(vi) *Willingness to Provide Financing.* The Senior DIP Lender has indicated a willingness to provide financing to the Debtor Borrowers subject to the entry of this Final A&R Order, including findings that such financing is essential to the Debtor Borrowers' estates, that the Senior DIP Lender is extending credit to the Debtor Borrowers as set forth in the Senior DIP Facility Agreement in good faith, and that the Senior 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 Final A&R Order or any other order. As a condition to the entry into the Senior DIP Facility Documents, the extension of credit under the Senior DIP Facility and the authorization to use Cash Collateral, the Debtor Borrowers, the Senior DIP Lender has agreed that proceeds of DIP Collateral and all payments and collections received by the Debtor Borrowers shall be applied solely as set forth in the Senior DIP Facility Documents.

(vii) *Business Judgment and Good Faith Pursuant to Section 364(e).* The extension of credit under the DIP Facilities and the DIP Facility Documents is fair, reasonable, and the best available to the Debtor Borrowers under the circumstances, reflect the Debtor Borrowers' 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 Facilities and the provisions regarding the use of Cash Collateral were negotiated in good faith and at arm's length among the Debtor Borrowers and the DIP Lenders, 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 Facilities, 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 Facilities 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 Facilities 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 Lenders are therefore entitled to the protections and benefits of section 364(e) of the Bankruptcy Code and this Final A&R Order.

(viii) *Priming of Prepetition Liens.* The priming of the Prepetition Liens on the Prepetition Collateral by the DIP Liens will enable the Debtor Borrowers to obtain the DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors. The Prepetition First Lien Parties have acted in good faith in consenting to the (i) Debtor Borrowers' use of the Prepetition Collateral, including, without limitation, the Cash Collateral, pursuant to the terms of this Final A&R Order, (ii) priming of their Prepetition Liens by the DIP Liens on all Prepetition Collateral, and (iii) entry of this Final A&R Order and the granting of the relief set forth herein, and their reliance on the assurances referred to herein is in good faith.

(ix) *Priming of Junior DIP Liens.* The priming of the Junior DIP Liens on the Prepetition Collateral by the Senior DIP Liens will enable the Debtor Borrowers to obtain

the Senior DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors.

(x) *Adequate Protection.* The Prepetition First Lien Agent and Prepetition First Lien Parties are entitled to and shall receive, adequate protection in the form of (I) current cash reimbursement of actual and documented fees and expenses and other disbursements of the Prepetition First Lien Parties, limited to King & Spalding LLP, one firm to serve as local counsel to SEF OA LLC, Richards Kibbe & Orbe LLP and Ashby & Geddes, P.A. whether incurred before or after the Petition Date; and (II) subject to the priorities set forth in paragraphs 13 and 14 below, the Senior Adequate Protection Lien and the Senior Adequate Protection Superpriority Claim (each as defined below), (III) a funded escrow account (the “**Funded Escrow**”) in the sum of \$50,000 to secure any contingent indemnification obligation under the Prepetition First Lien Credit Documents, and (IV) the right to receive certain information and reports from the Debtor Borrowers with respect to the business, results of operation and financial condition of the Debtor Borrowers and their subsidiaries, as may be requested by the Prepetition First Lien Agent. The Prepetition Second Lien Parties are entitled to and shall receive adequate protection in the form of, and subject to the priorities set forth in paragraphs 13 and 14 below, the Junior Adequate Protection Lien (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 Debtor Borrowers’ 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.

(xi) *Sections 506(c) and 552(b).* In light of (i) the agreement of the DIP Lenders and the Prepetition First Lien Parties to subordinate their liens and superpriority claims, as applicable, to the Carve-Out, and the Prepetition First Lien 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, (ii) the Approved Budget covering all administrative costs projected by the Debtor Borrowers and their subsidiaries, the DIP Lenders and the Prepetition First Lien 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.

(xii) *Notice.* Notice of the Final Hearing and the emergency relief requested in the Motion has been provided by the Debtor Borrowers, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including: (i) the U.S. Trustee; (ii) the Securities and Exchange Commission; (iii) the Internal Revenue Service; (iv) the Committee; (v) counsel to the Junior DIP Lender and counsel to the Senior DIP Lender; (vi) the Debtors' prepetition secured lenders; (vii) financial institutions where the Debtors hold bank accounts; and (viii) those parties who have formally filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Under the circumstances, the notice given by the Debtor Borrowers of the Motion, the relief requested therein, complies with Bankruptcy Rules 4001(b) and (c) and

the Local Rules. 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 A&R Order.

2. Use of Prepetition Collateral Approved. Subject to the terms of the DIP Facility Documents, this Final A&R Order, and the Approved Budget, the Debtor Borrowers 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 final relief sought in the Motion and to the entry of this Final A&R Order to the extent not withdrawn or resolved are hereby overruled on the merits in their entirety. Subject to the terms of this Final A&R Order, the rights of all parties in interest to object to the final relief sought by the Motion are reserved in full.

DIP Facility Authorization

4. Authorization of the DIP Facility Documents. The Debtor Borrowers are hereby authorized to execute, issue, deliver, enter into, and adopt, as the case may be, the DIP Facility Agreements and the other DIP Facility Documents to be delivered pursuant hereto or thereto or in connection herewith or therewith. The Debtor Borrowers are hereby authorized to borrow money under the DIP Facility Documents, on a final basis, and request extensions of credit under the DIP Facilities in accordance with the terms of this Final A&R Order and the DIP Facility Documents.

5. Authorized Action. In furtherance of the foregoing and without further approval of this Court, the Debtor Borrowers are authorized to perform all acts, to make, execute and

deliver all instruments and documents that may be necessary or required for performance by the Debtor Borrowers under the DIP Facility Documents and the creation and perfection of the DIP Liens described in, provided for and perfected by this Final A&R Order and the DIP Facility Documents. Subject to paragraph 15, the Debtor Borrowers are hereby authorized to pay, in accordance with this Final A&R Order, 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 Lenders' attorneys, advisers, accountants and other consultants. All fees shall be fully earned upon entry of this Final A&R Order and payable in accordance with the DIP Facility Documents.

6. Validity of DIP Obligations. Upon entry of this Final A&R Order, the DIP Facility Documents shall represent valid and binding obligations of the Debtor Borrowers, enforceable against the Debtor Borrowers and their estates in accordance with their terms, and subject to the terms of this Final A&R Order. The DIP Facility Documents and this Final A&R Order constitute and evidence the validity and binding effect of the DIP Obligations of the Debtor Borrowers, which DIP Obligations shall be enforceable, jointly and severally, against the Debtor Borrowers, 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 Lenders under the DIP Facility Documents or this Final A&R 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 Debtor Borrowers to the DIP Lenders under the DIP Facility Documents, including without limitation all principal, interest, costs, fees, expenses and other amounts owed pursuant to the DIP Facility Documents.

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

8. Use of DIP Facilities Proceeds. From and after the Petition Date, the Debtor Borrowers are authorized to use extensions of credit under the DIP Facilities only for the purposes specifically set forth in this Final A&R Order, the DIP Facility Documents and in compliance with the Approved Budget. The Debtor Borrowers 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 to (a) exchange the revolving portion of Prepetition First Lien Loans for Junior Roll-Up Loans; and to exchange \$7 million of the Prepetition First Lien Loans held by the Senior DIP Lender (with such Prepetition First Lien Loans of DW to be assigned to SEF OA LLC (*i.e.*, the Senior DIP Lender) following the entry of this Final A&R Order and Buyer's payment of \$7,000,000 to acquire DW's Prepetition First Loans along with the rights under the Senior DIP Facility) (inclusive, as appropriate, of any Junior Roll-Up Loans held by the Senior DIP Lender) for Senior Roll-Up Loans; (b) to pay fees, costs and expenses of the DIP Lenders (*i.e.*, SEF OA

LLC and Citiking) incurred in connection with the transactions contemplated by the DIP Facility Agreements; (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 Debtor Borrowers and their subsidiaries 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 of the Junior Roll-Up Loans and the Senior Roll-Up Loans shall be subject to the Carve-Out and the reservation of rights of parties in interest in paragraph 38 of this Final A&R Order, but are hereby deemed to be indefeasible, final and not subject to any challenge.

9. DIP Superpriority Claims. 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 Debtor Borrowers, 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 Debtor Borrowers, 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), 507(b), 552(b), or 726 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 Debtor Borrowers and their estates and all proceeds thereof, subject only to liens secured

thereby and the Carve-Out. The DIP Superpriority Claims held by the Senior DIP Lender shall be senior and prior in all respects to the DIP Superpriority Claims held by the Junior DIP Lender.

DIP Liens and Collateral.

10. Effective immediately upon entry of this Final A&R 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 any DIP Lender of any DIP Collateral, the DIP Lenders are hereby granted, 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 which shall be deemed to be for the benefit of the DIP Lenders), documents (as defined in the UCC), 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 DIP Lender, including all property of every description, in the custody of or in transit to any DIP Lender 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) 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. The DIP Liens held by the Senior DIP Lender (the "**Senior DIP Liens**") shall be senior and prior in all respects to the DIP Liens held by the Junior DIP Lender (the "**Junior DIP Liens**").

11. Until the indefeasible and irrevocable repayment of the Prepetition First Lien Obligations (if applicable), the Prepetition First Liens shall be deemed continuing liens for the benefit of and deemed assigned to the DIP Lenders to secure the DIP Obligations (as to which the Senior DIP Lender shall have priority over the Junior DIP Lender). All of the following agreements and other items related to the Prepetition First Liens remain in full force and effect and shall inure to the benefit of the DIP Lenders and the Prepetition First Lien Parties (as to which the Senior DIP Lender shall have priority over the Junior DIP Lender and the Prepetition First Lien 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 First Lien Parties on any Debtor Borrower's assets (real or personal) in connection with the Prepetition First Lien Obligations. Each of the Security Documents under the Prepetition First Lien Documents shall secure the DIP Obligations *mutatis*

mutandis. Any liens, claims or interests subordinated to the Prepetition First Liens as of the Petition Date and the Carve-Out shall likewise be deemed subordinate to the DIP Liens and the Carve-Out. Any liens, claims or interests subordinated to the Junior DIP Liens and the Carve-Out shall likewise be deemed subordinate to the Senior DIP Liens and the Carve-Out.

12. DIP Lien Priority.

(a) *DIP Liens.* The Junior DIP Liens shall be junior only to the (i) the Senior DIP Liens, (ii) Permitted Prior Senior Prepetition Liens, (iii) any valid, perfected, unavoidable liens or security interests in existence as of the Petition Date, or that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b) and (iv) the Carve-Out, and shall otherwise be senior in priority and superior to the 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. The Senior DIP Liens shall be junior only to the Carve-Out, and shall otherwise be senior in priority and superior to all Permitted Prior Senior Prepetition Liens, liens or security interests in existence as of the Petition Date, or that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b), 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; provided always that the Junior DIP Liens shall be junior to the Senior DIP Liens.

(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 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, and/or upon the dismissal of any of the Cases or any Successor Case. 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 Debtor Borrowers' estates pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens; provided always that the Senior DIP Liens shall be senior to the Junior DIP Liens.

Adequate Protection

13. Adequate Protection Liens.

(a) *Prepetition First Lien 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 First Lien Parties in the Prepetition Collateral, including Cash Collateral, against any diminution in value resulting from the Debtor Borrowers' 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 Debtor Borrowers hereby grant to the Prepetition First Lien Agent, on behalf of itself and the Prepetition First Lien Lenders, 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 Debtor Borrowers of mortgages, security agreements, pledge agreements, financing statements, or other agreements) and shall be subject and subordinate only to the DIP Liens, the Permitted Prior Senior Prepetition Liens, and to any valid, perfected, unavoidable liens or security interests in existence as of the Petition Date, or that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b), and the Carve-Out and otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(b) *Prepetition Second Lien Parties - Junior 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 Second Lien Parties in the Prepetition Collateral owned by Eclipse Aerospace, Inc. against any Diminution in Value, Eclipse Aerospace, Inc. hereby grants to the Prepetition Second Lien Note Holders, to the extent applicable (*i.e.*, to the extent that the Prepetition Second Lien Parties have valid and perfected Prepetition Second Liens in the Prepetition Collateral owned by Eclipse Aerospace, Inc.), a valid and perfected replacement and additional security interest in, and lien on (the “**Junior Adequate Protection Lien**” and, together with the Senior Adequate Protection Lien, the “**Adequate Protection Liens**”) the DIP Collateral owned by Eclipse Aerospace, Inc. To the extent applicable, the Junior Adequate Protection Lien is and shall be valid, binding, enforceable and fully perfected *nunc pro tunc* to the Petition Date and shall (i) be subject and subordinate only to the DIP Liens, the Permitted Prior Senior Prepetition Liens, and to any valid, perfected, unavoidable liens or security interests in existence as of the Petition Date, or that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b)the Carve-Out, the Senior Adequate Protection Liens and the Prepetition First Liens; (ii) otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral; and (iii) to the extent there at any time remains outstanding and unpaid Prepetition First Lien Obligations, be subject in all respects to the Existing Intercreditor and Subordination Agreement, as amended, modified or waived (or deemed amended, modified or waived) hereby and by the DIP Facility Documents.

(c) *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.

14. Adequate Protection Superpriority Claim.

(a) *Superpriority Claim of Prepetition First Lien Agent.* As further adequate protection of the interests of the Prepetition First Lien Parties, the Prepetition First Lien Agent, on behalf of itself and the Prepetition First Lien Lenders, is hereby granted an allowed administrative claim against the Debtor Borrowers' 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 First Lien 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 Debtor Borrowers 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), 546(c), 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 Claims and (ii) the Carve-Out.

15. Costs, Fees, Expenses, and Indemnification.

(a) *DIP Lenders.* The Debtor Borrowers are authorized to pay any and all reasonable out-of-pocket expenses of the DIP Lenders (*i.e.*, SEF OA LLC and Citiking) in connection with the DIP Facilities, 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 creation, perfection or protection of the liens under the DIP Facility Documents (including all search, filing and recording fees); (iii) 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; (iv) the enforcement of the DIP Facility Documents; (v) any refinancing or restructuring of the DIP Facilities in the nature of a “work-out”; and (vi) any legal proceeding relating to or arising out of the DIP Facilities 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 Debtor Borrowers, the professionals for the DIP Lenders shall deliver a copy of their respective invoices to counsel for the Committee and the U.S. Trustee. The invoices for such fees and expenses shall not be required to comply with any U.S. Trustee guidelines related to the payment of fees and expenses of retained estate professionals, shall include sufficient information to determine the reasonableness of such fees and expenses, and shall not be subject to application or allowance by the Court. Any objections raised by the Debtor Borrowers, the U.S. Trustee, or the Committee with respect to such invoices within ten

(10) business 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 Debtor Borrowers. Such fees and expenses shall not be subject to any offset, defense, claim, counterclaim, or diminution of any type, kind or nature whatsoever. Notwithstanding anything in this Final A&R Order to the contrary, the Debtor Borrowers shall not be permitted to pay any of the expenses, costs, or fees of the Junior DIP Lender until such time as the Senior DIP Facility (including the Senior Roll-Up Loans) has been repaid in full.

(b) *Indemnification of DIP Lenders.* The DIP Lenders shall have no liability to any third party, and shall not be deemed to be in control of the operations of the Debtor Borrowers or the other Debtors, or to be acting as a “responsible person” or managing agent with respect to the operation or management of the Debtor Borrowers or the other Debtors. The Debtor Borrowers shall indemnify and hold harmless the DIP Lenders, 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 Agreements and Debtor Borrowers’ use of the financing provided thereunder. This indemnification shall survive and continue for the benefit of all such persons or entities.

(c) *Prepetition First Lien Parties.* As additional adequate protection of the Prepetition First Lien Parties’ security interests in the Prepetition Collateral, the Debtor Borrowers are authorized to provide adequate protection in the form of (i) current cash reimbursement of actual and documented fees and expenses and other disbursements of the Prepetition First Lien Parties, whether incurred before or after the Petition Date or set forth in the Approved Budget, (ii) the Funded Escrow account to be maintained by the Debtor Borrowers for the benefit of the Prepetition First Lien Lenders in the sum of \$50,000 to secure any contingent

indemnification obligation under the Prepetition First Lien Credit Documents, 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 First Lien Documents, the DIP Facility Agreements and this Final A&R Order. Payment of professional fees and expenses of the Prepetition First Lien Parties shall not be subject to allowance by the Court. Notwithstanding the foregoing, at the same time such invoices are delivered to the Debtor Borrowers, the professionals for the Prepetition First Lien Parties shall deliver a copy of their respective invoices to counsel for the Committee and the U.S. Trustee. The invoices for such fees and expenses shall not be required to comply with any U.S. Trustee guidelines related to the payment of fees and expenses of retained estate professionals, shall include sufficient information to determine the reasonableness of such fees and expenses, and shall not be subject to application or allowance by the Court. Any objections raised by the Debtor, the U.S. Trustee or the Committee with respect to such invoices within ten (10) business 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 Debtor Borrowers. Such fees and expenses shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever. Notwithstanding anything in this Final A&R Order to the contrary, the Debtor Borrowers shall not be permitted to pay any of the expenses, costs, or fees of the Junior DIP Lender until such time as the Senior DIP Facility (including the Senior Roll-Up Loans) has been repaid in full.

Provisions Common to DIP Financing and Use of Cash Collateral Authorizations

16. Carve-Out.

(a) *Carve-Out.* All claims and liens granted by this Final A&R Order are subject to the Carve-Out, to the extent provided herein. As used in this Final A&R Order and the

DIP Facility Documents, the term “**Carve-Out**” shall mean an amount equal to the sum of (i) all fees required to be paid to the clerk of the Court or any claims and noticing agent acting in such capacity and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code *plus* interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) fees and expenses of up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); and (iii) allowed and unpaid claims for unpaid fees, costs, and expenses (the “**Allowed Fees**”) incurred by persons or firms retained by the Debtor Borrowers or the Committee whose retention is approved by the Bankruptcy Court pursuant to section 327, 328, and 1103 of the Bankruptcy Code (collectively, the “**Professional Persons**”), subject to the terms of this Final A&R Order and any other final or other compensation order entered by the Bankruptcy Court that are incurred or earned (A) at any time before delivery by the DIP Lenders of a Carve-Out Trigger Notice (as defined below) (the “**Pre-Trigger Date Fees**”), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice, subject to any limits imposed by the Approved Budget, this Final A&R Order or otherwise on fees permitted to be incurred in connection with any permitted investigations of claims and defenses against any Prepetition Secured Parties; and (B) starting the first day after the delivery of written notice (which may be by electronic mail) (the “**Carve-Out Trigger Notice**”) of an Event of Default (such date on which the Event of Default occurs, the “**Trigger Date**”) and the continuation thereof to the Debtor Borrowers, the Debtor Borrowers’ counsel, the U.S. Trustee, and counsel for the Committee in an aggregate amount not to exceed \$750,000 (the “**Post-EoD Carve-Out Amount**”); *provided*, that nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in clauses (i), (ii), (iii)(A) or (iii)(B) above, on any grounds.

Notwithstanding the foregoing, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (a) the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the Prepetition First Lien Parties or the holders of the indebtedness under the Prepetition First Lien Credit Agreement (whether in such capacity or otherwise) or (ii) challenging the amount, validity, perfection, priority, or enforceability of or asserting any defense, counterclaim, or offset to, the obligations and the liens and security interests granted under the DIP Facility Documents or the indebtedness under the Prepetition First Lien Credit Agreement (whether in such capacity or otherwise), including , in each case, without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (b) attempts to modify any of the rights granted to the DIP Lenders, the Prepetition First Lien Lenders, or the Prepetition First Lien Agent; (c) attempts to prevent, hinder, or otherwise delay any of the DIP Lenders' or the Prepetition First Lien Lenders' assertion, enforcement or realization upon any Collateral in accordance with the DIP Loan Documents and this Final A&R Order; (d) paying any amount on account of any claims arising before the commencement of the Cases unless such payments are approved by an order of the Bankruptcy Court; or (e) after delivery of a Carve-Out Trigger Notice, any success, completion, back-end or similar fees.

(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 Junior DIP Facility as provided herein and in the Junior DIP Facility Documents, the Junior 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, and the

Senior DIP Lender shall be responsible for funding the portion of the Carve-Out provided for in the Senior DIP Facility Documents. Nothing in this Final A&R Order or otherwise shall be construed: (i) to obligate any DIP Lender, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtor Borrowers 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 Lenders, 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.* On the day on which a Carve-Out Trigger Notice is given to the Debtors, such Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an aggregate amount equal to (1) the Pre-Trigger Date Fees plus (2) the Post-EoD Carve-Out Amount, and the Debtors shall deposit and hold any such amounts in a segregated account in trust for the Professional Persons (the “**Carve-Out Escrow Account**”). 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 A&R 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 Lenders and the Prepetition Secured Parties to object to the allowance and payment of such fees and expenses. So long as no Termination Event (as defined below) has occurred and is continuing, the Debtor Borrowers 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 Professional Person (including ordinary course professionals).

17. Modification of DIP Facility Documents. The Debtor Borrowers and the DIP Lenders are hereby authorized, subject to the DIP Facility Agreements, 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, (i) no waiver, modification, or amendment of any of the provisions of the Senior DIP Facility Agreements shall be effective unless set forth in writing, signed on behalf of the Debtor Borrowers and the Senior DIP Lender and (ii) no waiver, modification, or amendment of any of the provisions of the Junior DIP Facility

Agreements shall be effective unless set forth in a writing, signed on behalf of the Debtor Borrowers and the Junior DIP Lender and consented to by the Senior DIP Lender.

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

19. 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 A&R Order, including, without limitation, to (a) permit the Debtor Borrowers to grant the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and the Adequate Protection Superpriority Claims, and (b) authorize the Debtor Borrowers to pay, and the DIP Lenders and the Prepetition First Lien Parties and to retain and apply, payments made in accordance with this Final A&R Order.

20. Right to Credit Bid. The Senior DIP Lender shall have the right to credit bid up to the full amount of the outstanding loans under the Senior DIP Facility including any accrued interest and expenses and the Senior Roll-Up Loans, in any sale of DIP Collateral, as provided for in section 363(k) of the Bankruptcy Code, whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

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

(a) This Final A&R 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 Lenders or the Prepetition Secured Parties to the priorities granted herein.

(b) Notwithstanding the foregoing, the DIP Lenders and the Prepetition First Lien 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 DIP Lenders or any Prepetition First Lien 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 A&R Order.

(c) The Debtor Borrowers are authorized to execute and deliver promptly upon demand to the DIP Lenders or the Prepetition Secured Parties all such financing statements,

mortgages, control agreements, notices and other documents as the DIP Lenders or the Prepetition Secured Parties may reasonably request. The Debtor Borrowers are authorized to, and shall, execute and deliver to the DIP Lenders and the Prepetition First Lien Parties such agreements, financing statements, mortgages, instruments and other documents as the Prepetition First Lien Parties may reasonably request to evidence, confirm, validate, or perfect the DIP Liens or the Adequate Protection Liens; and the failure by the Debtor Borrowers 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 DIP Lenders and the Prepetition Secured Parties, each in its discretion, may file a photocopy of this Final A&R 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 A&R Order, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

(e) Subject to 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 (i) the consent or approval of one or more landlords or other parties or (ii) 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. 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 DIP Lenders or the Prepetition Secured Parties in accordance with the terms of this Final A&R Order.

22. Other Automatic Perfection Matters. To the extent that any Prepetition Agent is the secured party under any account control agreements, listed as loss payee under any of the Debtor Borrowers' insurance policies, or is the secured party under any Prepetition Loan Document, the DIP Lenders are also deemed to be the secured party under such account control agreements, loss payee under the Debtor Borrowers' insurance policies, and the secured party under each such Prepetition Loan Document, 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 A&R Order and the DIP Facility Documents. The Prepetition First Lien Agent shall serve as agent for the DIP Lenders for purposes of perfecting the DIP Lenders' security interests in and liens on all Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

23. Proceeds of Subsequent Financing. If the Debtor Borrowers, 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 First Lien Obligations, including subsequent to the confirmation of any plan of reorganization or liquidation with respect to the Debtor Borrowers and the Debtor Borrowers' estates, then all cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Lenders to be applied in accordance with this Final A&R Order and the DIP Facility Documents (first to the Senior DIP Lender until all Senior DIP Obligations are paid in full, and then to the Junior DIP Lender).

24. 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 Lenders to extend credit under the DIP Facilities, the Debtor Borrowers 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 terms of the DIP Facility Documents, (ii) subject to the Cash Management Order, as may be modified, with the prior written consent of the Senior 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 Senior DIP Lender. Other than as expressly required pursuant to the DIP Facility Agreements, the Cash Management Order or this Final A&R Order, no modifications to the Debtor Borrowers' cash management system existing as of the Petition Date may be made without the prior approval of the Senior DIP Lender.

25. Application of Proceeds of Collateral Payments and Collections. After repayment in full in cash of all DIP Obligations (first to the Senior DIP Lender until all Senior DIP Obligations are paid in full, and then to the Junior DIP Lender) any remaining proceeds of the DIP Collateral shall be applied to the Debtor Borrowers' 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 A&R Order.

26. Termination Event. The occurrence of an Event of Default under the DIP Facility Agreements is referred to herein as a "**Termination Event.**"

27. Rights and Remedies Following Termination Event.

(a) *Termination.* Immediately upon the occurrence and during the continuation of a Termination Event, the Senior DIP Lender, with no further action of this Court, may notify the Debtor Borrowers in writing that a Termination Event has occurred and is continuing (such notice, a “**Termination Notice**” and the date of any such notice, 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 Debtor Borrowers, counsel to the Committee, the U.S. Trustee, and the notice parties for the Prepetition Second Lien Parties. 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 Senior DIP Lender under the Senior DIP Facility Agreement, the Senior 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 Senior 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 Debtor Borrowers, (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 Senior DIP Facility and the Senior DIP Facility Documents as to any future liability or obligation of the Senior DIP Lender 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 Senior 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 Debtor Borrowers 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.

28. Good Faith under Section 364 of the Bankruptcy Code; No Modification or Stay of this Final A&R Order. The Senior DIP Lender has acted in good faith in connection with this Final A&R Order and its reliance on this Final A&R Order is in good faith. Based on the findings set forth in this Final A&R Order and the record made during the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final A&R Order are hereafter modified, amended or vacated by a subsequent order of the Court, or any other court, the Senior DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code.

29. 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 the DIP Lenders. The DIP Lenders shall not be required to file proofs of claim or requests for approval of administrative expenses authorized by this Final A&R Order in any of the Cases or any Successor Case, and the provisions of this Final A&R Order relating to the amount of the DIP Obligations, the Prepetition First 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.

30. Rights of Access and Information. Without limiting the rights of access and information afforded the DIP Lenders under the DIP Facility Documents, the Debtor Borrowers shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Lenders and the Prepetition First Lien Parties, reasonable access to the Debtor Borrowers' premises, knowledgeable officers of the Debtor Borrowers, 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.

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

32. Prohibited Use of DIP Facilities, DIP Collateral, Cash Collateral, Carve-Out, Etc.

Without the prior written consent of the Senior DIP Lender, the DIP Facilities, the DIP Collateral, and the Cash Collateral may not be used:

- a. for the payment of interest and principal with respect to the Prepetition Second Lien Obligations or any other prepetition indebtedness of the Debtor Borrowers 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; (iii) prepetition sales, use and real property taxes; (iv) prepetition amounts due in respect of insurance financings, premiums and brokerage fees; (v) payment of fees and expenses (including fees and expenses of professionals) of the DIP Lenders; (vi) other “first day” interim and final orders permitting payment of prepetition claims; (vii) cure amounts reasonably acceptable to the DIP Lenders under leases and executory contracts assumed with approval of the Court; (viii) the Prepetition First Lien Loan Obligations solely to the extent of current cash interest and expenses; and (ix) other Prepetition Indebtedness to the extent authorized by the Bankruptcy Court and set forth in the Approved Budget;
- b. subject to this Final A&R 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 the DIP Lenders under the DIP Facility Agreements, the other DIP Facility Documents, this Final A&R Order including preventing, hindering or otherwise delaying the exercise of any rights, remedies, claims or defenses by the DIP Lenders under the DIP Facility Agreements, the other DIP Facility Documents, this Final A&R Order or (y) the rights, remedies, claims or defenses of the Prepetition First Lien Parties under the Prepetition Loan Documents, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtor Borrowers or the 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 First Lien Obligations, Prepetition First Liens (as set forth in the DIP Facility Agreements); (B) for monetary, injunctive or other affirmative relief against the DIP Lenders or the Prepetition First Lien Parties or their respective collateral; or (C) preventing, hindering or otherwise delaying the exercise by the DIP Lenders or the Prepetition First Lien Parties of any rights and remedies under this Final A&R Order, the DIP Facility Documents, the Prepetition Loan Documents or applicable law, or the enforcement or realization (whether by foreclosure, credit bid,

further order of the Court or otherwise) by the DIP Lenders 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 Senior 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 Debtor Borrowers (including so-called “Topping Fees,” “Exit Fees” and other similar amounts) without prior written consent by the Senior DIP Lender, unless otherwise set forth in accordance with the Approved Budget;
- f. to object to, contest, or interfere with, in any way, the Senior DIP Lender’s 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 A&R Order, or seek to prevent the Senior DIP Lender 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 First Lien Obligations, and/or the DIP Lenders’ commitments under the DIP Facility Documents remain outstanding, without the consent of the Senior 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 Senior DIP Lender;
- j. to object to or challenge in any way the claims, liens, or interests held by or on behalf of the DIP Lenders or the Prepetition First Lien Parties;
- k. to assert, commence, prosecute or support any claims or causes of action whatsoever, including, without limitation, any Avoidance Action, against the DIP Lenders or the Prepetition First Lien 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 First Lien Obligations, the Prepetition Liens, or any other rights or interests of the DIP Lenders or the Prepetition First Lien 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 Agreements.

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

34. Limitations on Charging Expenses. Upon entry of this Final A&R 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 Lenders or the DIP Collateral or the First Lien 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 the DIP Lenders and/or any Prepetition First Lien 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.

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

36. No Marshaling/Applications of Proceeds. Upon entry of this Final A&R Order, neither the DIP Lenders nor the Prepetition First Lien Parties shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral.

37. Discharge Waiver. The Debtor Borrowers 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 or the Senior DIP Lender agrees to differing treatment; *provided* that the Debtors' proposed plan of reorganization provides that, on the effective date of such plan, the Senior DIP Obligations shall be converted into equity in the Reorganized Debtor. Except as otherwise agreed to by the Senior DIP Lender, the Debtor Borrowers shall not propose or support any plan or sale of all or substantially all of the Debtor Borrowers' assets or entry of any confirmation order or sale order that is not conditioned upon the payment in full, in cash of all Senior DIP Obligations.

38. Rights Preserved. Other than as expressly set forth in this Final A&R Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Lenders and the Prepetition First Lien Parties are preserved. Nothing contained herein shall be deemed to be a finding by this Court or an acknowledgement by the Prepetition First Lien Parties that the adequate protection granted herein does in fact adequately protect the Prepetition First Lien Parties against any post-petition diminution in value of the Prepetition Collateral. Nothing in this order is intended to change or otherwise modify the prepetition priorities among the prepetition secured creditors of the Debtors, including any lien rights or recoupment rights of Henry Orlosky, individually and as Trustee of the Orlosky Family Trust, Dated 2/19/97, and Katheryn Orlosky, as Trustee of the Orlosky Family Trust, Dated 2/19/97 (collectively, the

“Orloskys”), if any, to the extent such liens or rights are valid, enforceable, nonavoidable and perfected.

39. No Waiver by Failure to Seek Relief. The failure or delay of the DIP Lenders or the Prepetition First Lien Parties to seek relief or otherwise exercise their respective rights and remedies under this Final A&R Order, the Prepetition Loan Documents, 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 Lenders or the Prepetition Secured Parties.

40. Binding Effect of Final A&R Order. Immediately upon entry by the Court (notwithstanding any applicable law or rule to the contrary), the terms and provisions of this Final A&R 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 Debtor Borrowers, the DIP Lenders, the Prepetition First Lien Parties, the Prepetition Second Lien Note Holders (to the extent applicable), all other creditors of the Debtor Borrowers, the 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.

41. No Modification of Final A&R Order. The Debtor Borrowers irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the Senior DIP Lender, (i) any modification, stay, vacatur or amendment to this Final A&R Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtor Borrowers (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; and (b) without the prior written consent of the Senior DIP Lender and the Prepetition First Lien Agent, (i) any order allowing use of Cash Collateral other than this Final A&R 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). The Debtor Borrowers irrevocably waive any right to seek any material amendment, modification or extension of this Final A&R Order without the prior written consent, as provided in the foregoing, of the Senior DIP Lender and/or Prepetition First Lien Agent, as applicable, and no such consent shall be implied by any other action, inaction or acquiescence of the Prepetition First Lien Parties or the Senior DIP Lender.

42. Final A&R Order Controls. This Final A&R 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 A&R 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 A&R Order, the provisions of this Final A&R Order shall govern and control.

43. Survival. The provisions of this Final A&R 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 A&R Order, including the claims, liens, security interests and other protections granted to the Prepetition First Lien Parties and the DIP Lenders pursuant to this Final A&R Order and/or the Prepetition Loan Documents (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 A&R Order until all DIP Obligations and all Prepetition First Lien Obligations have been paid in full.

44. Preservation of Rights Granted Under this Final A&R 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 A&R Order to the DIP Lenders 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 Debtor Borrowers' 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 First Lien Obligations shall have been indefeasibly paid in full, the Debtor Borrowers shall not seek, and it shall constitute an Event of Default under the DIP Facility Agreement if any of the Debtor Borrowers seek, or if there is entered (i) any stay, vacatur, rescission or modification of this Final A&R Order without the prior written consent of the Senior DIP Lender, and no such consent shall be implied by any other action, inaction or acquiescence by the Senior 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 Senior 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 Final A&R Order, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Final A&R Order until all DIP Obligations and all Prepetition First Lien 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 Final A&R 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.

45. Notwithstanding anything herein or in the DIP Facility Agreements, the Existing Final DIP Order, the other DIP Facility Documents, the DIP Motion, the Sale Motion or any other motion to the contrary, neither the entry of this Final A&R Order nor any of the relief granted hereunder, and nothing contained in any other order entered by the Court (or for the avoidance of doubt, any plan or disclosure statement (including as amended or supplemented after the date hereof) proposed or to be proposed by any party or subsequently approved or confirmed by the Court), is intended to, or shall, impair in any way any claim, right, or remedy of DWC Pine Investments I, Ltd., or any affiliate or assignee (including the Senior DIP Lender) thereof (collectively, “**DW**”) under any of the “Purchase and Sale Agreement,” the “Continuing Obligations Agreement,” the “Escrow Agreement,” or the “Intercreditor Agreement” (as any of

the foregoing may have been or may be amended, modified, or clarified by the parties thereto) between DW and Citiking International US LLC (with its various affiliates, “**Citiking**”) or any other claim, right, or remedy that DW may have with respect to Citiking, or any related or affiliated parties - expressly including, for the avoidance of doubt, the right to declare, at any time, (i) the Junior DIP Liens to be subordinate to the Prepetition First Liens and (ii) (x) any obligation of any Debtor with respect to the Junior DIP Facility and (y) any other obligation of any Debtor with respect to any amount advanced to the Debtors by or on behalf of Citiking (or any related or affiliated party) prior to the date hereof to be subordinate in right of repayment and otherwise to the Debtors’ obligations to DW under the Prepetition First Lien Loan Documents, in either case to the extent such obligations (collectively) exceed the amount of the “Loans,” as described in Section 6(c) of the Continuing Obligations Agreement, and upon any such declaration, such Junior DIP Liens, such obligations with respect to the Junior DIP Facility, and/or such other obligations, as the case may be, shall immediately be so subordinated - all of which are hereby expressly reserved. Furthermore, the entry of this Order is without prejudice to (x) DW’s right to challenge any other relief sought by the Debtors, Citiking, or any related or affiliated parties from the Court at any time in the future and (y) DW’s ability to assert that the Court is the improper forum for (or without jurisdiction or the requisite adjudicatory authority to decide) disputes between DW and Citiking (or any related or affiliated party) or the “Purchase and Sale Agreement,” the “Continuing Obligations Agreement,” the “Escrow Agreement,” or the “Intercreditor Agreement” (as any of the foregoing may have been or may be amended, modified, or clarified by the parties thereto) between DW and Citiking. The Prepetition First Lien Loans of DW are to be assigned to SEF OA LLC (*i.e.*, the Senior DIP Lender) following the entry of this Final A&R Order and Buyer’s payment of \$7,000,000 to acquire DW’s

Prepetition First Loans along with the rights under the Senior DIP Facility), such that DW shall not at any time be obligated to itself fund any portion of the loans under the Senior DIP Facility, which shall be funded solely by SEF OA LLC as the Senior DIP Lender.

46. Existing Final DIP Order. Any provisions of the Existing Final DIP Order that are inconsistent with the provisions of this Final A&R Order are hereby expressly reversed.

47. Standstill by Junior DIP Lender. All rights and remedies of the Junior DIP Lender under the Junior DIP Facility Documentation, the Prepetition First Lien Credit Agreement, and/or this Final A&R Order or to the Junior DIP Obligations are hereby made expressly junior to, subject to, and subordinate in all respects to those of the Senior DIP Lender. Without the express written consent of the Senior DIP Lender, the Junior DIP Lender is hereby barred, restricted, and prohibited in this Court or in any other court or proceeding from exercising or enforcing any right or remedy, seeking to realize upon any of the DIP Collateral, or exercising any right of consent, veto, approval, or otherwise under the Prepetition First Lien Credit Agreement or the Junior DIP Facility Documentation or any agreement, document, or instrument relating thereto, including any right to any senior, priority, *pari passu* or pro rata treatment of its claims thereunder or under the Junior DIP Facility with those of the Senior DIP Lender thereunder or under the Senior DIP Facility.

48. Retention of Jurisdiction. The Court shall retain jurisdiction to enforce this Final A&R Order according to its terms to the fullest extent permitted by applicable law.

EXHIBIT 1

Senior DIP Facility Agreement

SENIOR DIP LOAN TERM SHEET

August 28, 2020

**Summary of Key Terms and Conditions for
First Priority Super-Senior Secured DIP Multi-Draw Term Loan Facility**

This term sheet (this “Term Sheet”) shall not become binding unless and until (1) the Term Sheet is signed by the Senior DIP Lender and the Debtors, and (2) the Senior DIP Order approving the Senior DIP Facility contemplated by this Term Sheet has been entered by the U.S. Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) with the benefits of Section 364(e) of the Bankruptcy Code. Prior to satisfaction of the two conditions set forth in the immediately preceding sentence, this Term Sheet shall be non-binding, for discussion purposes only and shall not be construed as a commitment of any kind to provide the Senior DIP Facility. This Term Sheet shall be confidential until the Senior DIP Lender shall provide consent for it to be disclosed; provided that this Term Sheet may be disclosed in connection with filing a motion to approve the Senior DIP Order.

This Term Sheet sets forth certain of the key terms and conditions by which SEF OA LLC, as the assignee of DWC Pine Investments I, Ltd. (the “Senior DIP Lender”), is willing to provide Eclipse Aerospace, Inc. and Brigadoon Aircraft Maintenance, LLC (collectively, the “Company”), ONE Aviation Corporation (“Parent”) and Company’s and Parent’s affiliated debtors (collectively, with the Company and Parent, the “Debtors”) with a \$9,750,000 super-senior secured DIP multi-draw term loan facility (the “Senior DIP Facility”) comprised of (a) Senior New Money Loans (as defined below) in an aggregate principal amount up to \$2,750,000 (the maximum amount thereof, the “Commitment”) and (b) a roll-up of pre-petition loans in the aggregate principal amount of \$7,000,000 (including, without limitation, a portion of pre-petition loans subject to roll-up under the existing DIP order), in connection with the Debtors’ chapter 11 cases (the “Chapter 11 Cases”) to facilitate a sale of the Debtors’ assets pursuant to Section 363 of the Bankruptcy Code. The term “Approved Form”, as used herein, shall mean in form and substance that the Senior DIP Lender has confirmed in writing (including by email) is satisfactory in its sole and absolute discretion (it being understood that the term “Senior DIP Lender” shall mean both SEF OA LLC and DWC Pine Investments I, Ltd. until such time that the Senior DIP Facility has been assigned to SEF OA LLC), which assignment shall occur following the entry of the Senior DIP Order and the payment of \$7 million from SEF OA LLC to DWC Pine Investments I, Ltd. (along with an assignment of the rights under the Senior DIP Facility) and prior to the funding of the Senior New Money Loans, which will be funded by SEF OA LLC and not by DWC Pine Investments I, Ltd.

Unless otherwise stated herein, each material term set forth herein shall be included in a final order in the form set forth in **Annex 2** hereof or otherwise in Approved Form (the “Senior DIP Order”), each authorizing the extension of the Senior DIP Facility contemplated hereby.

1. Senior DIP Loans	Subject to closing conditions and reasonable documentation to be agreed, including, without limitation, the Senior DIP Order (collectively, the “ <u>Senior DIP Documentation</u> ”), the Senior DIP Lender shall be the sole lender in connection with the Senior DIP Facility. The proceeds of the loans made under the Senior DIP Facility (collectively, the “ <u>Senior DIP Loans</u> ”) shall be used by the Company, after entry of the Senior DIP Order:
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	<p>(i) in an amount up to \$2,750,000.00, to be used in accordance with the budget attached as <u>Annex 3</u> hereto (the “<u>Budget</u>”) for certain limited purposes in connection with the sale of the Debtors’ assets (the “<u>Senior New Money Loans</u>”); and</p> <p>(ii) in an amount up to \$7,000,000.00, to repay, in the form of a “roll-up”, prepetition loan amounts (and interest thereon) funded by DWC Pine Investments I, Ltd. and assigned to SEF OA LLC, in the aggregate principal amount of up to \$7,000,000.00 (collectively, the “<u>Senior Roll-up Loans</u>”).</p> <p>The Senior New Money Loans will be made in multiple draws from time to time in amounts of at least \$250,000 (or if higher, in increments of \$50,000, or if less than \$250,000, the remaining undrawn portion thereof) (or in such other amounts acceptable to the Senior DIP Lender in its sole and absolute discretion), subject to (x) receipt of two (2) business days’ prior written notice of a borrowing request, and (y) the absence of any Event of Default (as defined below) or any event, circumstance or condition, that with the passage of time, would become an Event of Default, and (z) satisfaction of the Conditions Precedent (as defined below) (in each case except to the extent the Senior DIP Lender otherwise agrees in its sole and absolute discretion); <u>provided, however</u>, none of the limitations in this paragraph shall apply to the Senior Roll-Up Loans.</p> <p>As used herein, the term “<u>Senior DIP Obligations</u>” shall mean all principal, interest, fees, costs, expenses, charges and other amounts owing to the Senior DIP Lender in respect of the Senior DIP Facility.</p>
2. Interest Rate	<p>Interest on the Senior DIP Obligations shall be payable monthly in arrears, on the last business day of each month, either in cash or by automatically capitalizing any interest not paid in cash by adding it to the outstanding principal amount of the Senior DIP Obligations monthly at 11:59 p.m. ET on the last calendar day of each month.</p> <p>The outstanding principal amount of all Senior DIP Obligations shall bear interest at the sum of 5% per annum.</p> <p>After the occurrence and during the continuance of an Event of Default (as defined below), all outstanding Senior DIP Obligations shall bear an additional 2.00% per annum of interest, which additional interest will be payable on demand.</p> <p>Calculation of interest shall be on the basis of the actual days elapsed in a year of 360 days.</p>
3. Fees	<p>The term “<u>Fees</u>” means, collectively:</p>

	<p>(a) A Closing Fee equal to 0.25% of the total commitments in respect of Senior New Money Loans under the Senior DIP Facility, payable at maturity of the Senior DIP Facility.</p> <p>(b) An Exit Fee equal to 0.25% of the total commitments in respect of Senior New Money Loans under the DIP Facility, payable at maturity of the Senior DIP Facility.</p> <p>All Fees will be non-refundable and, if calculated on a per annum basis, shall use a 360-day year and actual days elapsed.</p>
4. Mandatory Prepayments	<p>The following mandatory prepayments of the Senior DIP Facility are required:</p> <p>(a) <u>Asset Sales</u>: Immediately following the receipt by any Debtor, prepayments in an amount equal to 100% of the proceeds (net of reasonable transaction-related expenses determined acceptable by the Senior DIP Lender, amounts then incurred in respect of the Carve-Out (solely to the extent that a Carve-Out Trigger Notice has then been delivered in accordance with the Senior DIP Order) (as each term is defined in the existing DIP order)) of the sale or other disposition of any property or assets of any Debtor outside the ordinary course of business, including, without limitation, pursuant to any sale pursuant to the sale process established in connection with the Bid Procedures Motion (as defined below).</p> <p>(b) <u>Insurance Proceeds</u>: Immediately following the receipt by any Debtor, prepayments in an amount equal to 100% of the insurance and condemnation proceeds (net of reasonable transaction-related expenses determined acceptable by Senior DIP Lender, amounts then incurred in respect of the Carve-Out (solely to the extent that a Carve-Out Trigger Notice has then been delivered in accordance with the Senior DIP Order)) received on account of any loss of or damage to any property or assets of any Debtor.</p>
5. Expense Reimbursement	<p>All fees and reasonable out-of-pocket expenses of SEF OA LLC (including, without limitation, the reasonable fees and expenses of any legal counsel, consultants, accounting firms, auditors, financial advisors or other advisors and professionals retained by the Senior DIP Lender from time to time) incurred in connection with (a) the Debtors' Chapter 11 Cases, (b) the diligencing, negotiation, documentation, consummation, administration or any other aspect of the Senior DIP Facility and the Senior DIP Documentation, (c) the diligencing, negotiation, documentation, consummation, administration or any other aspect of the sale process in the Chapter 11 Cases or (d) the enforcement of rights and remedies under the Senior DIP Facility, are to be reimbursed on a current basis by the Debtors, first from the proceeds of Senior DIP Loans and thereafter from the Debtors' other</p>

	assets, and shall in any event constitute part of the Senior DIP Obligations; <u>provided, however</u> , that any such expenses in excess of \$250,000 shall not be required to be paid in cash prior to the Maturity Date, but shall instead accrue to the balance of the Senior DIP Facility. For avoidance of doubt, all such fees and expenses described in the immediately preceding sentence shall constitute Senior DIP Obligations.
6. Credit Bid	The Senior DIP Lender may, at its sole and absolute discretion, credit bid all or any portion of the Senior DIP Obligations as part of any bid submitted in a sale of any portion or all the Debtors' assets pursuant to Section 363(k) of the Bankruptcy Code or included as part of any reorganization plan subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code.
7. Maturity Date	<p>The term "Maturity Date" means the earliest of (a) November 1, 2020 (or such later date to which Senior DIP Lender consents in writing in its sole and absolute discretion) and (b) acceleration of the Senior DIP Loans upon or following the occurrence of an Event of Default.</p> <p>All Senior DIP Obligations shall be payable in cash on the Maturity Date subject to the Senior DIP Lender (or its assignees) agreeing, in its sole and absolute discretion, either (i) to credit bid the Senior DIP Obligations in connection with acquiring the property, assets and/or stock of the Debtors, or (ii) to allow the Senior DIP Obligations to be refinanced through the issuance of debt securities issued by or loans made to an entity which is the successful bidder for any of the Debtors' assets and/or stock.</p>
8. Guaranty	<p>The term "<u>Guaranty</u>" or "<u>Guaranty Requirements</u>" shall mean, collectively, the following provisions:</p> <p>Each of the Debtors, jointly and severally with the Company and each other Debtor, hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all existing and future indebtedness and liabilities of every kind, nature and character, direct or indirect, absolute or contingent, liquidated or unliquidated, voluntary or involuntary and whether for principal, interest, premiums, fees indemnities, damages, costs, expenses or otherwise, of the Debtors to the Senior DIP Lender arising under the Senior DIP Facility (including all renewals, extensions, amendments, refinancings and other modifications thereof and all out-of-pocket costs, reasonable attorneys' fees and expenses incurred by the Senior DIP Lender in connection with the collection or enforcement thereof), and whether recovery upon such indebtedness and liabilities under the Senior DIP Facility may be or hereafter become unenforceable or shall be an allowed or disallowed claim under any proceeding or case commenced by or against the</p>

	<p>Company or any other Debtor under the Bankruptcy Code, any successor statute or any other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally (collectively, “<u>Debtor Relief Laws</u>”), and including interest that accrues after the commencement by or against the Debtors of any proceeding under any Debtor Relief Laws (collectively, the “<u>Guaranteed Obligations</u>”). This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any instrument or agreement evidencing any Guaranteed Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Guaranteed Obligations which might otherwise constitute a defense to the obligations of the Company or the other Debtors under this Guaranty, and the Company and each other Debtor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing (other than the defense of final payment in full in cash and performance in full of the Guaranteed Obligations, except for contingent indemnification obligations for which no claim has been asserted).</p> <p>To the extent permitted by applicable law, the Company and each Debtor consents and agrees that the Senior DIP Lender may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Guaranteed Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Guaranteed Obligations; (c) apply such security and direct the order or manner of sale thereof as the Senior DIP Lender in its sole and absolute discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Guaranteed Obligations. Without limiting the generality of the foregoing, the Company and each Debtor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of the Company and each Debtor under this Guaranty or which, but for this provision, might operate as a discharge of the Company or any other Debtor.</p> <p>The Company and each other Debtor waives to the extent permitted by applicable law (a) any defense arising by reason of any disability or other defense of the Company or any other guarantor (other than the defense of final payment in full in cash and performance in full of the Guaranteed Obligations, except for contingent indemnification obligations for which no claim has been asserted), or the cessation from</p>
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	<p>any cause whatsoever (including any act or omission of the Senior DIP Lender) of the liability of the Company or any other guarantor; (b) any defense based on any claim that the obligations of any Debtor exceed or are more burdensome than those of another Debtor; (c) the benefit of any statute of limitations affecting the Company's and the other Debtors' liability hereunder; (d) any right to require the Senior DIP Lender to proceed against the Company or any other guarantor, proceed against or exhaust any security for the Guaranteed Obligations, or pursue any other remedy in the Senior DIP Lender's power whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by the Senior DIP Lender; (f) any rights and defenses that are or may become available to the Company or any other Debtor by reason of Sections 2787 to 2855, inclusive, 2899 and 3433 of the California Civil Code; and (g) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties. The Company and each other Debtor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Guaranteed Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Guaranteed Obligations.</p> <p>The obligations of the Company and the other Debtors hereunder are those of primary obligor, and not merely as surety, and are independent of the Guaranteed Obligations and the obligations of any other guarantor, and a separate action may be brought against any Debtor to enforce this Guaranty whether or not any other Debtor or any other person or entity is joined as a party.</p> <p>Neither the Company nor any other Debtor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been asserted) have been paid and performed in full and any commitments of the Senior DIP Lender or facilities provided by the Senior DIP Lender with respect to the Guaranteed Obligations are terminated. If any amounts are paid to the Company or any other Debtor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Senior DIP Lender and shall forthwith be paid to the Senior DIP Lender to reduce the amount of the Guaranteed Obligations, whether matured or unmatured.</p> <p>This Guaranty is a continuing and irrevocable guaranty of all Guaranteed Obligations now or hereafter existing and shall remain in</p>
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	<p>full force and effect until all Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been asserted) are paid in full in cash and any commitments of the Senior DIP Lender or facilities provided by the Senior DIP Lender with respect to the Guaranteed Obligations are terminated. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Company or any other Debtor is made, or the Senior DIP Lender exercises its right of setoff, in respect of the Guaranteed Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Senior DIP Lender in its sole and absolute discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Senior DIP Lender is in possession of or has released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of the Company and each Debtor under this paragraph shall survive termination of this Guaranty.</p> <p>The Company and each of the Debtors hereby subordinates the payment of all obligations and indebtedness of the other Debtors owing to it, whether now existing or hereafter arising, including but not limited to any obligation of the Company or any other Debtor as subrogee of the Senior DIP Lender or resulting from the Company's or any other Debtor's performance under this Guaranty, to the payment in full in cash of all Guaranteed Obligations (other than contingent indemnification obligations for which no claim has been asserted). If the Senior DIP Lender so requests, any such obligation or indebtedness of the Company or any other Debtor to the Company or any other Debtor shall be enforced and performance received by the holder thereof as trustee for the Senior DIP Lender and the proceeds thereof shall be paid over to the Senior DIP Lender on account of the Guaranteed Obligations, but without reducing or affecting in any manner the liability of the Company or any other Debtor under this Guaranty.</p>
9. Collateral	<p>All Senior DIP Loans and all other Senior DIP Obligations owing by the Company and the other Debtors to the Senior DIP Lender, shall, at all times:</p> <p><u>Super-priority</u>: pursuant to section 364(c)(1) of the Bankruptcy Code, constitute allowed super-priority administrative expense claims in each of the Chapter 11 Cases, having priority over all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all expenses and claims of the Debtors, whether heretofore or hereafter incurred, including, but not limited to, the kind specified in, or ordered pursuant to, sections 105, 326, 328,</p>

	<p>330, 331, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, 1114 and any other provision of the Bankruptcy Code or otherwise, subject only to the Carve-Out;</p> <p><u>Unencumbered property</u>: pursuant to section 364(c)(2) of the Bankruptcy Code, be secured by valid, perfected, first-priority security interests in and liens on, except as excluded by the Final Order, all property and assets of the Debtors, and their respective estates, of every kind or type whatsoever, tangible, intangible, real, personal or mixed, whether now owned or hereafter acquired or arising, wherever located, including, without limitation, all accounts, accounts receivable, leases, cash collateral, cash and cash equivalents, chattel paper, commercial tort claims, contracts, contract rights, copyrights and copyright applications, deposit accounts, documents, documents of title, electronic chattel paper, equipment, fixtures, general intangibles, goods, insurance contracts, insurance contracts and insurance proceeds, instruments, intellectual property, intellectual property licenses, intercompany loans, inventory, investment property, licenses, leases, letters of credit, letter-of-credit rights, machinery, money, payment intangibles, patents and patent applications, real property, securities, tangible chattel paper, tax and other refunds, trade names, trademarks and trademark applications, and vehicles, and all proceeds and supporting obligations thereof or relating thereto; all property of the estate of the Debtors within the meaning of section 541 of the Bankruptcy Code; subject to entry of the Final Order, the proceeds of the Debtors' claims and causes of action 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; and all proceeds, rents and products of the foregoing (collectively, the "<u>Property</u>"), subject only to the Carve-Out; and</p> <p><u>Priming liens</u>: pursuant to Section 364(d)(1) of the Bankruptcy Code, shall be (i) senior to the obligations and liabilities of any Debtors to any party in interest (other than the Permitted Prior Senior Liens or the Carve-Out (as each such term is defined in the Senior DIP Order)), whether incurred prior to, on, or after the Petition Date, and (ii) secured by valid first-priority senior perfected security interests in and liens on all Property, senior to the security interests and liens of any other party in interest (but shall be subject to the Permitted Prior Senior Liens or the Carve-Out (as each such term is defined in the Senior DIP Order)).</p>
<p>10. Conditions Precedent to Senior DIP Lender's obligations to make Senior DIP Loans</p>	<p>The Senior DIP Lender shall have no obligation to make any Senior DIP Loan unless and until the following conditions are deemed to have been satisfied in full by Senior DIP Lender in its sole and absolute discretion (collectively, the "<u>Conditions Precedent</u>"): </p> <p>a) the Senior DIP Order shall have been entered by the Bankruptcy Court and shall be in full force and effect and shall not have been stayed, vacated, reversed, amended or otherwise</p>

	<p>modified without the prior written consent (including by email) of the Senior DIP Lender in its sole and absolute discretion;</p> <p>b) There shall have been filed a motion for approval of the bid procedures (including any bid protections) related thereto in Approved Form (the “<u>Bid Procedures Motion</u>”), and a bid procedures order in Approved Form (the “<u>Bid Procedures Order</u>”) shall have been entered by the Bankruptcy Court and shall be in full force and effect and shall not have been stayed, vacated, reversed, amended or otherwise modified without the prior written consent (including by email) of the Senior DIP Lender in its sole and absolute discretion; and</p> <p>c) No Event of Default has occurred and is continuing or would be reasonably expected to result after giving effect to any requested Senior DIP Loan.</p> <p>In addition, in respect of any Senior DIP Loan funded after the initial funding date, the Company and each other Debtor shall be in compliance in all material respects with all the terms and provisions set forth herein and in the other Senior DIP Documentation, and, at the time of and immediately after giving effect to such Senior DIP Loan and the application of the proceeds thereof, no Event of Default shall have occurred and be continuing on such date or would be reasonably expected to result after giving effect to any requested Senior DIP Loan.</p> <p>The Senior DIP Lender may waive any of the conditions precedent at any time or from time to time.</p>
<p>11. Events of Default</p>	<p>In addition to customary events of default for post-petition loans, the occurrence of any of the following events, unless waived in writing (including by email) by the Senior DIP Lender shall constitute an event of default (each an “<u>Event of Default</u>”) under the Senior DIP Documentation and with respect to use of Cash Collateral:</p> <p>(a) filing of any motion by any Debtor seeking to obtain credit or incur indebtedness, or the obtaining of credit and incurrence of indebtedness, by any Debtor that is: (i) secured by a security interest, mortgage or other lien on all or any portion of the Collateral which is equal or senior to any security interest, mortgage, or other lien in favor of the Senior DIP Lender described in this Term Sheet, or (ii) entitled to administrative priority status which is equal or senior to claims of the Senior DIP Lender (other than the Carve-Out) described in this Term Sheet;</p> <p>(b) institution of any judicial proceeding by any Debtor seeking to challenge the validity of any portion of the Senior DIP Documentation, the Senior DIP Obligations, or the applicability or enforceability of same or which seeks to void, avoid, limit, subordinate or otherwise adversely affect any</p>

	<p>security interest created by or in relation to the Senior DIP Documentation;</p> <p>(c) the entry of an order (i) amending, supplementing, staying, vacating or otherwise modifying the Senior DIP Order, or (ii) converting or dismissing the Debtors' Chapter 11 Cases; in each case, without the prior written consent (including by email) of the Senior DIP Lender in its sole and absolute discretion, which consent shall not be implied by any other action, inaction or acquiescence;</p> <p>(d) the entry of an order dismissing any Debtor's Chapter 11 Case or converting any such case to a chapter 7 case;</p> <p>(e) any breach by any Debtor of any provision of the Senior DIP Order, after expiration of any applicable cure period;</p> <p>(f) any disruption of the business operations of any Debtor that has a material adverse effect after the date hereof other than as a result of the COVID-19 pandemic;</p> <p>(g) the appointment of an interim or permanent trustee in any Debtor's Chapter 11 Case or the appointment of a receiver or an examiner in such Chapter 11 Case with expanded powers to operate or manage the financial affairs, the business, or reorganization of any Debtor;</p> <p>(h) the payment of, or application for authority to pay, any pre-petition claim without the Senior DIP Lender's prior written consent (including by email) or unless otherwise permitted under the Budget or the first day orders;</p> <p>(i) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code or otherwise against the Senior DIP Lender, its claims or its Collateral (other than with respect to the payment of the Carve-Out);</p> <p>(j) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any creditor to foreclose upon or enforce a lien or other interest in any Collateral with an aggregate value in excess of \$200,000;</p> <p>(k) (i) the entry of an order amending, supplementing, staying, vacating or otherwise modifying the Bid Procedures Order (as defined herein) or any order approving a sale in connection therewith, in any material respect, or any material violation by the Debtors of any term or condition set forth in the Bid Procedures Order (after giving effect to any applicable cure period) in each case without the prior written consent (including by email) of the Senior DIP Lender or the filing by any Debtor or any motion or application seeking the entry of any such order without the prior written consent (including by email) of the Senior DIP Lender, or (ii) the termination of any definitive asset purchase agreement approved by the Bankruptcy Court to remain in full force and effect at all times in all respects until the closing thereof (without any</p>
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	<p>amendments or other modifications thereto as to which the Senior DIP Lender has not given its prior written consent (including by email));</p> <p>(l) failure of the Debtors, to timely comply with any Senior DIP Milestones (as defined below) or the failure of the Debtors to incorporate the Senior DIP Milestones into the Bid Procedures Motion (as defined below);</p> <p>(m) In the event the Senior DIP Lender elects by written notice to the Debtors to require execution of a formal promissory note or Senior DIP Credit Agreement, and the Debtors fail to enter into the Senior DIP Credit Agreement reasonably appropriate for the circumstances within ten (10) business days of receiving a substantially final draft of the proposed promissory note or Senior DIP Credit Agreement from the Senior DIP Lender;</p> <p>(n) Any Debtor proposes or supports, directly or indirectly, any plan of reorganization or sale of all or substantially all of such Debtors' assets or entry of any confirmation order or sale order that is not conditioned upon the indefeasible payment in full in cash, upon the consummation of such plan of reorganization or such sale, of all Senior DIP Obligations;</p> <p>(o) the granting (or any Debtor seeking entry) of any order that provides any bid protections to any party, including without limitation, any break-up fee or any expense reimbursement, without the written consent of Senior DIP Lender; or</p> <p>(p) the closing of any sale or sales under the Bid Procedures Order without concurrently paying, in full and in cash, all Senior DIP Obligations.</p>
12. Remedies Upon Occurrence of an Event of Default	<p>Immediately upon the occurrence and during the continuance of any Event of Default (following the expiration of any applicable grace period), Senior DIP Lender may, subject to the terms of the Senior DIP Order and upon written notice to counsel for the Company, the Office of the United States Trustee and counsel to the appointed Official Committee of Unsecured Creditors (subject to the provisions of the immediately following paragraph with respect to any enforcement action by the Senior DIP Lender against any Collateral): (i) (a) declare all or any portion of the Senior DIP Obligations to be immediately due and payable; (b) declare the termination, reduction or restriction of any further commitment to extend credit to the Debtors, to the extent any such commitment remains; (c) terminate the Senior DIP Facility and the Senior DIP Loan Documents as to any future liability or obligation of the Senior DIP Lender, but without affecting any of the Senior DIP Obligations, the Senior DIP Liens (as defined in the Senior DIP Order), Senior DIP Super-Priority Claims (as defined in the Senior DIP Order) or the other Senior DIP Protections (as defined in the Senior DIP Order); (ii) declare a termination, reduction, or restriction on the ability of the Debtors to use any Cash Collateral; and/or (iii) subject to the next paragraph, exercise all default-related rights and remedies, without further order of or application or motion to the Bankruptcy</p>

	<p>Court, and without restriction or restraint by any stay under Sections 362 or 105 of the Bankruptcy Code or otherwise.</p> <p>In addition, upon the occurrence of any Event of Default (following the expiration of any applicable grace period), and subject to the terms of the Senior DIP Order and following the giving of five (5) business days' prior written notice to counsel for the Company, the Office of the United States Trustee and counsel to the appointed Official Committee of Unsecured Creditors, the Senior DIP Lender shall have relief from the automatic stay to foreclose on all or any portion of the Collateral, collect accounts receivable and apply the proceeds thereof to the Senior DIP Obligations (subject to payment in full in cash of the Carve-Out), occupy the Debtors' premises to sell or otherwise dispose of the Collateral or otherwise exercise remedies against the Collateral permitted by applicable non-bankruptcy law. During such five business day notice period, the Debtors, the Office of the United States Trustee and the Official Committee of Unsecured Creditors shall be entitled to any emergency hearing with the Bankruptcy Court for the sole purpose of contesting whether an Event of Default has occurred and is continuing. Unless during such period the Bankruptcy Court determines that an Event of Default has not occurred or is not continuing, then (i) the automatic stay, as to the Senior DIP Lender, shall be automatically terminated at the end of such notice period, without further notice, hearing or order, (ii) neither Section 105 nor any other provision of the Bankruptcy Code shall be utilized to preclude or restrict the Senior DIP Lender from exercising its default-related rights and remedies, and (iii) the Debtor shall cooperate with the Senior DIP Lender to effect an orderly liquidation of its Collateral on terms and conditions acceptable to the Senior DIP Lender in its sole and absolute discretion.</p> <p>Without limiting the foregoing, upon the request of the Senior DIP Lender following the occurrence and during the continuance of any Events of Default, the Debtors shall use commercially reasonable efforts to sell all or such portion of the Collateral as the Senior DIP Lender shall specify and on such terms and conditions and pursuant to such bidding procedures as are acceptable to the Senior DIP Lender in its sole and absolute discretion, and remit the proceeds therefrom to the Senior DIP Lender for application to the Senior DIP Obligations (subject to payment in full in cash of the Carve-Out), and in connection with the foregoing, the Debtors shall file and use commercially reasonable efforts to pursue one or more motions under Section 363 of the Bankruptcy Code, in form and substance satisfactory to the Senior DIP Lender, for the entry of order(s) of the Bankruptcy Court (in form and substance satisfactory to the Senior DIP Lender) approving bidding procedures (acceptable to the Senior DIP Lender in its sole and absolute discretion) governing each such sale of Collateral and</p>
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	approving each such sale of Collateral that has been approved by the Senior DIP Lender in its sole and absolute discretion.
13. Indemnification	<p>The Debtors shall jointly and severally indemnify and hold each of the Senior DIP Lender, its predecessors and successors and each of their respective shareholders, directors, agents, members, partners, advisors, officers, subsidiaries and affiliates (each, an “<u>Indemnified Person</u>”) harmless from and against any and all damages, losses, settlement payments, obligations, liabilities, claims, actions or causes of action, and reasonable costs and expenses incurred, suffered, sustained or required to be paid by an Indemnified Person by reason of or resulting from the Senior DIP Facility, this Term Sheet, the transactions contemplated thereby or hereby, in connection with responding to subpoenas (third party or otherwise) or any claim, litigation, investigation or proceeding relating to any of the foregoing, whether or not any of such Indemnified Person is a party thereto, except to the extent resulting from the willful misconduct, gross negligence, or bad faith of such Indemnified Person as determined by a final non-appealable order of a court of competent jurisdiction. The indemnity includes indemnification for the Senior DIP Lender exercising discretionary rights granted under the Senior DIP Facility. In all such litigation, or the preparation therefor, the Senior DIP Lender shall be entitled to select its own counsel and, in addition to the foregoing indemnity, the Debtors agree jointly and severally to pay promptly the reasonable fees and expenses of such counsel; provided, however, that no indemnification obligations may be paid, setoff, recouped, or otherwise applied from Excluded Assets (as defined in the Final Order).</p>
14. Senior DIP Milestones	<p>The Senior DIP Orders shall provide that the Debtors will implement their Chapter 11 Cases in accordance with the milestones as reflected in <u>Annex 1</u> attached hereto (the “<u>Senior DIP Milestones</u>”).</p> <p>The Debtors may extend a Senior DIP Milestone only with the express written consent of the Senior DIP Lender.</p>
15. Other Terms	<p>Governing Law. State of New York, except as governed by the Bankruptcy Code.</p> <p>Amendment and Waiver. No waiver, modification or amendment of the terms of this Term Sheet shall be valid unless such waiver, modification or amendment is in writing and has been signed by the Debtors and the Senior DIP Lender. No waiver of any of the provisions of this Term Sheet shall be deemed or constitute a waiver of any other provision of this Term Sheet, whether or not similar, nor shall any waiver be deemed a continuing waiver.</p>

[Signatures to follow on next page]

ACKNOWLEDGED AND CONSENTED TO:

SENIOR DIP LENDER:

DWC PINE INVESTMENTS I, LTD.

By: Houdin Honarvar
Name: Houdin Honarvar
Title: Director

**Proposed assignee (to become Senior DIP Lender):
SEF OA LLC**

By: _____
Name: _____
Title: _____

[Additional signatures follow on next page]

ACKNOWLEDGED AND CONSENTED TO:

SENIOR DIP LENDER:

DWC PINE INVESTMENTS I, LTD.

By: _____
Name: _____
Title: _____

Proposed assignee (to become Senior DIP Lender):

SEF OA LLC



By: _____
Name: Joseph Torres
Title: Managing Member

[Additional signatures follow on next page]

Very truly yours,

SEF OA LLC



By: _____

Name: Joseph Torres

Title: Managing Member

Acknowledged and agreed:

DWC Pine Investments I, Ltd.

By: _____

Name: _____

Title: _____

DEBTORS:

**ONE AVIATION CORPORATION,
For itself as a Debtor and for each of the other Debtors**

By:

Name:

Title:



Alan Klapmeier

CEO

Annex 1

Senior DIP Milestones

The Debtors shall comply with the Senior DIP Milestones, all subject to the Court's calendar, which shall include the following:

- (a) on or before August 28, 2020 the Debtors shall have filed a motion seeking entry of the Senior DIP Order;
- (b) no later than August 28, 2020 the Debtors shall have filed with the Bankruptcy Court the Bid Procedures Motion;
- (c) no later than September 4, 2020, the Bankruptcy Court shall have entered the Senior DIP Order;
- (d) no later than September 4, 2020, the Bid Procedures Order shall have been entered by this Court;
- (e) no later than September 25, 2020, the Auction (as defined in the Bid Procedures Order), if any, shall have occurred;
- (f) no later than September 29, 2020, the hearing to approve the sale shall have been completed;
- (g) no later than September 30, 2020, an order in Approved Form approving the sale contemplated by the Bid Procedures shall have been entered by the Bankruptcy Court; and
- (h) no later than October 15, 2020, the sale contemplated by the Bid Procedures Motion shall have been consummated pursuant to definitive documentation acceptable in form and substance to the Senior DIP Lender in its sole and absolute discretion.

Annex 2

Form of Senior DIP Order

[See attached]

Annex 3

Budget

[See attached]

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EXHIBIT 2

Junior DIP Facility Agreement

EXHIBIT 1

DIP FACILITY AGREEMENT

**SENIOR SECURED SUPERPRIORITY DEBTOR IN POSSESSION
CREDIT AND SECURITY AGREEMENT**

by and among

**ECLIPSE AEROSPACE, INC.,
BRIGADOON AIRCRAFT MAINTENANCE, LLC,
as Borrowers**

and

**CITIKING INTERNATIONAL US, LLC,
as Lender**

Dated as of October 9, 2018

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**SENIOR SECURED SUPERPRIORITY DEBTOR IN POSSESSION
CREDIT AND SECURITY AGREEMENT**

THIS SENIOR SECURED SUPERPRIORITY DEBTOR IN POSSESSION CREDIT AND SECURITY AGREEMENT (this “Agreement”), is entered into as of October 9, 2018, by and among Citiking International US, LLC (the “Lender”), and **ECLIPSE AEROSPACE, INC.**, a Delaware corporation (“Eclipse”), **BRIGADOON AIRCRAFT MAINTENANCE, LLC**, a Delaware limited liability company (“Brigadoon”, and together with Eclipse and any other Person that hereafter becomes a borrower, each a “Borrower”, and collectively the “Borrowers”) and the Guarantors party hereto from time to time.

RECITALS:

WHEREAS, prior to the date hereof Borrowers entered into that certain (i) Credit and Security Agreement, dated as of July 20, 2012 (as amended, modified, restated and supplemented and in effect from time to time, the “Existing Credit Agreement”), among the Borrowers, the “Lenders” (as defined therein (the “Prepetition Lenders”), and CANTOR FITZGERALD SECURITIES, as successor Administrative Agent and Collateral Agent for the Lenders (in such capacity, the “Prepetition Agent”), and (ii) all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of Prepetition Agent or Prepetition Lenders, including, without limitation, control agreements, mortgages, security agreements, guaranties, and UCC financing statements and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto (as amended, modified or supplemented and in effect, and collectively with the Existing Credit Agreement, the “Prepetition Financing Documents”);

WHEREAS, in accordance with the terms and conditions of the Prepetition Financing Documents, Borrowers acknowledge that: (i) they are liable to the Prepetition Agent and Prepetition Lenders for all of the “Obligations” (as defined in the Existing Credit Agreement), including, without limitation, (a) for all principal and accrued interest owed under the Loan Documents, whether now due or hereafter accruing; and (b) for all fees, and all “Lender Expenses” (as defined in the Existing Credit Agreement) (including attorneys’ fees and expenses) heretofore or hereafter incurred by the Prepetition Agent and Prepetition Lenders in connection with the protection, preservation, and enforcement by the Prepetition Agent and Prepetition Lenders of its/their rights and remedies under the Prepetition Financing Documents, (ii) as of the close of business on October 8, 2018, the aggregate principal balance of Term Loans (including any New Term Loans (each as defined in the Existing Credit Agreement)) outstanding under the Existing Credit Agreement, exclusive of interest, fees, costs and attorneys’ fees chargeable to Borrowers under the Prepetition Financing Documents, totaled not less than \$47.88 million in the aggregate, (iii) as of the close of business on October 8, 2018, the aggregate principal balance of Revolving Loans (as defined in the Existing Credit Agreement) outstanding under the Existing Credit Agreement, exclusive of interest, fees, costs and attorneys’ fees chargeable to Borrowers under the Prepetition Financing Documents, totaled not less than \$10.05 million in the aggregate and (iv) all of such Term Loans (including any New Term Loans), Revolving Loans and other “Obligations” (as defined in the Existing Credit Agreement) are absolutely due and owing by Borrowers to the Prepetition Agent and Prepetition Lenders without any defense, deduction, offset or counterclaim;

WHEREAS, on October 9, 2018 (the "Petition Date"), each of the Loan Parties together with certain of their Affiliates (as defined herein, collectively, the "Debtors") filed a voluntary petition for relief (collectively, the "Cases") under Chapter 11 of the Bankruptcy Code (defined herein) with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Debtors are continuing in the possession of their assets and continuing to operate their respective businesses and manage their respective properties as debtors and debtors in possession under Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Debtors have requested that the Lender make available to the Debtors, from and after the date of entry of the Interim Financing Order (defined herein) (the "Interim Financing Order Date"), a senior secured, superpriority debtor-in-possession revolving loan facility; and

WHEREAS, to provide security for the repayment of all obligations of the Loan Parties hereunder and under the other Loan Documents (defined herein), and in addition to all other property of any Loan Party that is subject to the Liens granted on the "Collateral" (as defined in the Existing Credit Agreement) in favor of the Prepetition Agent securing the Existing Liabilities (as defined herein) (such Liens, the "Existing Liens"), each of the Debtors will provide to the Lender the [DIP Protections] (as defined in the Financing Orders).

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

1. DEFINITIONS AND CONSTRUCTION.

1.1 Definitions, Code Terms, Accounting Terms and Construction. Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1(a). Additionally, matters of (i) interpretation of terms defined in the Code, (ii) interpretation of accounting terms and (iii) construction, are each set forth in Schedule 1.1(a).

2. LOANS AND TERMS OF PAYMENT.

2.1 Revolving Loans.

(a) Revolving Loan Commitment. Subject to the terms and conditions set forth herein, the Lender agrees to make loans (each such loan, a "Revolving Loan") to the Borrowers from time to time during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Revolving Commitment; subject in each case to the following limitations:

(i) no Revolving Loan shall exceed the amount of borrowings permitted under the Approved Budget to be outstanding for the applicable weekly period, without the written consent of the Lender, in its sole discretion; and

(ii) after giving effect to any Revolving Borrowing, the Total Revolving Outstandings shall not exceed the Revolving Commitment.

(b) Upon entry of the Final Financing Order, a Revolving Loan shall be deemed to be made to the Borrowers as a roll-up loan (the "Roll-Up Loan") that will be used to pay, in full upon the entry of the Final Financing Order, the aggregate amount of all outstanding Revolving Loans (as defined in the Existing Credit Agreement) under the Prepetition Financing Documents.

(c) Within the limits of the Revolving Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.1, prepay under Section 2.4, and re-borrow under this Section 2.1. The Total Revolving Outstandings, together with all other outstanding Obligations (without limitation, interest accrued and unpaid thereon and any premiums), shall be due and payable on the Termination Date.

2.2 Revolving Borrowings.

(a) Each Revolving Borrowing shall be made upon the Administrative Borrower's irrevocable notice to the Lender by delivery to the Lender of a written Revolving Loan Notice, which must be received by the Lender not later than 12:00 p.m. on the date which is at least one (1) Business Day prior to the requested date of such Revolving Borrowing. Each Revolving Borrowing shall be in a principal amount of \$100,000 or a whole multiple of \$10,000 in excess thereof. Each Revolving Loan Notice shall specify (i) the requested date of the Revolving Borrowing (which must be a Business Day), and (ii) the principal amount of Revolving Loans to be borrowed. The Administrative Borrower may request up to one (1) Revolving Borrowing in any fiscal week subject to the Approved Budget.

(b) Following receipt of a Revolving Loan Notice and upon satisfaction of the applicable conditions set forth in Section 4.2 (and, if such Revolving Borrowing is the initial Credit Extension, Section 4.1), the Lender shall use its best efforts to make all funds so requested available to the Borrowers by no later than 4:00 p.m. by wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Lender by the Administrative Borrower.

(c) The Lender, without the request of the Loan Parties, may advance any interest, fee, service charge (including direct wire fees), expenses, or other payment to which the Lender or other holder of any Obligations is entitled from the Loan Parties pursuant hereto or any other Loan Document and may charge the same to the Loan Account as a Revolving Loan notwithstanding that an Overadvance may result thereby. The Lender shall advise the Administrative Borrower of any such advance or charge promptly after the making thereof. Such action on the part of the Lender shall not constitute a waiver of the Lender's rights and the Borrowers' obligations under Section 2.4. Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.2(c) shall bear interest at the interest rate then and thereafter applicable to Revolving Loans.

(d) The Lender shall promptly notify the Administrative Borrower of the interest rate applicable to any Interest Period upon determination of such interest rate.

2.3 [Reserved].

2.4 Prepayments.

(a) Voluntary Prepayments. The Borrowers may, upon irrevocable notice from the Administrative Borrower to the Lender, at any time or from time to time voluntarily prepay Revolving Loans in whole or in part; provided that (i) such notice must be received by the Lender not later than 11:00 a.m. on the date of prepayment of Revolving Loans; and (ii) any partial prepayment of Revolving Loans shall be in a principal amount of \$[100,000] or a whole multiple of \$[50,000] in excess thereof. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Administrative Borrower, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory Prepayments.

(i) If for any reason the Total Revolving Outstandings at any time exceed the Revolving Commitment as then in effect, the Borrowers shall immediately prepay the Revolving Loans, in an aggregate amount equal to such excess.

(ii) If, at any time, any Loan Party or Subsidiary receives proceeds from a Prepayment Event, 100% of Net Proceeds received from such Prepayment Event shall be paid over to Lender on the date of receipt by such Loan Party or Subsidiary and shall be utilized to prepay the Revolving Loans, together with accrued interest thereon. Lender shall not be required to release its Liens on any Collateral included in such Prepayment Event until such Net Proceeds have been so received. If all Revolving Loans are paid in full, any excess Net Proceeds shall be remitted to the Borrowers after full payment in cash of all other Obligations then due and payable.

(iii) All repayments or prepayments under this Section 2.4(b) shall be prepaid without premium or penalty.

(c) Application of Payments. All Collections and all Proceeds of Collateral received by Lender, shall be applied, so long as no Event of Default has occurred and is continuing, first, to pay any amounts owed to Lender under this Agreement or any other Loan Documents, and then, subject to Section 2.6(c)(i), to reduce the outstanding Obligations in such manner as Lender shall determine. After payment in full in cash of all Obligations, any remaining balance shall be transferred to the Designated Account or otherwise to such other Person entitled thereto under applicable law.

2.5 [Reserved].

2.6 Interest Rates: Rates, Payments, and Calculations.

(a) Interest Rates. Except as provided in Section 2.6(b), all outstanding Obligations shall bear interest on the Daily Balance thereof for the period commencing with the Closing Date until paid (whether at stated maturity, on acceleration or otherwise) at a per annum rate equal to the Interest Rate; provided, that all interest shall be paid-in-kind on the first day of each calendar month by increasing the outstanding principal amount of the Revolving Loans made by the Lender by an amount equal to the amount of in-kind interest for the applicable

interest period commencing with the first day of a calendar quarter (or if the funding of Revolving Loans by the Lender is not made on such day, the date of such funding) through the last day of such calendar quarter (rounded to the nearest cent) (such increased amount, the "Capitalized Interest") such that the new outstanding principal amount of the Revolving Loans made by the Lender shall include such Capitalized Interest (it being understood that the initial interest period shall run from the Closing Date to the last date of the calendar quarter in which the Closing Date occurs and each subsequent interest period shall begin on the first day of each calendar quarter and end on the last day of each calendar quarter).

(b) Default Rate. Upon the occurrence and during the continuation of an Event of Default and at any time following the Termination Date, all Obligations shall bear interest on the Daily Balance thereof at a per annum rate equal to two (2) percentage points above the per annum rate otherwise applicable thereunder. Interest accrued in accordance with this Section 2.6(b) shall be payable from time to time on demand.

(c) Payment.

(i) Except as otherwise may be agreed by the Borrowers and the Lender, any prepayment of Revolving Loans shall be applied to the then outstanding Revolving Loans on a *pro rata* basis.

(ii) All payments to be made by the Borrowers shall be made without set off, recoupment or counterclaim. Except as otherwise expressly provided herein, all payments by the Borrowers shall be made to the Lender at the account designated by the Lender and shall be made in U.S. Dollars and in immediately available funds, no later than 12:00 p.m. (Eastern time) on the date specified herein. Any payment received by the Lender after such time shall be deemed (for purposes of calculating interest only) to have been received on the following Business Day and any applicable interest shall continue to accrue. For the avoidance of doubt, notwithstanding any other provision of any Loan Document to the contrary, no payment received directly or indirectly from any Loan Party that is not a Qualified ECP Guarantor shall be applied directly or indirectly by the Lender or otherwise to the payment of any Excluded Swap Obligations.

(d) Computation. All interest and fees chargeable under the Loan Documents shall be computed on the basis of a three hundred sixty (360) day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue. In the event the Interest Rate is changed from time to time hereafter, the rates of interest hereunder based upon the Interest Rate automatically and immediately shall be increased or decreased by an amount equal to such change in the Interest Rate.

(e) Intent to Limit Charges to Maximum Lawful Rate. In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrowers, Lender, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum

allowable under applicable law, then, as of the date of this Agreement, Borrowers are and shall be liable only for the payment of such maximum amount as is allowed by law, and payment received from Borrowers in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

(f) [Reserved].

2.7 Designated Account. Borrowers agree to establish and maintain one or more Designated Accounts, each in the name of a single Borrower, for the purpose of receiving the proceeds of the Loans requested by Borrowers and made by Lender hereunder. Unless otherwise agreed by Lender and Borrowers, any Loan requested by Borrowers and made by the Lender hereunder shall be made to the applicable Designated Account.

2.8 Maintenance of Loan Account; Statements of Obligations. Lender shall maintain an account on its books in the name of Borrowers (the "Loan Account") in which will be recorded all Loans made by Lender to Borrowers or for Borrowers' account and all other payment Obligations hereunder or under the other Loan Documents, including accrued interest, premiums, fees and expenses, and Lender Expenses. In accordance with Section 2.4 and Section 2.5, the Loan Account will be credited with all payments received by Lender from Borrowers or for Borrowers' account. All monthly statements delivered by Lender to the Borrowers regarding the Loan Account, if any, including with respect to principal, interest, fees, premiums, and including an itemization of all charges and expenses constituting Lender Expenses owing, shall be subject to subsequent adjustment by Lender but shall, absent manifest error, be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and Lender unless, within thirty (30) days after receipt thereof by Borrowers, Borrowers shall deliver to Lender written objection thereto describing the error or errors contained in any such statements.

2.9 Maturity Date. The principal amount of the Revolving Loans shall be repaid in full on the earliest of (i) January 31, 2019 (the date described in this clause (i) being the "Maturity Date"); *provided* that the Maturity Date may be extended upon written consent by the Lender, (ii) the date Borrowers terminate the Revolving Commitment pursuant to Section 2.11, (iii) the date the Revolving Commitment is terminated pursuant to Sections 10.1 and 10.2 following an Event of Default, or (iv) the Consummation Date (the earliest of these dates, the "Termination Date"). Each Borrower jointly and severally promises to pay the Existing Liabilities and the Obligations (including principal, interest, premiums, fees, costs, and expenses, including Lender Expenses) in full on the Termination Date.

2.10 [Reserved].

2.11 Reduction or Termination of Revolving Commitment.

(a) The Borrowers may, upon irrevocable notice from the Administrative Borrower to the Lender, terminate the Revolving Commitment or from time to time permanently reduce the Revolving Commitment; *provided* that (i) any such notice shall be received by the Lender not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$1,000,000 or any whole

multiple of \$1,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce the Revolving Commitment if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Outstandings would exceed the Revolving Commitment.

(b) All fees and interest in respect of the Revolving Commitment accrued until the effective date of any termination of the Revolving Commitment shall be paid on the effective date of such termination.

2.12 [Reserved.]

2.13 Priority; Liens. All of the Obligations are secured by Liens on substantially all the assets of the Loan Parties and, at all times, shall constitute administrative expenses of the Borrowers in the Cases with priority under Section 364(c)(1) of the Bankruptcy Code over any and all other administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, subject and subordinate only to the Carve Out. All Liens which secure the Obligations shall constitute first priority Liens under Section 364(d) of the Bankruptcy Code, subject only to the Liens securing the other Permitted Liens having priority under applicable law and the Carve Out. No other claims having a priority superior or *pari passu* to that granted to or on behalf of the Lender shall be granted or approved while any of the Obligations remain outstanding.

2.14 [Reserved].

2.15 Capital Requirements. If, after the Closing Date, the Lender determines that (i) the adoption of or change in any law, rule, regulation or guideline regarding capital or reserve requirements for banks or bank holding companies, or any change in the interpretation, implementation, or application thereof by any Governmental Authority charged with the administration thereof, including those changes resulting from the enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Basel III, regardless of the date enacted, adopted or issued, or (ii) compliance by the Lender or its parent bank holding company with any guideline, request or directive of any such entity regarding capital adequacy (whether or not having the force of law), has the effect of reducing the return on the Lender's or such holding company's capital or liquidity as a consequence of this Agreement, the Revolving Commitment or the Revolving Loans made by the Lender hereunder to a level below that which the Lender or such holding company could have achieved but for such adoption, change, or compliance (taking into consideration the Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by the Lender to be material, then the Lender may notify Borrowers thereof in writing (a "Capital Requirements Notice"). Following receipt of such Capital Requirements Notice, Borrowers agree to pay the Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within thirty (30) days after presentation by the Lender of a statement of the amount and setting forth in reasonable detail the Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, the Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation; provided, that, Borrowers shall not be required to

compensate the Lender pursuant to this Section for any reductions in return incurred more than one hundred eighty (180) days prior to the date that the Lender notifies Borrowers of such law, rule, regulation or guideline giving rise to such reductions and of the Lender's intention to claim compensation therefor; provided, further, that, if such claim arises by reason of the adoption of or change in any law, rule, regulation or guideline that is retroactive, then the one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof.

2.16 Extent of Each Borrower's Liability, Contribution.

(a) Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Lender the prompt payment and performance of, all Obligations under this Agreement and the other Loan Documents. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until cash payment in full of the Obligations, and that such obligations are absolute and unconditional, irrespective of (i) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Borrower is or may become a party or be bound; (ii) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by Lender with respect thereto; (iii) the existence, value or condition of, or failure to perfect any of Lender's Liens or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by Lender in respect thereof (including the release of any security or guaranty); (iv) the insolvency of any Borrower; (v) any election by Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (vi) any borrowing or grant of a Lien by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of Lender against any Borrower for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (viii) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except cash payment in full of all Obligations.

(b) [Reserved].

(c) [Reserved].

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

paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor.

(e) Nothing contained in this Section 2.16 shall limit the liability of any Borrower to pay extensions of credit made directly or indirectly to that Borrower (including Revolving Loans advanced to any other Borrower and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower) and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder.

2.17 Appointment of Administrative Borrower. Each Borrower hereby irrevocably appoints Eclipse as the borrowing agent and attorney-in-fact for all Borrowers (the "Administrative Borrower") which appointment shall remain in full force and effect unless and until Lender shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes the Administrative Borrower (a) to provide Lender with all notices and instructions under this Agreement, and (b) to take such action as the Administrative Borrower deems appropriate on its behalf to carry out the purposes of this Agreement. It is understood that the handling of the Loan Account and the Collateral in a combined fashion, as more fully set forth herein, is done solely as an accommodation to Borrowers in order to utilize the collective borrowing powers of Borrowers in the most efficient and economical manner and at their request, and that Lender shall not incur liability to any Borrower as a result hereof. Each Borrower expects to derive benefit, directly or indirectly, from the handling of the Loan Account and the Collateral in a combined fashion since the successful operation of each Borrower is dependent on the continued successful performance of the integrated group. To induce Lender to do so, and in consideration thereof, each Borrower hereby jointly and severally agrees to indemnify Lender and hold Lender harmless against any and all liability, expense, loss or claim of damage or injury, made against Lender by any Borrower or by any third party whosoever, arising from or incurred by reason of (a) the handling of the Loan Account and the Collateral of Borrowers as herein provided, or (b) Lender's relying on any instructions of the Administrative Borrower; except, that Borrowers will have no liability to Lender under this Section 2.17 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of Lender.

3. SECURITY INTEREST.

3.1 Grant of Security Interest. Each Loan Party hereby unconditionally grants, assigns, and pledges to Lender, as security for the payment and performance of the Obligations, a continuing security interest (hereinafter referred to as the "Security Interest") in all of such Loan Party's right, title, and interest in and to the Collateral. Following request by Lender, each Loan Party shall grant Lender a Lien and security interest in all Commercial Tort Claims that it may have against any Person. The Security Interest created hereby secures the payment and performance of the Obligations, whether now existing or arising hereafter. Without limiting the generality of the foregoing, this Agreement secures the payment of all amounts which constitute part of the Obligations and would be owed by any Loan Party to Lender, but for the fact that they

are unenforceable or not allowable (in whole or in part) as a claim in an Insolvency Proceeding involving any Borrower due to the existence of such Insolvency Proceeding.

3.2 Borrowers Remain Liable. Anything herein to the contrary notwithstanding, (a) each Loan Party shall remain liable under the contracts and agreements included in the Collateral to perform all of the duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by Lender of any of the rights hereunder shall not release any Loan Party from any of its duties or obligations under such contracts and agreements included in the Collateral, and (c) Lender shall not have any obligation or liability under such contracts and agreements included in the Collateral by reason of this Agreement, nor shall Lender be obligated to perform any of the obligations or duties of any Loan Party thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

3.3 Assignment of Insurance. As additional security for the Obligations, each Loan Party hereby assigns to Lender all rights of such Loan Party under every policy of insurance covering the Collateral and all other assets and property of each Loan Party (including, without limitation business interruption insurance and proceeds thereof) and all business records and other documents relating to it, and all monies (including proceeds and refunds) that may be payable under any policy, and each Loan Party hereby directs the issuer of each policy to pay all such monies directly and solely to Lender. At any time, whether or not a Default or Event of Default shall have occurred, Lender may (but need not), in Lender's or any Loan Party's name, execute and deliver proofs of claim, receive payment of proceeds and endorse checks and other instruments representing payment of the policy of insurance, and adjust, litigate, compromise or release claims against the issuer of any policy. Any monies received under any insurance policy assigned to Lender, other than liability insurance policies, or received as payment of any award or compensation for condemnation or taking by eminent domain, shall be paid to Lender and, as determined by the Lender in its sole discretion, either be applied to prepayment of the Obligations or disbursed to Borrowers under payment terms reasonably satisfactory to the Lender for application to the cost of repairs, replacements, or restorations of the affected Collateral which shall be effected with reasonable promptness and shall be of a value at least equal to the value of the items or property destroyed.

3.4 Financing Statements. Each Loan Party authorizes Lender to file financing statements describing Collateral to perfect Lender's Security Interest in the Collateral, and Lender may describe the Collateral as "all personal property" or "all assets" or describe specific items of Collateral including without limitation any Commercial Tort Claims. All financing statements filed before the date of this Agreement to perfect the Security Interest were authorized by such Loan Party and are hereby ratified.

3.5 Release of FAA Registry and Cape Town International Registry Filings. With respect to the sale or other disposition by any Loan Party to a buyer of an Aircraft or a buyer of Engines registered with the Cape Town International Registry pursuant to and in accordance with the terms of this Agreement, upon written notice by Administrative Borrower to Lender of such sale or disposition, at Borrowers' expense, (a) Lender will execute a release of Lender's lien and security interest on such Aircraft pursuant to an Aircraft Mortgage Recordation or Engine Mortgage Recordation suitable for recordation with the FAA Registry, in form and substance satisfactory to the Lender, and (b) such Loan Party shall have obtained the consent of

Lender to effect the release of the international interest of Lender in such Aircraft or such Engine with the Cape Town International Registry. Nothing contained in this Section 3.5 shall relieve Loan Parties in any respect from their respective obligations under this Agreement to remit to Lender all proceeds from the sale of such Aircraft or any other Aircraft or any other Collateral. Further, in the event that the proposed sale of any such Aircraft and/or Engine(s) does not close within seventy-two (72) hours of delivery by Lender of a release of Lender's lien and security interest, Administrative Borrower shall immediately execute and deliver to Lender whatever documents, instruments, and agreements as may be necessary in order to re-perfect Lender's lien and security interest therein, including an Aircraft Mortgage Recordation and/or an Engine Mortgage Recordation suitable for recordation with the FAA Registry, in form and substance satisfactory to the Lender.

3.6 Certain Bankruptcy Matters.

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

(b) Except as otherwise agreed to by the Lender, the Liens, Lien priorities, DIP Superpriority Claims and other rights and remedies granted to the Lender pursuant to this Agreement, the DIP Orders or the other Loan Documents (specifically including, but not limited to, the existence, perfection, enforceability and priority of the Liens provided for herein and therein, and the DIP Superpriority Claims provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of indebtedness by any Borrower or any other Loan Party (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by dismissal or conversion of the Cases, or by any other act or omission whatsoever.

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

(i) subject only to the Carve Out and to the extent provided in any of the DIP Orders and subject to the DIP Orders, no costs or expenses of administration which have been or may be incurred in the Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of the Lender against Borrower in respect of any Obligations;

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

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

(d) In connection with any sale or Disposition of all or any portion of the Collateral, including in each case pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code or as part of a restructuring plan subject to confirmation under Section 1129(b)(2)(A)(iii) of the Bankruptcy Code, or at any sale or foreclosure conducted by the Lender, in accordance with applicable law and, with respect to any credit bid, Section 363(k) of the Bankruptcy Code, each Borrower and each other Loan Party hereby gives the Lender the power and right, without assent by such Loan Party, to "credit bid" the full amount of all Obligations and any Existing Liabilities then outstanding, in order to purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral.

4. CONDITIONS.

4.1 Conditions Precedent to Initial Extension of Credit. The obligation of the Lender to make the initial Revolving Loans on the Closing Date is subject to the conditions precedent that Lender shall have received all of the following, each duly executed and dated the Closing Date (or such earlier date as shall be satisfactory to Lender), in form and substance satisfactory to Lender (and the date on which all such conditions precedent have been satisfied or waived in writing by Lender is called the "Closing Date"):

(a) Agreement, Notes and other Loan Documents. This Agreement and, to the extent requested by the Lender, a Note made payable to the Lender, and all other Loan Documents.

(b) Authorization Documents. For each Loan Party, such Person's (a) charter (or similar formation document), certified by the appropriate governmental authority; (b) bylaws (or similar governing document); (c) resolutions of its board of directors (or similar governing body) approving and authorizing such Person's execution, delivery and performance of the Loan Documents to which it is party and the transactions contemplated thereby; and (d) signature and incumbency certificates of its officers executing any of the Loan Documents (it being understood that Lender may conclusively rely on each such certificate until formally advised by a like certificate of any changes therein), all certified by its secretary or an assistant secretary (or similar officer) as being in full force and effect without modification.

(c) Loan Party Consents, etc. Certified copies of all documents evidencing any necessary corporate or partnership action, consents and governmental approvals (if any) required for the execution, delivery and performance by the Loan Parties of the documents referred to in this Section 4.1.

(d) Letter of Direction. A letter of direction containing funds flow information with respect to the proceeds of the Loans on the Closing Date.

(e) Engagement Letters. Engagement Letters from each of the Independent Consultant and the Investment Banker, each in form and substance reasonably satisfactory to Lender.

(f) Control Agreements. All deposit account control agreements and securities account control agreements that are required to be delivered on the Closing Date.

(g) Insurance. Evidence of the existence of insurance required to be maintained pursuant to this Agreement, together with evidence that Lender has been named as a lender's loss payee and an additional insured on all related insurance policies.

(h) Payment of Fees. Evidence of payment by Borrowers of all accrued and unpaid fees, costs and expenses to the extent then due and payable on the Closing Date, together with all Lender Expenses (including, without limitation, in respect of local bankruptcy counsel) to the extent invoiced prior to the Closing Date, plus such additional amounts incurred or to be incurred by Lender through the closing proceedings (provided that such estimate shall not thereafter preclude final settling of accounts between Borrowers and Lender).

(i) Search Results. Certified copies of Uniform Commercial Code search reports dated a date reasonably near to the Closing Date, listing all effective financing statements which name any Loan Party (under their present names and any previous names) as debtors, together with copies of such financing statements and such Uniform Commercial Code termination statements as Lender may reasonably request.

(j) Filings, Registrations and Recordings. Lender shall have received each document (including Uniform Commercial Code financing statements) required by the Loan Documents or under law or reasonably requested by Lender to be filed, registered or recorded in order to create in favor of Lender a perfected Lien on the collateral described therein, prior to any other Liens (subject only to Permitted Liens), in proper form for filing, registration or recording.

(k) Investment Documents. The Lender shall have received confirmation of ownership and capital structure of the Loan Parties and be satisfied with the constituent documents of the Loan Parties and related investment agreements.

(l) Closing Date Approved Budget. The Lender shall have received the 13-week budget for the period commencing on October [12], 2018 substantially in the form of Exhibit H hereto (the "Closing Date Approved Budget") and such other financial information regarding the Loan Parties and their Affiliates as the Lender may require.

(m) First Day Motions. All "first day" motions and proposed orders to be filed with and submitted to the Bankruptcy Court (including, without limitation, the Cash Management Order) shall be in form and substance reasonably satisfactory to the Lender.

(n) Interim Financing Order. The Interim Financing Order, which shall have been entered on or before the date that is five (5) business days after the Petition Date, in substantially in the form of Exhibit F hereto and otherwise acceptable to Lender, and which shall be in full force and effect and not subject to a stay or appeal.

(o) Existing Liabilities. The Bankruptcy Court shall have entered an order granting the Prepetition Lenders adequate protection of their interests, which order shall be in form and substance reasonably acceptable to the Lender under the Existing Credit Agreement and to the Lender hereunder.

(p) Diligence. The Lender shall have received all due diligence materials as Lender has requested and Lender shall have found such due diligence satisfactory to it.

(q) Approvals. Lender shall have received approval of its executive credit committee and the consent of the Required Lenders (as defined in the Existing Credit Agreement) to the credit facility evidenced hereby and the terms hereof.

(r) Plan of Reorganization. The Plan of Reorganization in form and substance reasonably acceptable to the Lender has been filed with the Bankruptcy Court.

(s) Other. Such other documents as Lender may reasonably request.

4.2 Conditions Precedent to All Extensions of Credit. The obligation of the Lender to make each Revolving Loan is subject to the following further conditions precedent that:

(a) Compliance with Warranties, No Default, etc. Both before and after giving effect to any borrowing, the following statements shall be true and correct:

(1) the representations and warranties of each Loan Party set forth in this Agreement and the other Loan Documents shall be true and correct in all respects with the same effect as if then made (except to the extent stated to relate to a specific earlier date, in which case such representations and warranties shall be true and correct as of such earlier date);

(2) no Default or Event of Default shall have then occurred and be continuing;

(3) the Lender shall have received a Revolving Loan Notice in accordance with the requirements hereof;

(4) the Lender shall have received an Approved Budget and Variance Report as required pursuant to Sections 6.1(b) and 6.1(c);

(5) each Loan shall be made pursuant to and in accordance with the Approved Budget; and

(6) Availability shall be greater than \$0.

(b) No Challenge. (i) There shall not have been any order granted by the Bankruptcy Court granting or sustaining any motion, complaint, objection or other pleading filed by any party, challenging, in either case, the validity, priority, perfection, or enforceability of the Prepetition Financing Documents, the Existing Liabilities, or any Lien granted pursuant to the Prepetition Financing Documents, and (ii) no Lien granted pursuant to the Prepetition Financing Documents shall have been determined to be null and void, invalid or unenforceable by the Bankruptcy Court or another court of competent jurisdiction in any action commenced or asserted by any other party in interest in the Cases, including, without limitation, the Creditors' Committee.

(c) Confirmatory Certificate. If requested by Lender, Lender shall have received a certificate dated the date of such requested Loan and signed by a duly authorized representative of Borrowers as to the matters set out in Section 4.2 (it being understood that each request by Borrower for the making of a Loan shall be deemed to constitute a representation and warranty by Borrowers that the conditions precedent set forth in this Section 4.2 will be satisfied at the time of the making of such Loan), together with such other documents as Lender may reasonably request in support thereof.

The conditions set forth in this Section 4.2 are for the sole benefit of the Lender.

5. REPRESENTATIONS AND WARRANTIES.

In order to induce Lender to enter into this Agreement, each Loan Party makes the representations and warranties to Lender set forth on Exhibit D. Each of such representations and warranties shall be true, correct, and complete, in all material respects (except, that, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date and as of each date such representations and warranties are deemed made pursuant to Section 4.2, and such representations and warranties shall survive the execution and delivery of this Agreement.

6. AFFIRMATIVE COVENANTS.

Each Loan Party covenants and agrees that, until termination of this Agreement and the Revolving Commitment and payment in full of the Obligations, each Loan Party shall, and shall cause their respective Subsidiaries to, comply with each of the following:

6.1 Financial Statements, Approved Budgets, Reports, Certificates. i) Deliver to Lender copies of each of the financial statements, reports, and other items set forth on Schedule 6.1 no later than the times specified therein. In addition, each Loan Party agrees that no Subsidiary of a Loan Party will have a fiscal year different from that of the Loan Parties. Each Loan Party agrees to maintain a system of accounting that enables such Borrower to produce financial statements in accordance with GAAP. Each Loan Party shall also (a) keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to its and its

Subsidiaries' sales, and (b) maintain its billing systems/practices substantially as in effect as of the Closing Date and shall only make material modifications following prior notice to Lender.

(a) The use of Revolving Loans by the Borrowers under this Agreement and the other Loan Documents shall be limited in accordance with the Approved Budget, subject to the Permitted Variance. The Closing Date Approved Budget shall be updated, modified or supplemented (with the consent and/or at the request of the Lender) from time to time, but in any event not less than on an every other week basis (each such budget a "Subsequent Approved Budget"), and such update, modification or supplement shall be in form and detail consistent with the Closing Date Approved Budget. Each Approved Budget shall set forth, for each week, the amount of Revolving Borrowings necessary for such week after giving effect to any cash inflows (subject to the Permitted Variance). Upon approval of each such update, modification or supplement to the Approved Budget by the Lender in its reasonable discretion, the applicable Subsequent 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; provided, that, if the Lender does not object to any such update, modification or supplement within two (2) Business Days, such update, modification or supplement shall be deemed to be approved by the Lender. 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 Lender shall be accompanied by such supporting documentation as reasonably requested by the Lender.

(b) Not later than 7:00 p.m. (Eastern) every other Thursday during the Cases, commencing on the Thursday following the first full calendar week after the Closing Date and thereafter on every other Thursday, a Variance Report;

(c) upon the reasonable request of the Lender, periodic estimated summaries of the then Reported Fee Accruals; and

(d) all documents and information required to be delivered pursuant to the DIP Orders.

6.2 Collateral Reporting; Lender Calls.

(a) To the extent requested by the Lender, provide Lender with each of the reports set forth on Schedule 6.2 at the times specified therein.

(b) Borrowers shall hold progress conference calls for Lender on an every other week basis, until the Maturity Date. During such conference calls the chief operating officer or other executive member of each Borrower's management acceptable to the Lender, which may include the Chairman of the Board of Directors, shall provide Lender with a reasonably comprehensive update relating to the business, condition (financial or otherwise), operation, performance, properties or prospects of any of the Loan Parties and any other information that may be reasonably requested by Lender (including, without limitation, in

respect of the Approved Budget, any Variance Report, and the status of the process with respect to any Permitted Disposition).

6.3 Existence. Except as otherwise permitted under Section 7.3 or Section 7.4, at all times maintain and preserve in full force and effect (a) its existence (including being in good standing in its jurisdiction of organization) and (b) all rights and franchises, licenses and permits material to its business; provided, however, that, no Loan Party or any of its Subsidiaries shall be required to preserve any such right or franchise, licenses or permits if such Person's board of directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Lender; provided, that Borrowers deliver at least ten (10) days prior written notice to Lender of such Loan Party's election not to preserve any such right or franchise, license or permit.

6.4 Maintenance of Properties. Maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear and casualty excepted and Permitted Dispositions excepted (and except where the failure to so maintain and preserve such assets could not reasonably be expected to result in a Material Adverse Change), and, to the extent required under the Bankruptcy Code or the DIP Orders, comply with the material provisions of all material leases to which it is a party as lessee, so as to prevent the loss or forfeiture thereof, unless such provisions are the subject of a Permitted Protest.

6.5 Taxes; Other Obligations.

(a) Cause all post-petition assessments and taxes imposed, levied, or assessed against any Loan Party or its Subsidiaries, or any of their respective assets or in respect of any of its income, businesses, or franchises to be paid in full, before delinquency or before the expiration of any extension period, except to the extent that the validity of such assessment or tax shall be the subject of a Permitted Protest and so long as, in the case of a post-petition assessment or tax that has or may become a Lien against any of the Collateral, (i) such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such assessment or tax, and (ii) any such other Lien is at all times subordinate to Lender's Liens.

(b) Each Loan Party will and will cause each of its Subsidiaries to make timely payment or deposit of all tax payments and withholding taxes required of it and them by applicable laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Lender with proof reasonably satisfactory to the Lender indicating that such Loan Party and its Subsidiaries have made such payments or deposits.

(c) Except as permitted under the Bankruptcy Code, pay and discharge as the same shall become due and payable following the Petition Date, all its obligations and liabilities, including (i) all lawful claims (including, without limitation, claims of landlords and warehousemen) which, if unpaid, would by law become a Lien upon its property; and (ii) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness, except, in each case,

where the validity of such obligation or liability shall be the subject of a Permitted Protest and so long as, in the case of an obligation or liability that has or may become a Lien against any of the Collateral, (x) such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such assessment or tax, (y) any such other Lien is at all times subordinate to Lender's Liens and (z) the failure to make payment pending such Permitted Protest could not reasonably be expected to result in a Material Adverse Change.

6.6 Insurance. At Borrowers' expense, maintain insurance respecting each of the Loan Parties' and their Subsidiaries' assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Borrowers also shall maintain (with respect to each of the Loan Parties and their Subsidiaries) business interruption, general liability, flood insurance, for Collateral located in a flood plain, product liability insurance, director's and officer's liability insurance, fiduciary liability insurance, and employment practices liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be with responsible and reputable insurance companies acceptable to Lender and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event in amount, adequacy and scope reasonably satisfactory to the Lender. All property insurance policies covering the Collateral are to be made payable to Lender as its interests may appear, in case of loss, pursuant to a lender loss payable endorsement reasonably acceptable to Lender and are to contain such other provisions as Lender may reasonably require to fully protect the Lender's interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance shall be delivered to Lender, with the lender loss payable endorsement (but only in respect of Collateral) and additional insured endorsements (with respect to general liability coverage) in favor of Lender and shall provide for not less than thirty (30) days (ten (10) days in the case of nonpayment) prior written notice to Lender of the exercise of any right of cancellation. If Borrowers fail to maintain such insurance, Lender may arrange for such insurance, but at Borrowers' expense and without any responsibility on Lender's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Borrowers shall give Lender prompt notice of any loss exceeding \$100,000 covered by their casualty or business interruption insurance. Upon the occurrence of an Event of Default, Lender shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

6.7 Inspections, Exams, Audits and Appraisals. Permit Lender and each of its duly authorized representatives or professionals to visit any of its properties and inspect any of its assets or books and records, to conduct inspections, exams, audits, appraisals and valuations of the Collateral, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as Lender may designate and, so long as no Default or Event of Default exists, with reasonable prior notice to Borrowers. The Borrowers shall pay the fees and expenses of the Lender and any such representatives or professionals engaged by Lender

with respect to the foregoing, including, without limitation, such appraisals and commercial finance examinations as Lender may determine advisable, in its exclusive discretion.

6.8 Account Verification. Permit Lender, in Lender's name or in the name of a nominee of Lender, to verify the validity, amount or any other matter relating to any Account, by mail, telephone, facsimile transmission or otherwise. Further, at the request of Lender, Borrowers shall send requests for verification of Accounts or send notices of assignment of Accounts to Account Debtors and other obligors.

6.9 Compliance with Laws.

(a) Comply with the requirements of all applicable laws, rules, regulations, licenses, approvals, orders and permits applicable to it and duly observe all requirements of any foreign, federal, state or local Governmental Authority, including, without limitation, any Type Certificate(s), Production Certificate(s), Dealer's Aircraft Registration Certificate(s) and Airworthiness Certificate(s), other than laws, rules, regulations, licenses, approvals, orders and permits (i) the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, or (ii) the non-compliance with which is otherwise permitted under the Bankruptcy Code or the DIP Orders. Each Loan Party shall promptly apply for the issuance by the FAA to such Loan Party of Production Certificates that are required for such Loan Party to directly design, manufacture, test and produce the Aircraft subject to the Type Certificates and Production Certificates, as applicable.

(b) Establish and maintain, at Loan Parties' expense, a system to assure and monitor their and their subcontractors', suppliers', and vendors' continued compliance in all material respects with all Aviation Laws and all FAA Certificates in all aspects of designing, manufacturing, testing, selling and operating any Aircraft, which system shall include periodic reviews of such compliance by employees or Lender of Loan Parties who are familiar with the requirements of the Aviation Laws and all FAA Certificates. At Lender's request, copies of all manuals, compliance surveys and results of investigations conducted by the FAA or notices received by any Loan Party from the FAA shall be promptly furnished, or caused to be furnished, by such Loan Party to Lender. Loan Parties shall promptly notify Lender of, and shall take prompt and appropriate action to respond to, any non-compliance with any of the Aviation Laws or the FAA Certificates.

6.10 Environmental.

(a) Keep any property either owned or operated by any Loan Party or its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances satisfactory to the Lender and in an amount sufficient to satisfy the obligations or liability evidenced by such Environmental Liens;

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

(c) Promptly notify Lender of any release of which any Loan Party has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by any Loan Party or its Subsidiaries and take any Remedial Actions required to abate

said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law; and

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

6.11 Disclosure Updates.

(a) Promptly and in no event later than two (2) Business Days after obtaining knowledge thereof or after the occurrence thereof, whichever is earlier, notify Lender:

(i) if any written information, exhibit, or report furnished to Lender contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. Any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto;

(ii) of all actions, suits, or proceedings brought by or against any Loan Party or any of its Subsidiaries before any court or Governmental Authority which reasonably could be expected to result in a Material Adverse Change; provided, that in any event, such notification shall not be later than five (5) days after service of process with respect thereto on any Loan Party or any of its Subsidiaries;

(iii) of (i) any disputes or claims by any Borrower's customers exceeding \$100,000 individually or \$200,000 in the aggregate during any fiscal year; or (ii) Goods returned to or recovered by any Borrower outside of the ordinary course of business;

(iv) of any material loss or damage to any Collateral or any substantial adverse change in the Collateral;

(v) of a violation of any law, rule or regulation, the non-compliance with which reasonably could be expected to result in a Material Adverse Change;

(vi) of any notice of violation of Aviation Laws which would result in a requirement that any Loan Party pay any fees, penalties, fines or other amounts or alter any Loan Party's business practices in an adverse manner;

(vii) of the occurrence of any ERISA Event;

(viii) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Change;

(ix) of any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof; or

(x) any failure by any Loan Party to pay rent at any of such Loan Party's locations when such rent first came due following the Petition Date, unless such non-payment was permitted under the Bankruptcy Code or pursuant to an order of the Bankruptcy Court.

(b) Immediately upon obtaining knowledge thereof or after the occurrence thereof, notify Lender of any event or condition which constitutes a Default or an Event of Default and provide a statement of the action that such Borrower proposes to take with respect to such Default or Event of Default.

Upon request of Lender, each Loan Party shall deliver to Lender any other materials, reports, records or information reasonably requested relating to the operations, business affairs, financial condition of any Loan Party or its Subsidiaries or the Collateral.

6.12 Collateral Covenants.

(a) Possession of Collateral. In the event that any Collateral, including Proceeds, is evidenced by or consists of Negotiable Collateral, Investment Related Property, or Chattel Paper, in each case, having an aggregate value or face amount of \$100,000 or more for all such Negotiable Collateral, Investment Related Property, or Chattel Paper, the Loan Parties shall promptly (and in any event within two (2) Business Days after receipt thereof), notify Lender thereof, and if and to the extent that perfection or priority of Lender's Liens is dependent on or enhanced by possession, the applicable Loan Party, promptly (and in any event within two (2) Business Days) after request by Lender, shall execute such other documents and instruments as shall be requested by Lender or, if applicable, endorse and deliver physical possession of such Negotiable Collateral, Investment Related Property, or Chattel Paper to Lender, together with such undated powers (or other relevant document of assignment or transfer acceptable to Lender) endorsed in blank as shall be requested by Lender, and shall do such other acts or things deemed necessary or desirable by Lender to enhance, perfect and protect Lender's Liens therein.

(b) Chattel Paper.

(i) Promptly (and in any event within two (2) Business Days) after request by Lender, each Loan Party shall take all steps reasonably necessary to grant Lender control of all electronic Chattel Paper of any Loan Party in accordance with the Code and all "transferable records" as that term is defined in Section 16 of the Uniform Electronic Transaction Act and Section 201 of the federal Electronic Signatures in Global and National Commerce Act as in effect in any relevant jurisdiction, to the extent that the individual or aggregate value or face amount of such electronic Chattel Paper equals or exceeds \$100,000; and

(ii) If any Loan Party retains possession of any Chattel Paper or instruments (which retention of possession shall be subject to the extent permitted hereby), promptly upon the request of Lender, such Chattel Paper and instruments shall

be marked with the following legend: "This writing and the obligations evidenced or secured hereby are subject to the Security Interest of Citiking International US, LLC".

(c) Control Agreements.

(i) Except to the extent otherwise provided by Section 7.11, each Loan Party shall obtain a Control Agreement (covering each Deposit Account), from each bank maintaining a Deposit Account for such Loan Party;

(ii) Except to the extent otherwise provided by Section 7.11, each Loan Party shall obtain a Control Agreement, from each issuer of uncertificated securities, securities intermediary, or commodities intermediary issuing or holding any financial assets or commodities to or for any Loan Party; and

(iii) Except to the extent otherwise provided by Section 7.11, each Loan Party shall cause Lender to obtain "control", as such term is defined in the Code, with respect to all of such Loan Party's investment property.

(d) Letter-of-Credit Rights. If the Loan Parties (or any of them) are or become the beneficiary of letters of credit having a face amount or value of \$100,000 or more in the aggregate, then the applicable Loan Party or Loan Parties shall promptly (and in any event within two (2) Business Days after becoming a beneficiary), notify Lender thereof and, promptly (and in any event within two (2) Business Days) after request by Lender, enter into a tri-party agreement with Lender and the issuer or confirming bank with respect to letter-of-credit rights assigning such letter-of-credit rights to Lender and directing all payments thereunder to such account as specified by Lender unless otherwise directed by Lender, all in form and substance satisfactory to the Lender.

(e) Commercial Tort Claims. If the Loan Parties (or any of them) obtain Commercial Tort Claims having a value, or involving an asserted claim, in the amount of \$100,000 or more in the aggregate for all Commercial Tort Claims, then the applicable Loan Party or Loan Parties shall promptly (and in any event within two (2) Business Days of obtaining such Commercial Tort Claim), notify Lender upon incurring or otherwise obtaining such Commercial Tort Claims and, promptly (and in any event within two (2) Business Days) after request by Lender, amend Schedule 5.6(d) to the Information Certificate to describe such Commercial Tort Claims in a manner that reasonably identifies such Commercial Tort Claims and which is otherwise reasonably satisfactory to the Lender, and hereby authorizes the filing of additional financing statements or amendments to existing financing statements describing such Commercial Tort Claims, and agrees to do such other acts or things deemed necessary or desirable by Lender to give Lender a first priority, perfected security interest in any such Commercial Tort Claim, which Commercial Tort Claim shall not be subject to any other Liens.

(f) Government Contracts. Other than Accounts and Chattel Paper the aggregate value of which does not at any one time exceed \$100,000, if any Account or Chattel Paper of any Loan Party arises out of a contract or contracts with the United States of America or any State or any department, agency, or instrumentality thereof, Loan Parties shall promptly (and in any event within two (2) Business Days of the creation thereof) notify Lender thereof and,

promptly (and in any event within two (2) Business Days) after request by Lender, execute any instruments or take any steps reasonably required by Lender in order that all moneys due or to become due under such contract or contracts shall be assigned to Lender and shall provide written notice thereof under the Assignment of Claims Act or other applicable law.

(g) Intellectual Property.

(i) Upon the request of Lender, in order to facilitate filings with the PTO and the United States Copyright Office, each Loan Party shall execute and deliver to Lender one or more Copyright Security Agreements or Patent and Trademark Security Agreements to further evidence Lender's Lien on such Loan Party's Patents, Trademarks, or Copyrights, and the General Intangibles of such Loan Party relating thereto or represented thereby;

(ii) Each Loan Party shall have the duty, with respect to Intellectual Property that is necessary in the conduct of such Loan Party's business, to protect and diligently enforce and defend at such Loan Party's expense its Intellectual Property, including (A) to diligently enforce and defend, including promptly suing for infringement, misappropriation, or dilution and to recover any and all damages for such infringement, misappropriation, or dilution, and filing for opposition, interference, and cancellation against conflicting Intellectual Property rights of any Person, (B) to prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the Closing Date or hereafter until the termination of this Agreement, (C) to prosecute diligently any patent application that is part of the Patents pending as of the Closing Date or hereafter until the termination of this Agreement, (D) to take all reasonable and necessary action to preserve and maintain all of such Loan Party's Trademarks, Patents, Copyrights, Intellectual Property Licenses, and its rights therein, including paying all maintenance fees and filing of applications for renewal, affidavits of use, and affidavits of non-contestability, and (E) to require all employees, consultants, and contractors of each Loan Party who were involved in the creation or development of such Intellectual Property to sign agreements containing assignment to such Loan Party of Intellectual Property rights created or developed and obligations of confidentiality. No Loan Party shall abandon any Intellectual Property or Intellectual Property License that is necessary in the conduct of such Loan Party's business. Each Loan Party shall take the steps described in this Section 6.12(g)(ii) with respect to all new or acquired Intellectual Property to which it or any of its Subsidiaries is now or later becomes entitled that is necessary in the conduct of such Loan Party's business;

(iii) Each Loan Party acknowledges and agrees that the Lender shall not have any duties with respect to any Intellectual Property or Intellectual Property Licenses of any Loan Party. Without limiting the generality of this Section 6.12(g)(iii), each Loan Party acknowledges and agrees that Lender shall not be under any obligation to take any steps necessary to preserve rights in the Collateral consisting of Intellectual Property or Intellectual Property Licenses against any other Person, but Lender may do so at its option from and after the occurrence and during the continuance of an Event of Default, and all expenses incurred in connection therewith (including reasonable fees and

expenses of attorneys and other professionals) shall be for the sole account of Loan Parties;

(iv) Each Loan Party shall promptly file an application with the United States Copyright Office for any Copyright that has not been registered with the United States Copyright Office if such Copyright is necessary in connection with the conduct of such Loan Party's business. Any expenses incurred in connection with the foregoing shall be borne by the Loan Parties; and

(v) No Loan Party shall enter into any Intellectual Property License to receive any license or rights in any Intellectual Property of any other Person unless such Loan Party has used commercially reasonable efforts to permit the assignment of or grant of a Security Interest in such Intellectual Property License (and all rights of such Loan Party thereunder) to Lender (and any transferees of Lender).

(h) Investment Related Property.

(i) Upon the occurrence and during the continuance of an Event of Default, following the request of Lender, all sums of money and property paid or distributed in respect of the Investment Related Property that are received by any Loan Party shall be held by the Loan Parties in trust for the benefit of Lender segregated from such Loan Party's other property, and such Loan Party shall deliver it promptly to Lender in the exact form received; and

(ii) Each Loan Party shall cooperate with Lender in obtaining all necessary approvals and making all necessary filings under federal, state, local, or foreign law to effect the perfection of the Security Interest on the Investment Related Property or to effect any sale or transfer thereof.

(i) Real Property; Fixtures. Upon the acquisition by any Loan Party of any fee interest in Real Property with a value in excess of \$250,000 ("Acquired Real Property"), such Loan Party will promptly (and in any event within two (2) Business Days of acquisition) notify Lender of the acquisition of such Acquired Real Property and will grant to Lender a first priority Mortgage on such Acquired Real Property, which Acquired Real Property shall not be subject to any other Liens except Permitted Liens, and shall deliver such other documentation and opinions, in form and substance satisfactory to the Lender, in connection with the grant of such Mortgage as Lender shall request in its Permitted Discretion, including title insurance policies and endorsements, surveys, financing statements, fixture filings, flood insurance, flood insurance certifications and environmental audits and such Loan Party shall pay all recording costs, intangible taxes and other fees and costs (including reasonable attorneys' fees and expenses) incurred in connection therewith. All such appraisals, title insurance policies and endorsements, environmental audits and surveys shall be prepared or issued by parties reasonably acceptable to Lender. To the extent permitted by applicable law, all of the Collateral shall remain personal property regardless of the manner of its attachment or affixation to real property.

(j) Cash Management.

(i) Each Loan Party shall comply with the Cash Management Order, and

(ii) Each Loan Party shall maintain the Cash Management Services consistent with the Interim and Final Cash Management Order.

(k) Motor Vehicles. Promptly (and in any event within two (2) Business Days) after (i) the value of all motor vehicles owned by Loan Parties exceeds \$250,000 in the aggregate or (ii) the occurrence of a Default or an Event of Default, each Loan Party shall deliver to Lender, an original certificate of title for each such motor vehicle together with a signed motor vehicle title application naming Lender as first lien holder with respect to such motor vehicle and will cause such title certificates to be filed (with the Lender's Lien noted thereon) in the appropriate state motor vehicle filing office.

(l) Aircraft and Engines. (i) Loan Parties shall (A) promptly notify Lender of (1) the use by any Loan Party in its business of any Aircraft for demonstration, personnel transportation or other purposes and the acquisition by any Loan Party of any Aircraft whether as a result of a trade-in or otherwise, or (2) the recording of, or any Loan Party's intention to record, an Aircraft Registration in the name of any Loan Party for any Aircraft, and (B) at Lender's request, at the sole expense of Loan Parties, obtain and furnish to Lender a written report of a search of the appropriate FAA recordation records by an attorney or recognized aircraft title service as to the title, liens, security interests, orders and other interests recorded with the FAA with respect to such Aircraft, execute an Aircraft Mortgage with respect to such Aircraft and duly effect an Aircraft Mortgage Recordation with respect to such Aircraft Mortgage promptly after such Aircraft Registration; (ii) Loan Parties shall not sell, lease or dispose of any Aircraft, except as expressly permitted herein; (iii) except with the express prior written consent of Lender, (A) Loan Parties shall not permit any Aircraft or Engine to be located outside of or removed from the United States of America, (B) Loan Parties shall not effect any Aircraft Registration with respect to any Aircraft unless promptly thereafter an Aircraft Mortgage Recordation is made with respect to such Aircraft and (C) Loan Parties shall not effect any Engine Registration with respect to any Engine unless promptly thereafter an Engine Mortgage Recordation is made with respect to such Engine; (iv) to the extent applicable, Loan Parties shall design, manufacture, test, maintain and operate all Aircraft in accordance with any Type Certificate(s), Production Certificate(s) and the Dealer's Aircraft Registration Certificate applicable thereto and in conformity with all other FAA Certificates issued to any Loan Party and all Aviation Laws and all other applicable laws; and (v) Loan Parties assume all responsibility and liability arising from or relating to the production, use, sale or other disposition of the Aircraft or Engines.

6.13 Material Contracts. Contemporaneously with the delivery of each Compliance Certificate pursuant to Section 6.1, provide Lender with copies of (a) each Material Contract entered into since the delivery of the previous Compliance Certificate, and (b) each material amendment or modification of any Material Contract entered into since the delivery of the previous Compliance Certificate. Borrowers shall maintain all Material Contracts in full force and effect and shall not default in the payment or performance of any obligations thereunder.

6.14 Location of Inventory, Equipment and Books; Maintenance of Books and Records.

(a) Keep each Loan Party's and its Subsidiaries' Inventory and Equipment (other than vehicles and Equipment out for repair) and Books only at the locations identified on Schedule 5.29 to the Information Certificate and keep their chief executive offices only at the locations identified on Schedule 5.6(b) to the Information Certificate; provided, however, that Borrowers may amend Schedule 5.29 to the Information Certificate so long as such amendment occurs by written notice to Lender not less than ten (10) days prior to the date on which such Inventory, Equipment or Books are moved to such new location.

(b) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary, as the case may be; and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Loan Parties or such Subsidiary, as the case may be.

6.15 Further Assurances.

(a) At any time upon the reasonable request of Lender, execute or deliver to Lender any and all financing statements, fixture filings, security agreements, pledges, assignments, endorsements of certificates of title, mortgages, deeds of trust, collateral reviews and all other documents (the "Additional Documents") that Lender may reasonably request and in form and substance reasonably satisfactory to the Lender, to create, perfect, and continue perfection or to better perfect Lender's Liens in all of the Collateral of each Loan Party (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents; provided that the foregoing shall not apply to any Loan Party that is a CFC if providing such documents would result in adverse tax consequences or the costs to the Loan Parties of providing such documents are unreasonably excessive (as determined by Lender) in relation to the benefits to Lender afforded thereby. To the maximum extent permitted by applicable law, if a Loan Party refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time, not to exceed thirty (30) days following the request to do so, such Loan Party hereby authorizes Lender to execute any such Additional Documents in the applicable Loan Party's name, as applicable, and authorizes Lender to file such executed Additional Documents in any appropriate filing office. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Lender may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of each Borrower and each other Loan Party, and all of the outstanding capital Stock of each Loan Party (subject to exceptions and limitations contained in the Loan Documents with respect to CFCs and non-operating Subsidiaries of Borrowers with nominal assets and nominal liabilities).

(b) Each Loan Party authorizes the filing by Lender of financing or continuation statements, or amendments thereto, and such Loan Party will execute and deliver to

Lender such other instruments or notices, as Lender may reasonably request, in order to perfect and preserve the Security Interest granted or purported to be granted hereby.

(c) Each Loan Party authorizes Lender at any time and from time to time to file, transmit, or communicate, as applicable, financing statements and amendments (i) describing the Collateral as “all personal property of debtor” or “all assets of debtor” or words of similar effect, (ii) describing the Collateral as being of equal or lesser scope or with greater detail, or (iii) that contain any information required by Part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of such financing statement. Each Loan Party also hereby ratifies any and all financing statements or amendments previously filed by Lender in any jurisdiction.

(d) Each Loan Party acknowledges that no Loan Party is authorized to file any financing statement or amendment or termination statement with respect to any financing statement filed in connection with this Agreement without the prior written consent of Lender, subject to such Loan Party’s rights under Section 9-509(d)(2) of the Code.

6.16 Formation of Subsidiaries. If at any time any Loan Party forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary, such Loan Party shall (a) within ten (10) days of such formation or acquisition (or such later date as permitted by the Lender in its sole discretion) cause any such new Subsidiary to become a Borrower or a Guarantor, as Lender may determine, and to provide to Lender a joinder to this Agreement and a joinder to the Guaranty, together with such other security documents, as well as appropriate financing statements (and with respect to all property subject to a mortgage, fixture filings), all in form and substance reasonably satisfactory to the Lender (including being sufficient to grant Lender a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary); provided, that, the Guaranty and such other security documents shall not be required to be provided to Lender with respect to any Subsidiary of Borrower that is a CFC if providing such documents would result in adverse tax consequences or (ii) if the costs to the Loan Parties of executing any security documents or perfecting the security interests created thereby are unreasonably excessive (as determined by Lender) in relation to the benefits of Lender of the security or guarantee afforded thereby, (b) within ten (10) days of such formation or acquisition (or such later date as permitted by the Lender in its sole discretion) provide to Lender a pledge agreement and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary reasonably satisfactory to the Lender; provided, that only sixty-five (65%) percent of the total outstanding voting Stock of any first tier Subsidiary of a Borrower that is a CFC shall be required to be pledged if pledging a greater amount would result in material adverse tax consequences or the costs to the Loan Parties of providing such pledge or perfecting the security interests created thereby are unreasonably excessive (as determined by Lender) in relation to the benefits of Lender of the security or guarantee afforded thereby (which pledge, if reasonably requested by Lender, shall be governed by the laws of the jurisdiction of such Subsidiary), and (c) within ten (10) days of such formation or acquisition (or such later date as permitted by the Lender in its sole discretion) provide to Lender all other documentation, including one or more opinions of counsel reasonably satisfactory to the Lender, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance or other documentation with respect to all Real Property owned in fee and subject to a

mortgage). Any document, agreement, or instrument executed or issued pursuant to this Section 6.16 shall be a Loan Document.

6.17 [Reserved].

6.18 Retention of Independent Consultant and Investment Banker.

(a) Until such time as all Existing Liabilities and all Obligations have been repaid in full in cash, the Borrowers shall continue to retain the Independent Consultant and the Investment Banker, pursuant to terms reasonably acceptable to the Lender, for the purpose of (i) assisting in the preparation of each budget, Variance Report and the other financial and collateral reporting required to be delivered to the Lender pursuant to this Agreement, (ii) advising the Loan Parties with regard to their financial performance and affairs and operational initiatives, including, but not limited to, liquidity and working capital management, operational efficiencies, budgets and forecasts, and interactions with the Lender; (iii) being available to the Lender to discuss in detail the Approved Budgets, Variance Reports, the Loan Parties' operating and financial performance, and the reports and other materials and matters as set forth above, and (iv) assisting in the consummation of any Permitted Dispositions, and to perform financial and restructuring services on terms reasonably satisfactory to the Lender. In the event that an Independent Consultant or an Investment Banker resigns or is otherwise no longer engaged by the Borrowers, the Borrowers shall, subject to Bankruptcy Court approval, engage a replacement Independent Consultant or Investment Banker, as applicable, reasonably acceptable to the Lender within ten (10) Business Days.

(b) The Loan Parties authorize the Lender to communicate directly with their independent certified public accountants, financial advisors, investment bankers and consultants (including the Independent Consultant and the Investment Banker), which have been engaged from time to time by the Loan Parties, and authorizes and shall instruct those accountants, financial advisors, investment bankers and consultants to communicate to the Lender such information relating to each Loan Party with respect to the business, results of operations, prospects and financial condition of such Loan Party and other matters as the Lender may reasonably request.

6.19 Performance within Approved Budget.

(a) The Loan Parties and their Subsidiaries shall not pay any expenses or make any disbursements other than those set forth in the Approved Budget, subject to the Permitted Variance. Compliance with the Approved Budget shall be tested (A) for the first two weeks following the Closing Date on a cumulative basis, (B) for the first three weeks following the Closing Date on a cumulative basis, and (C) thereafter weekly on a rolling four (4) week basis.

(b) The Loan Parties and their Subsidiaries shall not use funds allocated to a particular line item in the Approved Budget (including line items denominated "Miscellaneous" or "Other", or words of similar import) to pay any expenses under any other line item(s) in the Approved Budget without the prior express written consent of the Lender, which consent may be conditioned, withheld, or delayed in the Lender's sole and exclusive discretion.

6.20 Approval of Agreement and Plan of Reorganization.

(a) On or prior to two days after the Petition Date, the Borrower shall file a motion seeking approval of the procedures for the solicitation of votes in connection with the Plan of Reorganization pursuant to sections 1125 and 1126 of the Bankruptcy Code (the "Solicitation"), the forms of ballots and notices and related relief, all in a form and substance acceptable to the Lender.

(b) On or prior to 90 days after the Petition Date, the Bankruptcy Court shall hold a hearing for approval of the Disclosure Statement and confirmation of the Plan of Reorganization.

(c) On or before 100 days after the Petition Date, the Bankruptcy Court shall have entered a confirmation order with respect to the Plan of Reorganization in form and substance acceptable to the Lender and such confirmation order shall be a Final Order.

7. NEGATIVE COVENANTS.

Each Loan Party covenants and agrees that, until termination of this Agreement and the Revolving Commitment and payment in full of the Obligations, the Loan Parties will not and will not permit any of their Subsidiaries to do any of the following:

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

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

7.3 Restrictions on Fundamental Changes.

(a) Enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Stock, except for (i) any merger between Loan Parties; provided, that a Borrower must be the surviving entity of any such merger to which it is a party, and (ii) any merger between Subsidiaries of a Borrower that are not Loan Parties;

(b) Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except for (i) the liquidation or dissolution of Subsidiaries of any Borrower, only if the Lender has given written consent to the liquidation or dissolution of any such Subsidiaries, (ii) the liquidation or dissolution of a Loan Party (other than a Borrower) or any of its wholly-owned Subsidiaries so long as all of the assets (including any interest in any Stock) of such liquidating or dissolving Loan Party or Subsidiary are transferred to a Loan Party that is not liquidating or dissolving, or (iii) except with respect to such liquidation or dissolution pursuant to clause (i) above, the liquidation or dissolution of a Subsidiary of a Borrower that is not a Loan Party (other than any such Subsidiary the Stock of which (or any portion thereof) is subject to a Lien in favor of Lender) so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Subsidiary of a Borrower that is not liquidating or dissolving;

(c) Suspend or cease operation of a substantial portion of its or their business, except as permitted pursuant to Sections 7.3(a) or (b) above or in connection with the transactions permitted pursuant to Section 7.4; or

(d) Form or acquire any direct or indirect Subsidiary.

7.4 Disposal of Assets. Other than Permitted Dispositions or transactions expressly permitted by Sections 7.3 or 7.12, Loan Parties shall not sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any of the Collateral or any other asset except as expressly permitted by this Agreement; provided, that notwithstanding anything to the contrary contained herein or in any other Loan Document, no Parts Manufacturer Approvals owned by Brigadoon may be sold, assigned, transferred, or otherwise disposed of, or an option granted with respect thereto. Lender shall not be deemed to have consented to any sale or other disposition of any of the Collateral or any other asset except as expressly permitted in this Agreement or the other Loan Documents.

7.5 Change Name. Change any Loan Party's or any of its Subsidiaries' name, organizational identification number, state of organization, organizational identity or "location" for purposes of Section 9-307 of the Code.

7.6 Nature of Business. Make any change in the nature of its or their business as conducted on the date of this Agreement or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, however, that, the foregoing shall not prevent any Loan Party or any of its Subsidiaries from engaging in any business that is reasonably related or ancillary to its or their business.

7.7 Prepayments and Amendments.

(a) Except in connection with Refinancing Indebtedness permitted by Section 7.1,

(i) pay, redeem, defease, purchase, or otherwise acquire any Indebtedness of any Loan Party or any of its Subsidiaries, other than (A) the Existing Liabilities under the Existing Credit Agreement; (B) the Obligations in accordance with this Agreement, and (C) Permitted Intercompany Advances, or

(ii) make any payment on account of Indebtedness that has been contractually subordinated in right of payment to the Obligations if such payment is not permitted at such time under the subordination terms and conditions, or

(b) Directly or indirectly, amend, modify, or change (or permit the amendment, modification or change of) any of the terms or provisions of:

(i) any agreement, instrument, document, indenture, or other writing evidencing or concerning Permitted Indebtedness other than (A) the Obligations in accordance with this Agreement, (B) Permitted Intercompany Advances, and (C) Indebtedness permitted under clauses (c), (e) and (f) of the definition of Permitted Indebtedness, and Loan Parties shall furnish to Lender all notices or demands in

connection with such Permitted Indebtedness either received by any Loan Party or on its behalf, promptly after the receipt thereof, or sent by any Loan Party or on its behalf, concurrently with the sending thereof, as the case may be;

(ii) any Material Contract except to the extent that such amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of Lender; or

(iii) the Governing Documents of any Loan Party or any of its Subsidiaries if the effect thereof, either individually or in the aggregate, could reasonably be expected to be materially adverse to the interests of Lender.

7.8 Change of Control. Cause, permit, or suffer, directly or indirectly, any Change of Control unless the Lender shall have provided its prior written consent.

7.9 Restricted Junior Payments. Make any Restricted Junior Payment.

7.10 Accounting Methods; Inventory Reporting.

(a) Modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP).

(b) Modify or change its standard cost of reporting of Inventory unless the Lender shall have provided its prior written consent.

7.11 Investments; Controlled Investments.

(a) Except for Permitted Investments, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment.

(b) Other than (i) an aggregate amount of not more than \$25,000 at any one time, in the case of each Loan Party and its Subsidiaries, and (ii) amounts deposited into Deposit Accounts identified on Schedule 5.15 to the Information Certificate which are specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for each Loan Party's or their Subsidiaries' employees, make, acquire, or permit to exist Permitted Investments consisting of cash, Cash Equivalents, or amounts credited to Deposit Accounts or Securities Accounts unless such Borrower and such other Loan Party or its Subsidiaries, as applicable, and the applicable bank (as permitted solely pursuant to Section 6.12(j)) or securities intermediary have entered into Control Agreements with Lender governing such Permitted Investments in order to perfect (and further establish) Lender's Liens in such Permitted Investments.

7.12 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any transaction with any Affiliate of any Loan Party or any of their Subsidiaries except for:

(a) transactions (other than the payment of management, consulting, monitoring, or advisory fees) between a Borrower or any other Loan Party or its Subsidiaries, on

the one hand, and any Affiliate of a Borrower, any other Loan Party or its Subsidiaries, on the other hand, so long as such transactions (i) are fully disclosed to Lender prior to the consummation thereof, if they involve one or more payments by a Borrower or a Loan Party or its Subsidiaries in excess of \$50,000 for any single transaction or series of related transactions, and (ii) are no less favorable, taken as a whole, to the Loan Parties or their Subsidiaries, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate;

(b) so long as it has been approved by a Loan Party's or its applicable Subsidiary's board of directors (or comparable governing body) in accordance with applicable law, any indemnity provided for the benefit of directors (or comparable managers) of such Loan Party or its applicable Subsidiary;

(c) so long as it has been approved by a Loan Party's or its applicable Subsidiary's board of directors (or comparable governing body) in accordance with applicable law, the payment of reasonable compensation, severance, or employee benefit arrangements to employees, officers, and outside directors of a Loan Party and its Subsidiaries in the ordinary course of business and consistent with industry practice; and

(d) transactions permitted by Section 7.3 or Section 7.9, or any Permitted Intercompany Advance.

7.13 Use of Proceeds. Use the proceeds of any loan made hereunder for any purpose other than (a) to pay fees, costs, and expenses, including Lender Expenses, incurred in connection with the Loan Documents, and the transactions contemplated hereby and thereby and, to the extent approved by the Bankruptcy Court and as set forth in the DIP Orders, in connection with the Cases, (b) for other payments of the Debtors (including, without limitation, in respect of the Existing Liabilities using the proceeds of the Roll-Up Loan) permitted to be made by the DIP Orders and any other order of the Bankruptcy Court, and (c) to the extent expressly permitted under applicable law, the Loan Documents, the DIP Orders, and in accordance with the Approved Budget (subject to Section 6.19), for general corporate and working capital purposes of the Debtors for their lawful and permitted purposes (provided, that no part of the proceeds of the Revolving Loans will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System). For the avoidance of doubt, no proceeds of any loan made hereunder shall be used, except as expressly provided in the DIP Orders, to (w) finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation of any type adverse to the interests of the Lender or its rights and remedies under this Agreement and the other Loan Documents, including, without limitation, for the payment of any services rendered by the professionals retained by the Borrowers or the Creditors' 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 (1) invalidating, setting aside, avoiding or subordinating, in whole or in part, the Obligations or the Liens securing same, (2) for monetary, injunctive or other affirmative relief against the Lender or the Collateral, or (3) preventing, hindering or otherwise delaying the exercise by any the Lender of any rights and remedies under the Loan Documents or applicable Law, or the enforcement or realization

(whether by foreclosure, credit bid, further order of the court or otherwise) by any or all of the Lender upon any of the Collateral, (x) make any distribution under a Plan of Reorganization in the Cases; (y) make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other Governmental Authority without the prior written consent of the Lender; (z) to pay any fees or similar amounts to any Person who has proposed or may propose to purchase interests in any Borrower without the prior written consent of the Lender.

7.14 Limitation on Issuance of Stock. Except for the issuance or sale of common stock or Permitted Preferred Stock by the Loan Parties, issue or sell or enter into any agreement or arrangement for the issuance and sale of any of their Stock.

7.15 Consignments. Consign any of its Inventory or sell any of its Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale, except as set forth on Schedule 7.15 to the Information Certificate.

7.16 Inventory and Equipment with Bailees. Store the Inventory or Equipment of any Loan Party or any of its Subsidiaries at any time now or hereafter with a bailee, warehouseman, or similar party, except as set forth on Schedule 7.16 to the Information Certificate.

7.17 Insider Transactions. With respect to Borrower, sell any Aircraft to any Insiders (as that term is defined at Section 101(31) of the Bankruptcy Code) without the prior written consent of Lender. Any costs or expenses incurred by the Borrowers in connection with servicing or modifying of any Aircraft owned or controlled by an Insider of the Borrowers in excess of \$150,000 in the aggregate shall require full and immediate repayment upon completion of said servicing or modification.

7.18 No Additional Capital. Without the prior written consent of the Lender, receive any additional capital in the form of any cash proceeds or any other property from (i) issuances of Stock of Borrowers (or any direct or indirect parent company or any Subsidiary thereof) or (ii) the incurrence of any additional indebtedness or loans except for Permitted Indebtedness.

7.19 [Reserved]

7.20 Bankruptcy Related Negative Covenants. Seek, consent to, or permit to exist any of the following:

(a) Any order which authorizes the rejection or assumption of any leases of any Loan Party without the Lender's prior consent, whose consent shall not be unreasonably withheld;

(b) Any modification, stay, vacation or amendment to the DIP Orders to which the Lender has not consented in writing;

(c) A priority claim or administrative expense or unsecured claim against any Loan Party (now existing or hereafter arising or any kind or nature whatsoever, including, without limitation, any administrative expense of the kind specified in Sections 105, 326, 328, 330, 331, 364(c), 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726 or 1114 of the

Bankruptcy Code) equal or superior to the priority claim of the Lender in respect of the Obligations and the Existing Liabilities, except with respect to the Carve Out;

(d) Any Lien on any Collateral having a priority equal or superior to the Lien securing the Obligations, other than with respect to (i) the Carve Out, (ii) Permitted Liens having priority by operation of applicable law, and (iii) the Liens securing the Existing Liabilities;

(e) Any order which authorizes the return of any of the Loan Parties' property pursuant to Section 546(h) of the Bankruptcy Code;

(f) Any order which authorizes the payment of any Indebtedness (other than the Existing Liabilities, Indebtedness reflected in the Approved Budget, and other Indebtedness approved by the Lender) incurred prior to the Petition Date or the grant of "adequate protection" (whether payment in cash or transfer of property) with respect to any such Indebtedness which is secured by a Lien; or

(g) Any order seeking authority to take any action that is prohibited by the terms of this Agreement or the other Loan Documents or refrain from taking any action that is required to be taken by the terms of this Agreement or any of the other Loan Documents.

(h) The filing of or support for a disclosure statement or plan that does not provide for the payment in full of all obligations under the DIP Credit Facility and Existing Credit Agreement unless otherwise agreed to by the Lender.

7.21 Burdensome Agreements. Enter into or permit to exist any contractual obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Junior Payments or other distributions to any Loan Party or to otherwise transfer property to or invest in a Loan Party, (ii) of any Subsidiary to Guarantee the Obligations, (iii) of any Subsidiary to make or repay loans to a Loan Party, or (iv) of the Loan Parties or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person in favor of the Lender; provided, however, that this clause (iv) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under clause (c) of the definition of Permitted Indebtedness solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.

8. [RESERVED].

9. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default (each, an "Event of Default") under the Loan Documents:

(a) If any Borrower fails to pay when due and payable, or when declared due and payable, all or any portion of the Obligations consisting of principal, interest, fees, charges, premiums or other amounts due Lender, reimbursement of Lender Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations;

(b) If any Loan Party or any of its Subsidiaries:

(i) fails to perform or observe any covenant or other agreement contained in any of (i) Sections 3.5, 6.1, 6.2, 6.3 (solely if any Loan Party is not in good standing in its jurisdiction of organization), 6.5(a) (solely with respect to F.I.C.A., F.U.T.A., federal income taxes and any other taxes or assessments the non-payment of which may result in a Lien having priority over Lender's Liens), 6.5(b), 6.6, 6.7 (solely if any Loan Party refuses to allow Lender or its representatives or agents to visit such Loan Party's properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss such Loan Party's affairs, finances, and accounts with officers and employees of such Loan Party), 6.8, 6.11, 6.12, 6.13, 6.14, 6.16, 6.17, 6.18, 6.19, 6.20 or 6.21 of this Agreement, or (ii) Section 7 of this Agreement;

(ii) fails to perform or observe any covenant or other agreement contained in any of Sections 6.3 (other than if a Loan Party is not in good standing in its jurisdiction of organization), 6.4, 6.5(a) (other than F.I.C.A., F.U.T.A., federal income taxes and any other taxes or assessments the non-payment of which may result in a Lien having priority over Lender's Liens), 6.7 (other than if any Loan Party or any of its Subsidiaries refuses to allow Lender or its representatives or agents to visit its properties, inspect its assets or books or records, examine and make copies of its books or records or disclose its affairs, finances and accounts with its officers and employees), 6.9, 6.10 and 6.15 of this Agreement and (x) such failure is not as a result of the commencement of the Cases or any applicable payment is stayed by the Bankruptcy Court, and (y) such failure continues for a period of fifteen (15) days after the earlier of (i) the date on which such failure shall first become known to or should have been known by any officer of such Loan Party or (ii) the date on which written notice thereof is given to such Loan Party by Lender; or

(iii) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is unable to be cured or is the subject of another provision of this Section 9 (in which event such other provision of this Section 9 shall govern), and such failure continues for a period of thirty (30) days after the earlier of (i) the date on which such failure shall first become known to or should have been known by any officer of such Loan Party or (ii) the date on which written notice thereof is given to such Loan Party by Lender;

(c) If after the Petition Date, there is entered or filed against a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, (x) one or more judgments, orders, or awards for the payment of money in an amount in excess of \$100,000 in any one case or in excess of \$200,000 in the aggregate (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage), or (y) any one or more non-monetary judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Change, and with respect to any of the events described in the foregoing clauses (x) or (y), either (a) there is a period of ten (10) consecutive days at any time after the entry of any such judgment, order, or award during which (1) the same is not discharged, satisfied, vacated, or bonded pending appeal,

or (2) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

(d) If (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of \$100,000 or which would reasonably likely result in a Material Adverse Change, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of \$100,000 or which could reasonably likely result in a Material Adverse Change;

(e) If there occurs any uninsured loss to any material portion of the Collateral;

(f) If any Loan Party or any of its Subsidiaries is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of the business affairs of such Loan Party and its Subsidiaries, taken as a whole;

(g) If, except as a result of the commencement of the Cases or unless payment is stayed by the Bankruptcy Court, there is (a) a default under one or more agreements to which a Loan Party or any of its Subsidiaries is a party with one or more third Persons relative to a Loan Party's or any of its Subsidiaries' Indebtedness involving an aggregate amount of \$100,000 or more, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder, or (b) a default in or an involuntary early termination of one or more Hedge Agreements to which a Loan Party or any of its Subsidiaries is a party involving an aggregate amount of \$100,000 or more;

(h) If any warranty, representation, certificate, statement, or Record made herein or in any other Loan Document or delivered in writing to Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (except, that, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date of issuance or making or deemed making thereof;

(i) If the obligation of any Guarantor under the Guaranty is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement), or if any Guarantor fails to perform any obligation under the Guaranty, or repudiates or revokes or purports to repudiate or revoke any obligation under the Guaranty, or any individual Guarantor dies or becomes incapacitated, or any other Guarantor ceases to exist for any reason;

(j) If this Agreement or any other Loan Document (including, without limitation, any DIP Order) that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected and, except to the extent of Permitted Liens which are permitted purchase money Liens or the interests of lessors under Capital Leases, first priority Lien on the

Collateral covered thereby, except (a) as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement, or (b) with respect to Collateral the aggregate value of which, for all such Collateral, does not exceed at any time, \$100,000;

(k) The occurrence any Material Adverse Change;

(l) If any event or circumstance shall occur which, in the Permitted Discretion of the Lender exercised in good faith, would be reasonably likely to cause Lender to suspect that any Loan Party or any of its Subsidiaries has engaged in fraudulent activity with respect to the Collateral or other matters;

(m) If any director, officer, or owner of at least twenty percent (20%) of the issued and outstanding ownership interests of a Loan Party is indicted for a felony offense under state or federal law, or a Loan Party hires an officer or appoints a director who has been convicted of any such felony offense, or a Person becomes an owner of at least twenty percent (20%) of the issued and outstanding ownership interests of a Loan Party who has been convicted of any such felony offense;

(n) If the validity or enforceability of any Loan Document (including, without limitation, any DIP Order) shall at any time for any reason be declared to be null and void, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document (including, without limitation, any DIP Order);

(o) The Restructuring Support Agreement is terminated;

(p) If there is entered an order in the Cases which stays, modifies or reverses any DIP Order or which otherwise materially adversely affects the effectiveness of any DIP Order without the express written consent of the Lender;

(q) If there occurs either (i) the appointment in the Cases of a trustee, any examiner having expanded powers to operate all or any part of any Loan Party's business, or similar insolvency official or administrator, or (ii) the conversion of the Cases to a case under Chapter 7 of the Bankruptcy Code;

(r) If the Bankruptcy Court fails to enter a Final Financing Order, in form and substance satisfactory to the Lender, within forty-five (45) days after the Petition Date;

(s) If there is entered any order which provides relief from the automatic stay otherwise imposed pursuant to Section 362 of the Bankruptcy Code which permits any creditor to (i) realize upon, or to exercise any right or remedy with respect to any material portion of the Collateral or (ii) terminate any material license, franchise, or similar agreement;

(t) If there is filed any application by any Loan Party without the express prior written consent of the Lender for the approval of any super-priority claim in the Cases

which is pari passu with or senior to the priority of the claims of the Lender for the Obligations, or there shall arise any such super-priority claim under the Bankruptcy Code;

(u) If there occurs the payment or other discharge by any Loan Party of any pre-petition Indebtedness, except as expressly permitted hereunder, under any DIP Order, or in the Approved Budget or by order in the Cases to which order the Lender has provided its written consent;

(v) If there is entered any order in the Cases which provides adequate protection, or the granting by any Loan Party of similar relief in favor of any one or more of a Loan Party's pre-petition creditors, contrary to the terms and conditions of any DIP Order or the terms hereof;

(w) If there occurs failure of any Loan Party to (i) comply with each and all of the terms and conditions of any DIP Order or (ii) comply in all material respects with the Cash Management Order or any other order entered in the Cases;

(x) If there is filed any motion by any Loan Party seeking, or the entry of any order in the Cases: (i) (A) permitting working capital or other financing (other than ordinary course trade credit, unsecured debt) for any Loan Party from any Person other than the Lender (unless the proceeds of such financing are used to pay all Existing Liabilities in full, to pay all Obligations in full, to cash collateralize all Obligations due in connection with any Hedge Agreement, cash management, depository or similar products (collectively, the "Unliquidated Claims"), and the establishment of a reserve account for all indemnification obligations hereunder), (B) granting a Lien on, or security interest in (other than a Permitted Lien) any of the Collateral, other than with respect to this Agreement (unless such Liens are granted in connection with a financing, the proceeds of which are applied to the payment in full of all Obligations and the cash collateralization of all Obligations due in connection with any Hedge Agreement, other Unliquidated Claims and indemnification obligations hereunder), (C) except as permitted by this Agreement and the DIP Orders, permitting the use of any of the Collateral pursuant to Section 363(c) of the Bankruptcy Code without the prior written consent of the Lender, (D) permitting recovery from any portion of the Collateral any costs or expenses of preserving or disposing of such Collateral under Section 506(c) of the Bankruptcy Code, or (E) dismissing the Cases or (ii) the filing of any motion by any party in interest or any Creditors' Committee appointed in the Cases) to reconsider any DIP Order or otherwise seeking any of the matters specified in the foregoing clause (i) that is not dismissed or denied within thirty (30) days of the date of the filing of such motion (or such later date agreed to in writing by the Lender);

(y) If there is filed a motion by any Loan Party or if the Loan Party supports a motion seeking approval of a Disclosure Statement and a Plan of Reorganization, or the entry of an order confirming a Bankruptcy Plan, that does not require repayment in full in cash of all Obligations and Existing Liabilities on the Consummation Date of such Plan of Reorganization; or

(z) If the validity, priority, perfection, or enforceability of the Existing Loan Documents, the Existing Liabilities, or any Lien granted pursuant to the Existing Loan Documents is determined to be null and void, invalid or unenforceable by the Bankruptcy Court

or another court of competent jurisdiction in any action commenced or asserted by any other party in interest in the Cases, including, without limitation, the Creditors' Committee.

10. RIGHTS AND REMEDIES.

10.1 Rights and Remedies. Upon the occurrence and during the continuation of an Event of Default and subject to the terms of the DIP Orders, Lender may (in each case under clauses (a) or (b) by written notice to Borrowers, in addition to any other rights or remedies provided for hereunder or under any other Loan Document (including, without limitation, the DIP Orders) or by applicable law, do any one or more of the following:

(a) declare the Obligations, whether evidenced by this Agreement or by any of the other Loan Documents immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by each Loan Party;

(b) declare the Revolving Commitment of the Lender to make Revolving Loans to be terminated, whereupon such Revolving Commitment shall be terminated;

(c) give notice to an Account Debtor or other Person obligated to pay an Account, a General Intangible, Negotiable Collateral, or other amount due, notice that the Account, General Intangible, Negotiable Collateral or other amount due has been assigned to Lender for security and must be paid directly to Lender and Lender may collect the Accounts, General Intangible and Negotiable Collateral of each Borrower and each other Loan Party directly, and any collection costs and expenses shall constitute part of the Obligations under the Loan Documents;

(d) in Lender's name or in Borrowers' name, as Borrowers' agent and attorney-in-fact, notify the United States Postal Service to change the address for delivery of Borrowers' mail to any address designated by Lender, otherwise intercept Borrowers' mail, and receive, open and dispose of Borrowers' mail, applying all Collateral as permitted under this Agreement and holding all other mail for Borrowers' account or forwarding such mail to Borrowers' last known address;

(e) without notice to or consent from any Borrower, and without any obligation to pay rent or other compensation, take exclusive possession of all locations where Borrowers conduct their business or have any rights of possession and use the locations to store, process, manufacture, sell, use, and liquidate or otherwise dispose of items that are Collateral, and for any other incidental purposes deemed appropriate by Lender in good faith; and

(f) exercise in respect of the Collateral, in addition to other rights and remedies provided for herein, in the other Loan Documents, or otherwise available to it, all the rights and remedies of a secured party on default under the Code or any other applicable law.

10.2 Additional Rights and Remedies. Without limiting the generality of the foregoing, each Borrower expressly agrees that upon the occurrence and during the continuance of an Event of Default, subject to the DIP Orders:

(a) Lender, without demand of performance or other demand, advertisement or notice of any kind (except a notice specified below of time and place of public or private sale) to or upon any Borrower, any Loan Party or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), may take immediate possession of all or any portion of the Collateral and (i) require Loan Parties to, and each Loan Party hereby agrees that it will at its own expense and upon request of Lender forthwith, assemble all or part of the Collateral as directed by Lender and make it available to Lender at one or more locations designated by Lender where such Borrower or Loan Party conducts business, and (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of Lender's or Loan Party's offices or elsewhere, for cash, on credit, and upon such other terms as Lender may deem commercially reasonable, which sale may be conducted under the provisions of the Code (including pursuant to Sections 9-610 and 9-620 of the Code), the provisions of the Bankruptcy Code (including pursuant to Section 363 of the Bankruptcy Code) or at any sale or foreclosure conducted by the Lender (whether by judicial action or otherwise) in accordance with applicable laws. The Lender may Credit Bid and purchase at any such sale (either directly or through one or more acquisition vehicles) all or any portion of the Collateral. Each Loan Party agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to such Borrower or such other Loan Party of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification and such notice shall constitute a reasonable "authenticated notification of disposition" within the meaning of Section 9-611 of the Code. Lender shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Lender may adjourn any public or private sale from time to time, and such sale may be made at the time and place to which it was so adjourned. Each Loan Party agrees that the internet shall constitute a "place" for purposes of Section 9-610(b) of the Code. Each Loan Party agrees that any sale of Collateral to a licensor pursuant to the terms of a license agreement between such licensor and such Borrower or such Loan Party is sufficient to constitute a commercially reasonable sale (including as to method, terms, manner, and time) within the meaning of Section 9-610 of the Code;

(b) Lender may, in addition to other rights and remedies provided for herein, in the other Loan Documents, or otherwise available to it under applicable law and without the requirement of notice to or upon any Loan Party or any other Person (which notice is hereby expressly waived to the maximum extent permitted by the Code or any other applicable law), (i) with respect to any Loan Party's Deposit Accounts in the Lender's Liens are perfected by control under Section 9-104 of the Code, instruct the bank maintaining such Deposit Account for the applicable Loan Party to pay the balance of such Deposit Account to or for the benefit of Lender, and (ii) with respect to any Loan Party's Securities Accounts in the Lender's Liens are perfected by control under Section 9-106 of the Code, instruct the securities intermediary maintaining such Securities Account for the applicable Loan Party to (A) transfer any cash in such Securities Account to or for the benefit of Lender, or (B) liquidate any financial assets in such Securities Account that are customarily sold on a recognized market and transfer the cash proceeds thereof to or for the benefit of Lender;

(c) any cash held by Lender as Collateral and all cash proceeds received by Lender in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied against the Obligations in the order set forth in Section 10.5 of this

Agreement. In the event the proceeds of Collateral are insufficient to satisfy all of the Obligations in full, each Borrower and each other Loan Party shall remain jointly and severally liable for any such deficiency; and

(d) the Obligations arise out of a commercial transaction, and that if an Event of Default shall occur Lender shall have the right to an immediate writ of possession without notice of a hearing. Lender shall have the right to the appointment of a receiver for each Loan Party or for the properties and assets of each Loan Party, and each Loan Party hereby consents to such rights and such appointment and hereby waives any objection such Loan Party may have thereto or the right to have a bond or other security posted by Lender .

In addition to the exercise by the Lender of any or all of its rights and remedies after the occurrence and during the continuance of an Event of Default, the Lender may require, and upon request by the Lender the Borrowers shall, undertake to Liquidate the Collateral on behalf of the Lender in such manner as the Lender may require. The Lender and the Borrowers shall endeavor to implement such a Liquidation on mutually acceptable terms and conditions. However, the Lender may by written notice to the Administrative Borrower require the Borrowers to:

(e) File a motion or motions seeking to sell or otherwise dispose of any or all of the Real Property pursuant to Section 363 of the Bankruptcy Code, on terms acceptable to the Lender; and

(f) File a motion or motions seeking to sell, assume, assign, or otherwise dispose of any or all leases pursuant to Sections 363 and 365 of the Bankruptcy Code, on terms acceptable to the Lender.

The Borrowers shall file such motion(s) within three (3) Business Days of the Lender's request and shall diligently prosecute such motion(s). If the Borrowers fail to so file or diligently prosecute the motion(s), the Lender may file and prosecute such motion(s) in the name of the Borrowers.

10.3 Lender Appointed Attorney in Fact. Each Loan Party hereby irrevocably appoints Lender its attorney-in-fact, with full authority in the place and stead of such Loan Party and in the name of such Loan Party or otherwise, at such time as an Event of Default has occurred and is continuing, to take any action and to execute any instrument the Lender may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, including:

(a) to ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in connection with the Accounts or any other Collateral of such Borrower or such other Loan Party;

(b) to receive, indorse, and collect any drafts or other instruments, documents, Negotiable Collateral or Chattel Paper;

(c) to file any claims or take any action or institute any proceedings the Lender may deem necessary or desirable for the collection of any of the Collateral of such

Borrower or such other Loan Party or otherwise to enforce the rights of Lender with respect to any of the Collateral;

(d) to repair, alter, or supply Goods, if any, necessary to fulfill in whole or in part the purchase order of any Person obligated to Borrower or such other Loan Party in respect of any Account of such Borrower or such other Loan Party;

(e) to use any Intellectual Property or Intellectual Property Licenses of such Borrower or such other Loan Party including but not limited to any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, or advertising matter, in preparing for sale, advertising for sale, or selling Inventory or other Collateral and to collect any amounts due under Accounts, contracts or Negotiable Collateral of such Borrower or such other Loan Party;

(f) to take exclusive possession of all locations where each Borrower or other Loan Party conducts its business or has rights of possession, without notice to or consent of any Borrower or any Loan Party and to use such locations to store, process, manufacture, sell, use, and liquidate or otherwise dispose of items that are Collateral, without obligation to pay rent or other compensation for the possession or use of any location;

(g) Lender shall have the right, but shall not be obligated, to bring suit in its own name or in the applicable Loan Party's name, to enforce the Intellectual Property and Intellectual Property Licenses and, if Lender shall commence any such suit, the appropriate Borrower or such other Loan Party shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents reasonably required by Lender in aid of such enforcement;

(h) execute all agreements, documents, instruments of assignment, licenses or other papers for the purpose of transferring, licensing, assigning, selling or otherwise disposing of such Loan Party's right, title and interest in and to any Type Certificate, other FAA Certificate or Aircraft; and

(i) to the extent permitted by law, such Loan Party hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement is terminated and all Obligations have been paid in full in cash.

10.4 Remedies Cumulative. The rights and remedies of Lender under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. Lender shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Event of Default shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence by it.

10.5 Crediting of Payments and Proceeds. In the event that the Obligations have been accelerated pursuant to Section 10.1 or the Lender has exercised any remedy set forth in this Agreement or any other Loan Document, all payments received by Lender upon the Obligations and all net proceeds from the enforcement of the Obligations shall be applied in the following order:

(i) First, to payment of accrued and unpaid Professional Fees and Expenses up to an aggregate amount not to exceed the Carve Out;

(ii) Second, to the payment of reasonable costs and expenses, including all amounts expended to preserve the value of the Collateral, of foreclosure or suit, if any, and of such sale and the exercise of any other rights or remedies, and of all proper fees, expenses, liability, indemnities and advances, including reasonable legal expenses and attorneys' fees, incurred, owed or made hereunder by Lender;

(iii) Third, to the payment to Lender of the interest then owing or unpaid on the Revolving Loans;

(iv) Fourth, to the payment to Lender of the premiums then owing or unpaid on the Revolving Loans;

(v) Fifth, to the payment to Lender of the principal then owing or unpaid on the Revolving Loans;

(vi) Sixth, to the payment to holders of Other Liabilities *pro rata* in proportion to the respective amounts of the amounts described in this clause Sixth held by them;

(vii) Seventh, to the payment of other amounts then payable to Lender under any of the Loan Documents; and

(viii) Eighth, to the payment of the surplus, if any, to Borrowers, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

For the avoidance of doubt, notwithstanding any other provision of any Loan Document, no amount received directly or indirectly from any Loan Party that is not a Qualified ECP Guarantor shall be applied directly or indirectly by the Lender or otherwise to the payment of any Excluded Swap Obligations and Obligations arising under secured agreements in respect of Bank Products shall be excluded from the application described above if the Lender has not received written notice thereof, together with such supporting documentation from the applicable provider of Bank Products, as may be reasonably necessary to determine the amount of the Other Liabilities owed thereunder.

10.6 Marshaling. Lender shall not be required to marshal any present or future collateral security (including but not limited to the Collateral) for, or other assurances of payment of, the Obligations or any of them or to resort to such collateral security or other assurances of payment in any particular order, and all of its rights and remedies hereunder and in respect of such collateral security and other assurances of payment shall be cumulative and in addition to all other rights and remedies, however existing or arising. To the extent that it lawfully may, Borrower and each other Loan Party hereby agrees that it will not invoke any law relating to the marshaling of collateral which might cause delay in or impede the enforcement of Lender's rights and remedies under this Agreement or under any other instrument creating or evidencing any of the Obligations or under which any of the Obligations is outstanding or by which any of the Obligations is secured or payment thereof is otherwise assured, and, to the

extent that it lawfully may, each Borrower hereby irrevocably waives the benefits of all such laws.

10.7 License. Each Loan Party hereby grants to Lender a non-exclusive, worldwide and royalty-free license to use or otherwise exploit all Intellectual Property rights of such Loan Party for the purpose of: (a) completing the manufacture of any in-process materials following any Event of Default so that such materials become saleable Inventory, all in accordance with the same quality standards previously adopted by such Loan Party for its own manufacturing; and (b) selling, leasing or otherwise disposing of any or all Collateral following any Event of Default.

11. WAIVERS; INDEMNIFICATION.

11.1 Demand; Protest; etc. Each Borrower and each other Loan Party waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by Lender on which such Loan Party may in any way be liable.

11.2 The Lender's Liability for Collateral. Each Borrower and each other Loan Party hereby agrees that: (a) so long as Lender complies with its obligations, if any, under the Code, Lender shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by each Borrower and such Loan Parties.

11.3 Indemnification. Each Loan Party shall pay, indemnify, defend, and hold the Lender and each of its Related Persons and the permitted successors and assigns of the foregoing (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery, enforcement, performance, or administration (including any restructuring, forbearance or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of each Borrower and each other Loan Party's and its respective Subsidiaries' compliance with the terms of the Loan Documents, (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, (c) in connection with the custody, preservation, use or operation of, or, upon an Event of Default, the sale of, collection from, or other realization upon, any of the Collateral, including, without limitation, any Aircraft or Engine, in accordance with this Agreement and the other Loan Documents, (d) with respect to the failure by any Borrower or any

other Loan Party to perform or observe any of the provisions hereof or any other Loan Document, (e) in connection with the exercise or enforcement of any of the rights of Lender hereunder or under any other Loan Document, and (f) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by Borrower or any other Loan Party or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of such Loan Party or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, no Loan Party shall have any obligation to any Indemnified Person under this Section 11.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, or attorneys. This provision shall survive the termination of this Agreement, the repayment of the Obligations and the termination of the Revolving Commitment. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which a Loan Party was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by such Loan Party with respect thereto. WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.

12. NOTICES.

Unless otherwise provided in this Agreement, all notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or telefacsimile. In the case of notices or demands to Borrowers, any other Loan Party or Lender, as the case may be, they shall be sent to the respective address set forth below:

If to any Borrowers or
Guarantors:

Eclipse Aerospace, Inc.
3250 Spirit Drive SE
Albuquerque, New Mexico 87106
Attn: Michael Wyse

with courtesy copies to
(which shall not constitute
Notice for purposes of this
Section 12):

Paul Hastings LLP
71 South Wacker Drive, Suite 4500
Chicago, Illinois 60606
Attention: Chris Dickerson
Nathan Gimpel
Email: chrisdickerson@paulhastings.com
nathangimpel@paulhastings.com
-and-

Paul Hastings LLP
1117 S. California Avenue
Palo Alto, California 94304
Attention: Todd M. Schwartz
Email: toddschwartz@paulhastings.com

If to Lender:

Citiking International US, LLC
14 Wall Street
20th Floor
New York, New York

with courtesy copies to
(which shall not constitute
Notice for purposes of this
Section 12):

Emmet, Marvin & Martin, LLP
120 Broadway
New York, New York 10271
Attn: Thomas Pitta
Email: tpitta@emmetmarvin.com

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 12, shall be deemed received on the earlier of the date of actual receipt or three (3) Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except, that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment). Any notice given by Lender to any Loan Party as provided in this Section 12 shall be deemed sufficient notice as to all Loan Parties, regardless of whether each Borrower is sent a separate copy of such notice or whether each Loan Party is specifically identified in such notice.

13. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE

CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO AS WELL AS ALL CLAIMS, CONTROVERSIES OR DISPUTES ARISING UNDER OR RELATED TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE BANKRUPTCY CODE AND THE LAWS OF THE STATE OF NEW YORK.

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS MAY BE TRIED AND LITIGATED IN THE BANKRUPTCY COURT AND THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED, HOWEVER, THAT, ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE LENDER ELECT TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH PARTY HERETO WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 13(b).

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS (EACH, A "CLAIM"). EACH PARTY HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

(d) NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST THE LENDER, OR ANY AFFILIATE OF LENDER OR ANY DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF THE LENDER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

14. ASSIGNMENTS; SUCCESSORS.

(a) This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that, no Borrower or any other Loan Party may assign this Agreement or any rights or duties hereunder without Lender's prior written consent and any prohibited assignment shall be absolutely *void ab initio*. No consent to assignment by the Lender shall release any Borrower or any other Loan Party from its Obligations.

(b) The Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and the Revolving Loans at the time owing to it) without the consent of the Borrower or any other Person (an "Assignee").

(c) The Lender may, without the consent of the Borrower or any other Person, sell participations to one or more banks or other entities (a "Participant") in all or a portion of the Lender's rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and Revolving Loans owing to it); provided that (i) the Lender's obligations under this Agreement shall remain unchanged; (ii) the Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; and (iii) the Borrower shall continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement. The Borrower agrees that each Participant shall be entitled to the benefits of Section 2.15 (subject to the requirements and limitations therein) to the same extent as if it were the Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section.

(d) Lender may furnish any information concerning any Loan Party in the possession of Lender from time to time to Assignees and Participants. The Loan Parties shall assist Lender permitted to sell assignments or participations under this Section 14 in whatever manner reasonably necessary in order to enable or effect any such assignment or participation, including (but not limited to) the execution and delivery of any and all agreements, notes and other documents and instruments as shall be requested and the delivery of informational materials, appraisals or other documents for, and the participation of relevant management in meetings and conference calls with, potential Assignees or Participants. The Borrower shall certify the correctness, completeness and accuracy, in all material respects, of all descriptions of the Loan Parties and their affairs provided, prepared or reviewed by any Loan Party that are contained in any selling materials and all other information provided by it and included in such materials. Lender may disclose the Loan Documents and any other financial or other information relating to Borrower or any Subsidiary to any potential Assignee or Participant, provided that such Assignee or Participant agrees to protect the confidentiality of such documents and information using the same measures that it uses to protect its own confidential information and otherwise conform to the requirements of Section 17.8.

(e) If Lender that sells a participation shall, acting for this purpose as an agent of 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 Revolving Commitment, the Loans or other obligations under the Loan Documents (the "Participant")

Register"); provided, that Lender shall not 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, or its other obligations under the Loan Documents) to any Person except to the extent that such disclosure is necessary to establish such commitment, loan, or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and the 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.

15. AMENDMENTS; WAIVERS.

(a) Neither this Agreement nor any other Loan Document nor any terms hereof or thereof may be amended, waived, discharged or terminated unless such amendment, waiver, discharge or termination is in writing signed by Lender, and as to amendments to any of the Loan Documents, by the Borrowers, and such amendment, waiver, discharge or termination shall be effective and binding as to the Lender only in the specific instance and for the specific purpose for which given.

(b) No failure by Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Lender in exercising the same, will operate as a waiver thereof. No waiver by Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Lender on any occasion shall affect or diminish Lender's rights thereafter to require strict performance by Borrowers or any other Loan Party of any provision of this Agreement. Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Lender may have.

16. TAXES.

(a) All payments made by any Borrower or any other Loan Party hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes, and in the event any deduction or withholding of Taxes is required, each Borrower shall comply with the next sentence of this Section 16(a). If any Taxes are so levied or imposed, each Borrower and each other Loan Party agrees to pay the full amount of such Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16(a) after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein; provided, however, that, Borrowers or Loan Parties shall not be required to increase any such amounts if the increase in such amount payable results from Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction). Each Borrower and each other Loan Party will furnish to Lender as promptly as possible after the date the payment of any Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by such Borrower.

(b) Each Borrower agrees to pay any present or future stamp, value added or documentary taxes or any other excise or property taxes, charges, or similar levies that arise from any payment made hereunder or from the execution, delivery, performance, recordation, or filing of, or otherwise with respect to this Agreement or any other Loan Document.

17. GENERAL PROVISIONS.

17.1 Effectiveness. This Agreement shall be binding and deemed effective when executed by each Borrower, each Loan Party, and Lender.

17.2 Section Headings. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17.3 Interpretation. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

17.4 Severability of Provisions. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

17.5 Debtor-Creditor Relationship. The relationship between the Lender, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. Lender shall not have (and shall not be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between Lender, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.6 Counterparts; Electronic Execution. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

17.7 Revival and Reinstatement of Obligations. If the incurrence or payment of the Obligations by any Borrower or any other Loan Party or the transfer to Lender of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of

money or transfers of property (each, a “Voidable Transfer”), and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that Lender is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys’ fees of Lender related thereto, the liability of such Borrower or such other Loan Party automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made and all of Lender’s Liens in the Collateral shall be automatically reinstated without further action.

17.8 Confidentiality.

(a) Lender agrees that material, non-public information regarding the Loan Parties and their Subsidiaries, their operations, assets, and existing and contemplated business plans (“Confidential Information”) shall be treated by Lender in a confidential manner, and shall not be disclosed by Lender to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to Lender and to employees, directors and officers of Lender (the Persons in this clause (i), “Representatives”) on a “need to know” basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of Lender; provided, that, any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.8, (iii) as may be required by regulatory authorities, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided, that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrowers with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrowers pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrowers, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process; provided, that, (x) prior to any disclosure under this clause (vi) the disclosing party agrees to provide Borrowers with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrowers pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Lender or its Representatives), (viii) in connection with any assignment, participation or pledge of the Lender’s interest under this Agreement; provided, that, prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information hereunder subject to the terms of this Section, (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents, (x) to equity owners of each Loan Party and (xi) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Lender may use the name, logos, and other insignia of the Loan Parties and the amount of Revolving Commitment and Revolving Loans provided hereunder in any “tombstone” or comparable advertising, on its website or in other marketing materials of Lender.

17.9 Expenses. Each Loan Party agrees to pay the Lender Expenses with ten (10) Business Days of receipt of a reasonably detailed invoice therefor, and each Loan Party agrees that its obligations contained in this Section 17.9 shall survive payment or satisfaction in full of all other Obligations and the termination of the Revolving Commitment.

17.10 Setoff. Lender may at any time, in its sole discretion and without demand or notice to anyone, setoff any liability owed to any Borrower or any Guarantor by Lender against any of the Obligations, whether or not due.

17.11 Survival. All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any loan or any fee or any other amount payable under this Agreement is outstanding and so long as the obligation of Lender to provide extensions of credit hereunder has not expired or been terminated. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Lender may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Lender, the Lender and the providers of Bank Products against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, (y) any obligations that may thereafter arise with respect to the Other Liabilities and (z) any Obligations that may thereafter arise under Article 11.

17.12 Patriot Act. Lender hereby notifies the Loan Parties that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow Lender to identify each Loan Party in accordance with the Patriot Act. In addition, if Lender is required by law or regulation or internal policies to do so, it shall have the right to periodically conduct (a) Patriot Act searches, OFAC/PEP searches, and customary individual background checks for the Loan Parties, and (b) OFAC/PEP searches and customary individual background checks of the Loan Parties’ senior management and key principals, and each Loan Party agrees to cooperate in respect of the conduct of such searches and further agrees that the reasonable costs and charges for such searches shall constitute Lender Expenses hereunder and be for the account of Borrowers.

17.13 Integration. This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and

shall not be contradicted or qualified by any other agreement, oral or written, before the Closing Date.

17.14 [Reserved]

17.15 Relationship with DIP Orders. In the event of any inconsistency between the terms of the DIP Orders and the Loan Documents, the terms of the DIP Orders shall control and the representations, warranties, covenants, agreements or events of default made herein and in the other Loan Documents shall be subject to the terms of the DIP Orders.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their officers or officers of their sole ultimate members thereunto duly authorized as of the day and year first above written, to be effective as of the Closing Date.

ECLIPSE AEROSPACE, INC.,
as a Borrower and as Debtor-In-Possession

By: _____
Name: _____
Title: _____

**BRIGADOON AIRCRAFT MAINTENANCE,
LLC,**
as a Borrower and as Debtor-In-Possession

By: _____
Name: _____
Title: _____

ONE AVIATION CORPORATION,
as a Guarantor and as Debtor-In-Possession

By: _____
Name: _____
Title: _____

CITIKING INTERNATIONAL US LLC
as Lender

By: _____
Name: _____
Title: _____

Schedule 1.1(a)

a. **Definitions.** As used in this Agreement, the following terms shall have the following definitions:

“Account” means an account (as that term is defined in Article 9 of the Code).

“Account Debtor” means an account debtor (as that term is defined in the Code).

“Accounting Change” shall have the meaning given in clause (b) of this Schedule 1.1.

“Acquired Real Property” has the meaning specified therefor in Section 6.12(i) of this Agreement.

“Additional Documents” has the meaning specified therefor in Section 6.15 of this Agreement.

“Administrative Borrower” means Eclipse, in its capacity as Administrative Borrower on behalf of itself and the other Borrowers pursuant to Section 2.17) hereof and its successors and assigns in such capacity.

“Affiliate” means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, for purposes of Section 7.12 of this Agreement: (a) any Person which owns directly or indirectly ten (10%) percent or more of the Stock having ordinary voting power for the election of the board of directors or equivalent governing body of a Person or ten (10%) percent or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

“Lender” has the meaning specified therefor in the preamble to this Agreement and its successors and assigns.

“Lender’s Liens” mean the Liens granted by Loan Parties and their Subsidiaries to Lender under the Loan Documents.

“Agreement” means the Senior Secured Superpriority Debtor In Possession Credit and Security Agreement to which this Schedule 1.1 is attached.

“Aircraft” means, as to each Loan Party, all aircraft now or hereafter owned by such Loan Party and shall include, without limitation, all aircraft objects, existing and future airframes, Engines, rotors and propellers, parts and other goods, accessions and property attached to, incorporated in, affixed to or used in connection with such aircraft.

“Aircraft and Engines Security Agreement” means the Seconded Amended Aircraft and Engines Security Agreement, dated as of April 20, 2015, among Lender, Loan Parties, as the same now exists or may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced.

“Aircraft Mortgage” means, as to any Aircraft for which an Aircraft Registration exists or as to any future or prospective Aircraft Registration reserved by or on behalf of any Loan Party, the Aircraft and Engines Security Agreement, including any supplemental schedules thereto, executed by Loan Parties, in form and substance satisfactory to the Lender, granting to Lender a security interest and international interest in and lien upon such Aircraft.

“Aircraft Mortgage Recordation” means, as to any Aircraft, or as to any future or prospective Aircraft Registration, (a) the recordation of an Aircraft Mortgage with the FAA Registry in accordance with, and as required by, the regulations issued by the FAA and (b) the registrations with the Cape Town International Registry in accordance with, and as required by, the regulations issued under the Cape Town Convention (Aircraft Protocol) Laws, as applicable, which in each case constitutes a first and prior security interest and international interest, as applicable, in and lien upon such Aircraft in favor of Lender.

“Aircraft Protocol” means the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, adopted on November 16, 2001, as the same now exists or may hereafter from time to time be amended, modified, recodified or supplemented (except, that, terms used herein which are defined in the Aircraft Protocol as in effect in on the date hereof shall continue to have the same meaning notwithstanding any such amendment, modification, recodification or supplement amendment of such protocol except as Lender may otherwise determine).

“Aircraft Purchase Contract” means, as to any Aircraft, a written contract between a buyer thereof and any Borrower for the purchase of such Aircraft that provides for the payment in full of the purchase price for such Aircraft in the United States of America in United States Dollars, concurrently with or before the delivery of the completed Aircraft and a bill of sale with respect thereto by such Borrower or such Guarantor to such buyer, in cash.

“Aircraft Registration” means, as to any Aircraft, (a) registration of the title to such Aircraft, by and in the name of any Loan Party with the FAA Registry in accordance with, and as required by, the Aviation Laws, (b) the registration of an aircraft registration number reserved by or on behalf of any Loan Party for future Aircraft or the registration of a prospective international interest by or on behalf of such Loan Party for future Aircraft or (c) registration of contracts of sale of any Aircraft with the Cape Town International Registry in accordance with, and as required by, the applicable regulations issued under the Cape Town Convention (Aircraft Protocol) Laws.

“Airworthiness Certificate” means, as to any Aircraft, an Airworthiness Certificate with respect to such Aircraft issued by the FAA to any Loan Party pursuant to the Aviation Laws, as the same now exists or may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced.

“Allocable Amount” has the meaning specified therefor in Section 2.16(c).

“Approved Budget” means, collectively, the Closing Date Approved Budget and each Subsequent Approved Budget that has been approved in accordance with Section 6.1(b).

“Approved Fund” means any Fund that is administered or managed by (a) Lender, (b) an Affiliate of Lender, (c) an entity or an Affiliate of an entity that administers or manages Lender, or (d) the same investment advisor or an advisor under common control with the Lender, Affiliate or advisor, as applicable.

“Assignee” has the meaning specified therefor in Section 14 of this Agreement.

“Availability” means, as of any date of determination, the difference derived when (i) an amount equal to the Total Revolving Outstandings is subtracted from (ii) the Revolving Commitment on such date (and if the amount in clause (i) is equal to or greater than the applicable amount in clause (ii), Availability on such date shall be \$0 or a negative number, as applicable).

“Availability Period” means the period from and including the Closing Date to the Termination Date.

“Aviation Laws” means Title 49 of the United States Code, including without limitation, all regulations issued by the FAA and all regulations issued under the Cape Town Convention (Aircraft Protocol) Laws, as the same now exist or may hereafter from time to time be amended, modified, recodified or supplemented, together with all rules, regulations, procedures, orders, handbooks, guidelines and interpretations thereunder or related thereto.

“Bank Product” means any one or more of the following financial products or accommodations extended to a Borrower or its Subsidiaries by a bank product provider: (a) commercial credit cards, (b) commercial credit card processing services, (c) debit cards, (d) stored value cards, (e) purchase cards (including so-called “procurement cards” or “P-cards”), (f) Cash Management Services, or (g) transactions under Hedge Agreements.

“Bank Product Agreements” means those agreements entered into from time to time by a Borrower or its Subsidiaries in connection with the obtaining of any of the Bank Products.

“Bankruptcy Code” means title 11 of the United States Code, as in effect from time to time.

“Bankruptcy Court” has the meaning specified therefor in the recitals of this Agreement.

“Bankruptcy Recoveries” means any claims and causes of action to which any Loan Party may be entitled to assert by reason of any avoidance or other power vested in or on behalf of any Loan Party or the estate of any Loan Party under Chapter 5 of the Bankruptcy Code, or similar state law and any and all recoveries and settlements thereof and includes Avoidance Actions and Avoidance Action Proceeds as defined in the Interim Financing Order and Final Financing Order.

“Bidding Procedures Order” has the meaning provided in Section 6.20(f).

“Board of Directors” means the board of directors (or comparable managers) of a Borrower or any other Loan Party or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

“Books” means books and records (including a Borrower’s or any other Loan Party’s Records indicating, summarizing, or evidencing such Borrower’s or such other Loan Party’s assets (including the Collateral) or liabilities, such Borrower’s or such other Loan Party’s Records relating to such Borrower’s or such other Loan Party’s business operations or financial condition, or such Borrower’s or such other Loan Party’s Goods or General Intangibles related to such information).

“Borrowers” means, collectively, (a) Eclipse, (b) Brigadoon, and (c) each other Person that becomes a Borrower after the Closing Date pursuant to Section 6.16 of this Agreement, and “Borrower” means any one of them.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close pursuant to the rules and regulations of the Federal Reserve System.

“Cape Town Convention” means the Convention on International Interests in Mobile Equipment adopted on November 16, 2001, as the same now exists or may hereafter from time to time be amended, modified, recodified or supplemented (except, that, terms used herein which are defined in the Cape Town Convention as in effect in on the date hereof shall continue to have the same meaning notwithstanding any such amendment, modification, recodification or supplement amendment of such convention except as Lender may otherwise determine).

“Cape Town Convention (Aircraft Protocol) Laws” means, collectively, the Cape Town Convention and the Aircraft Protocol, as the same now exist or may hereafter from time to time be amended, modified, recodified or supplemented, together with all rules, regulations, procedures, orders, guidelines and interpretations thereunder or related thereto.

“Cape Town International Registry” means the international registry system under the Cape Town Convention (Aircraft Protocol) Laws to record “international interests” in “aircraft objects” as such terms are defined under the Cape Town Convention (Aircraft Protocol) Laws.

“Capital Lease” means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

“Capital Requirements Notice” shall have the meaning given in Section 2.15 hereof.

“Capitalized Interest” shall have the meaning given in Section 2.6(a)(i) hereof.

“Capitalized Lease Obligation” means that portion of the obligations under a Capital Lease that is required to be capitalized in accordance with GAAP.

“Carve Out” shall mean a carve out for the following expenses: (i) all fees required to be paid to the Clerk of the Bankruptcy Court; (ii) all statutory fees payable to the U.S. Trustee pursuant to 28 U.S.C. § 1930(a)(6) and 28 U.S.C. § 156(c), as determined by agreement of the U.S. Trustee or by a Final Order of the Bankruptcy Court; (iii) all accrued and unpaid fees, disbursements, costs and expenses incurred by Case Professionals to the extent allowed at any time, through the date of service by the Lender of a Carve Out Trigger Notice, up to and as limited by the respective Approved Budget amounts for each Case Professional or category of Case Professional through the date of service of said Carve Out Trigger Notice (including partial amounts for any Carve Out Trigger Notice given other than at the end of a week, and after giving effect to all carryforwards and carrybacks from prior or subsequent favorable Approved Budget variances), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve Out Trigger Notice less the amount of pre-petition retainers received by such Case Professionals and not previously applied to fees and expenses; and (iv) all accrued and unpaid fees, disbursements, costs and expenses incurred by the Case Professionals after the date of service of a Carve Out Trigger Notice, to the extent allowed at any time, in an aggregate amount not to exceed \$[750,000] less the amount of pre-petition retainers received by such Case Professionals and not applied to the fees, disbursements, costs and expenses set forth in clause (iii) above. The Professional Expense Carve-Out shall be reduced on a dollar-for-dollar basis by any payments of fees or expenses of the Case Professionals made after delivery of the Carve Out Trigger Notice in respect of fees and expenses incurred after delivery of the Carve Out Trigger Notice. The term Carve Out includes any additional amounts included in the definition of Carve Out under the Interim Financing Order and the Final Financing Order.

“Carve Out Trigger Notice” means written notice from the Lender to the Administrative Borrower, its lead counsel, the U.S. Trustee and lead counsel to the Creditors’ Committee of the occurrence and during the continuance of an Event of Default.

“Case Professionals” means Persons or firms retained by the Loan Parties or the Creditors’ Committee or other statutory committee appointed in the Cases pursuant to §§327 and 1103 of the Bankruptcy Code.

“Cases” has the meaning specified therefor in the recitals of this Agreement.

“Cash Equivalents” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one (1) year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one (1) year from the date of acquisition thereof and having one of the two highest ratings obtainable from either Standard & Poor’s Rating Group (“S&P”) or Moody’s Investors Service, Inc. (“Moody’s”), (c) commercial paper maturing no more than two hundred seventy (270) days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody’s, (d) certificates of deposit, time deposits, overnight bank deposits or bankers’ acceptances maturing within one (1) year from the date of acquisition thereof issued by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having combined capital and surplus of not less than \$250,000,000, (e) Deposit Accounts

maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than \$250,000,000, having a term of not more than seven (7) days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

“Cash Management Order” means an order entered by the Bankruptcy Court, in form and substance reasonably satisfactory to the Lender, authorizing the Loan Parties to, among other things, continue their cash management systems and to otherwise comply with the terms of this Agreement and the other Loan Documents.

“Cash Management Services” means any cash management or related services including treasury, depository, return items, overdraft, controlled disbursement, merchant stored value cards, epayables services, electronic funds transfer, interstate depository network, automatic clearing house transfer (including the Automated Clearing House processing of electronic funds transfers through the direct Federal Reserve Fedline system) and other cash management arrangements.

“CFC” means a controlled foreign corporation (as that term is defined in the IRC).

“Change of Control” means a majority of the members of the Board of Directors do not constitute Continuing Directors or the Loan Parties fail to own and control, directly or indirectly, one hundred (100%) percent of the Stock of each other Loan Party (other than ONE Aviation Corporation).

“Chattel Paper” means chattel paper (as that term is defined in the Code), and includes tangible chattel paper and electronic chattel paper.

“Claim” has the meaning specified therefor in Section 13(c) of this Agreement.

“Closing Date” means the date of the making of the initial extension of credit (or other extension of credit) under this Agreement.

“Closing Date Approved Budget” has the meaning specified therefor in Section 4.1(m).

“Code” means the New York Uniform Commercial Code, as in effect from time to time; provided, however, that, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, priority, or remedies with respect to Lender’s Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term “Code” shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies. To the extent that defined terms set

forth herein shall have different meanings under different Articles under the Uniform Commercial Code, the meaning assigned to such defined term under Article 9 of the Uniform Commercial Code shall control.

“Collateral” means all of each Loan Party’s now owned or hereafter acquired:

- (a) Accounts;
- (b) Books;
- (c) Chattel Paper;
- (d) Deposit Accounts;
- (e) Goods, including Equipment and Fixtures;
- (f) General Intangibles (including, without limitation, Intellectual Property and Intellectual Property Licenses);
- (g) Inventory (including, without limitation, all Aircraft, Engines and Spare Parts);
- (h) Investment Related Property;
- (i) Negotiable Collateral;
- (j) Supporting Obligations;
- (k) Commercial Tort Claims;
- (l) money, Cash Equivalents, or other assets of such Loan Party that now or hereafter come into the possession, custody, or control of Lender (or its agent or designee);
- (m) any Parts Manufacturer Approvals;
- (n) the Bankruptcy Recoveries;
- (o) proceeds realized upon the sale, disposition and/or termination of any Lease(s), but not the Leases themselves, whether or not so perfected prior to the Petition Date;
- (p) any cash held in any escrow or other account of the Loan Parties in respect of accrued and/or accruing employee benefit obligations as provided for in the Approved Budget; and
- (q) all of the proceeds (as such term is defined in the Code) and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance or Commercial Tort Claims covering or relating to any or all of the foregoing, and any and all Accounts, Books, Chattel Paper, Deposit Accounts, Equipment, Fixtures, General Intangibles, Inventory, Investment Related Property, Negotiable Collateral, Supporting Obligations, money,

or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, the proceeds of any award in condemnation with respect to any of the foregoing, any rebates or refunds, whether for taxes or otherwise, and all proceeds of any such proceeds, or any portion thereof or interest therein, and the proceeds thereof, and all proceeds of any loss of, damage to, or destruction of the above, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty, or guaranty payable by reason of loss or damage to, or otherwise with respect to any of the foregoing (collectively, the “Proceeds”). Without limiting the generality of the foregoing, the term “Proceeds” includes whatever is receivable or received when Investment Related Property or proceeds are sold, exchanged, collected, or otherwise disposed of, whether such disposition is voluntary or involuntary, and includes proceeds of any indemnity or guaranty payable to such Loan Party or Lender from time to time with respect to any of the Investment Related Property.

Notwithstanding anything contained in this Agreement to the contrary, the term “Collateral” shall not include: (i) voting Stock of any CFC, solely to the extent that (y) such Stock represents more than sixty-five (65%) percent of the outstanding voting Stock of such CFC, and (z) pledging or hypothecating more than sixty-five (65%) percent of the total outstanding voting Stock of such CFC would result in material adverse tax consequences; or (ii) any rights or interest in any contract, lease, permit, license, or license agreement covering real or personal property of any Loan Party if under the terms of such contract, lease, permit, license, or license agreement, or applicable law with respect thereto, the grant of a Lien therein is prohibited as a matter of law or under the terms of such contract, lease, permit, license, or license agreement and such prohibition or restriction has not been waived or the consent of the other party to such contract, lease, permit, license, or license agreement has not been obtained (provided, that, (A) the foregoing exclusions of this clause (ii) shall in no way be construed (1) to apply to the extent that any described prohibition or restriction is unenforceable under Section 9-406, 9-407, 9-408, or 9-409 of the Code or other applicable law, or (2) to apply to the extent that any consent or waiver has been obtained that would permit Lender’s Lien notwithstanding the prohibition or restriction on the pledge of such contract, lease, permit, license, or license agreement and (B) the foregoing exclusions of clauses (i) and (ii) shall in no way be construed to limit, impair, or otherwise affect any of Lender’s Liens upon any rights or interests of any Loan Party in or to (1) monies due or to become due under or in connection with any described contract, lease, permit, license, license agreement, or Stock (including any Accounts or Stock), or (2) any proceeds from the sale, license, lease, or other dispositions of any such contract, lease, permit, license, license agreement, or Stock); or (iii) any United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law; provided, that, upon submission and acceptance by the PTO of an amendment to allege use pursuant to 15 U.S.C. Section 1060(a) (or any successor provision), such intent-to-use trademark application shall be considered Collateral.

“Collateral” shall also include all “Collateral” or “DIP Collateral” as defined in any applicable Loan Document (including, without limitation, a DIP Order), together with all other property that is or is intended under the terms of the Loan Documents (including, without limitation, the DIP Orders) to be pledged as collateral security for any of the Obligations. Notwithstanding anything to the contrary contained in this definition, the term “Collateral” shall not, except as expressly provided in the DIP Orders, include Bankruptcy Recoveries.

“Collateral Access Agreement” means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in a Loan Party’s or its Subsidiaries’ Books, Equipment, Accounts or Inventory, in each case, in favor of Lender with respect to the Collateral at such premises or otherwise in the custody, control or possession of such lessor, warehouse, processor, consignee or other Person and in form and substance reasonably satisfactory to the Lender.

“Collections” means all cash, checks, notes, instruments, and other items of payment (including insurance Proceeds, cash Proceeds of asset sales, rental Proceeds, and tax refunds).

“Commercial Tort Claims” means commercial tort claims (as that term is defined in the Code), and includes those commercial tort claims listed on Schedule 5.6(d) to the Information Certificate.

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

“Compliance Certificate” means a certificate substantially in the form of Exhibit A delivered by the chief financial officer of the Borrowers and the president or chief executive officer of the Borrowers (or any person providing chief executive officer services to such Borrowers) to Lender, which in any event, shall include all of the information set forth in the Compliance Certificate delivered on the Closing Date (it being understood that such information shall be updated with the delivery of each subsequent Compliance Certificate delivered after the Closing Date to include the information as of the date such Compliance Certificate is being delivered).

“Confidential Information” has the meaning specified therefor in Section 17.8(a) of this Agreement.

“Consummation Date” means the date of substantial consummation (as defined in Section 1101 of the Bankruptcy Code and which for purposes of this Agreement shall be no later than the effective date) of a Plan of Reorganization confirmed by a Final Order.

“Continuing Director” means (a) any member of the Board of Directors who was a director (or comparable manager) of the Borrowers on the Closing Date, and (b) any individual who becomes a member of the Board of Directors after the Closing Date if such individual was approved, appointed or nominated for election to the Board of Directors and is acceptable to the Lender.

“Control Agreement” means a control agreement, in form and substance reasonably satisfactory to the Lender, executed and delivered by each Loan Party, Lender, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account) or issuer, (with respect to uncertificated securities).

“Copyright Security Agreement” means each Copyright Security Agreement executed and delivered by a Borrower or another Loan Party and Lender, in form and substance acceptable to the Lender.

“Copyrights” means any and all rights in any works of authorship, including (i) copyrights and moral rights, (ii) copyright registrations and recordings thereof and all applications in connection therewith including those listed on Schedule 5.26(b) to the Information Certificate, (iii) income, license fees, royalties, damages, and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (iv) the right to sue for past, present, and future infringements thereof, and (v) all of each Borrower’s and each Loan Party’s rights corresponding thereto throughout the world.

“Credit Bid” means a bid at a public or private sale in connection with the purchase of all or any portion of the Collateral, in which any of the Obligations owing to the Lender under this Agreement are used and applied as a credit on account of the purchase price.

“Creditors’ Committee” means any official committee of creditors formed, appointed or approved in the Cases or any successor case pursuant to the Bankruptcy Code.

“Daily Balance” means, as of any date of determination and with respect to any Obligation, the amount of such Obligation owed at the end of such day.

“Dealer’s Aircraft Registration Certificate” means any Dealer’s Aircraft Registration Certificate issued by the FAA to any Loan Party pursuant to the Aviation Laws, as the same now exists or may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced.

“Debtor Relief Law” means title 11 of the Bankruptcy Code, as in effect from time to time, or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

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

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

“Designated Account” means the operating Deposit Account of Borrowers at Lender identified on Schedule D-1.

“DIP Orders” means and refers to the Interim Financing Order and the Final Financing Order.

“Disclosure Statement” means a disclosure statement filed in the Cases in connection with a Plan of Reorganization.

“Dollars” or “\$” means United States dollars.

“Eclipse” has the meaning specified therefor in the preamble to this Agreement.

"Effect of Bankruptcy" means, with respect to any contractual obligation, contract or agreement to which a Loan Party is a party, any default or other legal consequences arising on account of the commencement or the filing of the Cases (including the implementation of any stay), or the rejection of any such contractual obligation, contract or agreement with the approval of the Bankruptcy Court if required under applicable law.

"Engine Mortgage" means, as to any Engine for which an Engine Registration exists or as to any future or prospective Engine Registration for an Engine reserved by or on behalf of Loan Parties, the Aircraft and Engines Security Agreement, including any supplemental schedules thereto, executed by Loan Parties, in form and substance satisfactory to the Lender, granting to Lender a security interest and international interest in and lien upon such Engine.

"Engine Mortgage Recordation" means, as to any Engine, or as to any future or prospective Engine Registration for an Engine, (a) the recordation of an Engine Mortgage with the FAA Registry in accordance with, and as required by, the regulations issued by the FAA and (b) the registrations with the Cape Town International Registry in accordance with, and as required by, the regulations issued under the Cape Town Convention (Aircraft Protocol) Laws, as applicable, which in each case constitutes a first and prior security interest and international interest in and lien upon such Engine in favor of Lender.

"Engine Registration" means, as to any Engine, (a) registration of the title to such Aircraft, by and in the name of any Borrower or any Guarantor with the FAA Registry and the Cape Town International Registry in accordance with, and as required by, the Aviation Laws, and (b) registration of contracts of sale of any Engine with the Cape Town International Registry in accordance with, and as required by, the applicable regulations issued under the Cape Town Convention (Aircraft Protocol) Laws.

"Engines" means, as to each Loan Party, all engines now or hereafter owned by such Loan Party, and shall include without limitation, all engines having five hundred fifty (550) or more rated takeoff horsepower, or the equivalent of that horsepower, identified on Schedule I to the Aircraft and Engines Security Agreement and incorporated herein by this reference, and any other aircraft engines having five hundred fifty (550) or more rated takeoff horsepower, or the equivalent of that horsepower, which are hereafter owned or used by such Loan Party, together with any and all parts, appliances, components, accessories, accessions, attachments or equipment installed on, appurtenant to, or delivered with or in respect of such engines.

"Environmental Action" means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of any Loan Party, any Subsidiary of a Loan Party, or any of their predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by any Loan Party, any Subsidiary of a Loan Party, or any of their predecessors in interest.

"Environmental Law" means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and

enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on any Loan Party or any of its Subsidiaries, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

“Environmental Liabilities” means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

“Environmental Lien” means any Lien in favor of any Governmental Authority for Environmental Liabilities.

“Equipment” means equipment (as that term is defined in the Code).

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

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

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity 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 any 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 Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any 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; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the IRC or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate.

“Event of Default” has the meaning specified therefor in Section 9 of this Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as in effect from time to time.

“Excluded Swap Obligation” means, with respect to any Loan Party (other than the direct counterparty of such Swap Obligation), any Swap Obligation of a Loan Party (other than the direct counterparty of such Swap Obligation) if, and to the extent that, all or a portion of the Guaranty of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal or unlawful under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act at the time the Guaranty of such Loan Party or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guaranty or security interest is or becomes illegal or unlawful.

“Existing Credit Agreement” has the meaning specified therefor in the recitals of this Agreement.

“Existing Liabilities” means the “Obligations” as defined in the Existing Credit Agreement.

“Existing Liens” has the meaning specified therefor in the recitals of this Agreement.

“FAA” means the Federal Aviation Administration of the United States Department of Transportation, an agency of the United States of America, and any subdivision or office thereof, and any successor or replacement administrator, agency or other entity having the same or similar authority and responsibilities.

“FAA Certificates” means, collectively, all certificates required by the FAA and the Aviation Laws for the manufacture, design, production, maintenance, use or sale of aircraft by Loan Parties, including, without limitation, each Type Certificate, Production Certificate, Airworthiness Certificate and Dealer’s Aircraft Registration Certificate issued in favor of Loan Parties, as the same now exist or may hereafter be amended, supplemented, renewed, extended, reissued or replaced.

“FAA Registry” means the Civilian Aviation Registry or such other registry as may be designated by the FAA from time to time as the authorizing entry point for the registration of aircraft and security interests or international interests in Aircraft and Engines, and any successor or replacement registry with the same or similar purposes.

“Final Financing Order” means an order of the Bankruptcy Court which order shall be in form, scope and substance reasonably acceptable to the Lender, which, among other matters but not by way of limitation, authorizes the Loan Parties to obtain credit, incur (or guaranty) Obligations, grant Liens under this Agreement, the other Loan Documents, and the DIP Orders, and provides for the super priority of the Lender’s claims, which order is a Final Order.

“Final Order” means an order or judgment of the Bankruptcy Court, as entered on the docket of the Clerk of the Bankruptcy Court, that has not been reversed, stayed, modified or amended and as to which the time to appeal or seek leave to appeal, petition for certiorari,

reargue or seek rehearing has expired and no proceeding for certiorari, reargument or rehearing is pending or if an appeal, petition for certiorari, reargument, or rehearing has been sought, the order or judgment of the Bankruptcy Court has been affirmed by the highest court to which the order was appealed, from which the reargument or rehearing was sought, or certiorari has been denied and the time to take any further appeal or to seek certiorari or further reargument or rehearing has expired.

“Fixtures” means fixtures (as that term is defined in the Code).

“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 as in effect from time to time in the United States, consistently applied; provided, however, that, all calculations relative to liabilities shall be made without giving effect to Statement of Financial Accounting Standards No. 159.

“General Intangibles” means general intangibles (as that term is defined in the Code), and includes payment intangibles, contract rights, rights to payment, rights under Hedge Agreements (including the right to receive payment on account of the termination (voluntarily or involuntarily) of any such Hedge Agreements), rights arising under common law, statutes, or regulations, choses or things in action, goodwill, Intellectual Property, Intellectual Property Licenses, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, rights to payment and other rights under any royalty or licensing agreements, including Intellectual Property Licenses, infringement claims, pension plan refunds, pension plan refund claims, insurance premium rebates, tax refunds, and tax refund claims, interests in a partnership or limited liability company which do not constitute a security under Article 8 of the Code, and any other personal property other than Commercial Tort Claims, money, Accounts, Chattel Paper, Deposit Accounts, Goods, Investment Related Property, Negotiable Collateral, and oil, gas, or other minerals before extraction.

“Goods” means goods (as that term is defined in the Code).

“Governing Documents” means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

“Governmental Authority” means any federal, state, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

“Guarantor Payment” has the meaning specified therefor in Section 2.16(c).

“Guarantors” means, ONE Aviation Corporation, a Delaware Corporation, and each Person that becomes a guarantor after the Closing Date pursuant to Section 6.16 of this Agreement, and “Guarantor” means any one of them.

“Guaranty” means that certain general continuing guaranty, executed and delivered by each Guarantor in favor of Lender, in form and substance reasonably satisfactory to the Lender, as the same now exist or may hereafter be amended, supplemented, renewed, extended, reissued or replaced.

“Hazardous Materials” means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or “EP toxicity”, (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million.

“Hedge Agreement” means a “swap agreement” as that term is defined in Section 101(53B)(A) of the Bankruptcy Code.

“Indebtedness” as to any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products and all Obligations, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices), (f) all obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) any Prohibited Preferred Stock of such Person, and (h) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (g) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness described in clause (d) above shall be the lower of the amount of the obligation and the fair market value of the assets of such Person securing such obligation.

“Indemnified Liabilities” has the meaning specified therefor in Section 11.3 of this Agreement.

“Indemnified Person” has the meaning specified therefor in Section 11.3 of this Agreement.

“Independent Consultant” means Ernst & Young LLP (or another independent third party consultant reasonably acceptable to the Lender).

“Information Certificate” means the Information Certificate completed and executed by the Loan Parties attached hereto as Exhibit E.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, receiverships, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

“Intellectual Property” means any and all Patents, Copyrights, Trademarks, trade secrets, know-how, inventions (whether or not patentable), algorithms, software programs (including source code and object code), processes, product designs, industrial designs, blueprints, drawings, data, customer lists, URLs and domain names, specifications, documentations, reports, catalogs, literature, and any other forms of technology or proprietary information of any kind, including all rights therein and all applications for registration or registrations thereof

“Intellectual Property Licenses” means, with respect to any Person (the “Specified Party”), (i) any licenses or other similar rights provided to the Specified Party in or with respect to Intellectual Property owned or controlled by any other Person, and (ii) any licenses or other similar rights provided to any other Person in or with respect to Intellectual Property owned or controlled by the Specified Party, in each case, including (A) any software license agreements (other than license agreements for commercially available off-the-shelf software that is generally available to the public which have been licensed to a Specified Party pursuant to end-user licenses), (B) the license agreements listed on Schedule 5.26(b) to the Information Certificate, and (C) the right to use any of the licenses or other similar rights described in this definition in connection with the enforcement of the Lender’s rights under the Loan Documents.

“Intercompany Subordination Agreement” means an intercompany subordination agreement executed and delivered by a Loan Party, each of its Subsidiaries, and Lender, the form and substance of which is reasonably satisfactory to the Lender, as the same now exists or may hereafter be amended, supplemented, renewed, extended, reissued or replaced.

“Interest Rate” means an interest rate equal 12.0% per annum.

“Interim Financing Order” means an order entered by the Bankruptcy Court, substantially in the form of, and containing the provisions set forth in, Exhibit F (or such other form and provisions as may be reasonable acceptable to the Lender), approving, on an interim basis, the Loan Parties’ obtaining credit and incurring (or guarantying) Obligations, granting Liens to secure the Obligations, and providing for the super priority of the Lender’s Liens and granting the Lender under the Existing Credit Agreement adequate protection of their interests, and entering into and performing their obligations under this Agreement and the other Loan Documents.

“Interim Financing Order Date” has the meaning specified therefor in the recitals of this Agreement.

“Inventory” means inventory (as that term is defined in the Code), including, without limitation, (a) all Aircraft which (i) are leased by a Loan Party as lessor; (ii) are held by a Loan Party for sale or lease or to be furnished under a contract of service; (iii) are furnished by a Loan Party under a contract of service; or (iv) consist of raw materials, work in process, finished goods or materials used or consumed in each Loan Party’s business, (b) all tooling related to the manufacture, assembly or production of any Aircraft, whether pursuant to an FAA Certificate or otherwise, (c) all Engines and (d) all Spare Parts.

“Investment” means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business not to exceed \$100,000 in the aggregate during any fiscal year of Borrowers, and (b) bona fide Accounts arising in the ordinary course of business), or acquisitions of Indebtedness, Stock, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

“Investment Banker” means Duff & Phelps, LLC (or another Person reasonably acceptable to the Lender).

“Investment Related Property” means any and all investment property (as that term is defined in the Code).

“IRC” means the Internal Revenue Code of 1986, as in effect from time to time.

“Joinder Agreement” means a joinder agreement, in form and substance reasonably satisfactory to the Lender, executed and delivered by each Loan Party becoming a party to a Loan Document and Lender, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

“Lender Expenses” means all (a) reasonable costs or expenses (including taxes, and insurance premiums) required to be paid by any Loan Party or any of its Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by Lender, (b) reasonable out-of-pocket fees or charges paid or incurred by Lender in connection with Lender’s transactions with any Loan Party or any of its Subsidiaries under any of the Loan Documents, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, judgment lien, litigation, bankruptcy and Code searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles), filing, recording, publication, appraisal (including periodic collateral appraisals or business valuations, real estate surveys, real estate title insurance policies and endorsements, and environmental audits, (c) Lender’s customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrowers (whether by wire transfer or otherwise), together with any out of pocket costs and expenses incurred in connection therewith, (d) out-of-pocket charges paid or incurred by Lender resulting from the dishonor of checks payable by or to any Loan Party, (e) reasonable out-of-pocket costs and expenses paid or incurred by Lender to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in

gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (f) fees and expenses to initiate electronic reporting by Borrowers to Lender, (g) reasonable out-of-pocket examination fees and expenses (including reasonable travel, meals, and lodging) of Lender related to any inspections, examinations, audits or appraisals to the extent of the fees and charges (and up to the amount of any limitation) contained in this Agreement, (h) reasonable out-of-pocket costs and expenses of third party claims or any other suit paid or incurred by Lender in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or Lender's relationship with any Loan Party or any of its Subsidiaries, (i) Lender's reasonable costs and expenses (including reasonable attorneys' fees) incurred in advising, structuring, drafting, reviewing, administering (including reasonable travel, meals, and lodging), or amending the Loan Documents and (j) all of Lender's costs and expenses (including attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with the Cases or any successor case or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning the Collateral.

"Lender" has the meaning specified therefor in the preamble to this Agreement and its successors and assigns.

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"Liquidation" means the exercise by the Lender of those rights and remedies accorded to the Lender under the Loan Documents and applicable Laws as a creditor of the Loan Parties with respect to the realization on the Collateral (subject to the terms of the DIP Orders), including (after the occurrence and during the continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Lender, of any public, private or other similar sale or any other disposition of the Collateral for the purpose of liquidating the Collateral. Derivations of the word "Liquidation" (such as "Liquidate") are used with like meaning in this Agreement.

"Loan Account" has the meaning specified therefor in Section 2.8 of this Agreement.

"Loan Documents" means this Agreement, the Control Agreements, the Collateral Access Agreements, the Pledge Agreement, the Guaranty, , the Joinder Agreements, the Intercompany Subordination Agreement, the Patent and Trademark Security Agreement, the Aircraft and Engines Security Agreement, the Aircraft Mortgage, the Engine Mortgage, any Note, the DIP Orders and any other instrument or agreement entered into, now or in the future, by any Loan Party with, to or in favor of Lender in connection with this Agreement (including, without limitation, in respect of Bank Products secured by the Collateral).

“Loan Party” means, individually, each Borrower and each Guarantor, and “Loan Parties” means, collectively, Borrowers and Guarantors.

“Margin Stock” as defined in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

“Material Adverse Change” means (a) a material adverse change in the business, prospects, operations, results of operations, assets, liabilities or condition (financial or otherwise) of the Loan Parties and their Subsidiaries taken as a whole, (b) a material impairment of Loan Party’s and their Subsidiaries’ ability to perform their obligations under the Loan Documents to which it is a party or of the Lender’s ability to enforce the Obligations or realize upon the Collateral, (c) a material impairment of the enforceability or priority of Lender’s Liens with respect to the Collateral as a result of an action or failure to act on the part of any Loan Party or its Subsidiaries, or (d) any claim against any Loan Party or its Subsidiaries or threat of litigation which if determined adversely to any Loan Party or any of its Subsidiaries, would result in the occurrence of an event described in clauses (a), (b) or (c) above. Notwithstanding anything to the contrary, a “Material Adverse Change” shall not be deemed to exist as a result of the Effect of Bankruptcy or the events leading up to and resulting therefrom.

“Material Contract” means, with respect to any Person, all contracts or agreements, the loss of which could reasonably be expected to result in a Material Adverse Change.

“Maturity Date” has the meaning specified therefor in Section 2.9 of this Agreement.

“Moody’s” has the meaning specified therefor in the definition of Cash Equivalents.

“Multiemployer Plan” means a multiemployer plan (as defined in Section 4001(a)(3) of ERISA) to which any Loan Party or any of its Subsidiaries or any ERISA Affiliate contributes or is obligated to contribute.

“Negotiable Collateral” means letters of credit, letter-of-credit rights, instruments, promissory notes, drafts and documents (as each such term is defined in the Code).

“Net Proceeds” means (a) with respect to a sale, assignment or other disposition of property or assets, including a Permitted Disposition, proceeds (including cash receivable (when received) by way of deferred payment) received by such Person in cash from such asset disposition, net of: (i) the reasonable and customary costs and expenses actually incurred in connection with such asset disposition (including legal fees and sales commissions); (ii) amounts applied to repayment of Indebtedness (other than the Obligations) secured by a Permitted Lien on such Collateral disposed of that is senior in priority to the Lender’s Liens; (iii) transfer or similar taxes; and (iv) reserves for escrows and indemnities, until such reserves are no longer required and such reserves or escrows are released to such Person; (b) with respect to the incurrence or issuance of any Indebtedness by any Loan Party or any of its Subsidiaries (other than Permitted Indebtedness), the result of (i) the sum of the cash and Cash Equivalents received in connection with such incurrence or issuance minus (ii) the underwriting discounts and commissions, and other reasonable out-of-pocket costs, fees, commissions, premiums and expenses incurred by the Loan Parties or their Subsidiaries in connection with such incurrence or issuance to the extent such amounts (A) were not deducted in determining the amount referred to

in clause (i) above, (B) are, at the time of receipt of such cash or Cash Equivalents, actually paid or payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and (C) are properly attributable to such transaction; and (c) with respect to the sale or issuance of any Stock of a Borrower (or its direct or indirect parent) (or successor thereof), the result of (i) the sum of the cash and Cash Equivalents received in connection with such sale or issuance minus (ii) the underwriting discounts and commissions, and other reasonable out-of-pocket costs, fees, commissions, premiums and expenses, incurred by such Borrower (or its direct or indirect parent) (or successor thereof) in connection with such sale or issuance to the extent such amounts (A) were not deducted in determining the amount referred to in clause (c)(i) above, (B) are, at the time of receipt of such cash or cash equivalents, actually paid or payable to a Person that is not an Affiliate of any Loan Party or any of its Subsidiaries, and (C) are properly attributable to such transaction.

“Note” mean a promissory note or notes of a Borrower substantially in the form attached as Exhibit B hereto.

“Obligations” means (a) all loans (including the Revolving Loans), debts, principal, interest, premiums, liabilities, obligations (including indemnification obligations), fees, costs, Lender Expenses, guaranties, and all covenants and duties of any other kind and description owing by any Loan Party pursuant to or evidenced by this Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, liquidated or unliquidated, determined or undetermined, voluntary or involuntary, due, not due or to become due, sole, joint, several or joint and several, incurred in the past or now existing or hereafter arising, however arising, and including all interest not paid when due, and all other expenses or other amounts that any Borrower or any other Loan Party is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, and (b) any Other Liabilities; provided that, notwithstanding anything to the contrary, the Obligations of any Guarantor shall exclude any Excluded Swap Obligations solely of such Guarantor. Any reference in this Agreement or in the Loan Documents to the Obligations shall include all or any portion thereof and any extensions, modifications, renewals, or alterations thereof.

“OFAC” means The Office of Foreign Assets Control of the U. S. Department of the Treasury.

“Other Liabilities” means any obligation on account of any transaction with the Lender or any of its Affiliates, which arises out of any Bank Product entered into with any Loan Party and any such Person, as each may be amended from time to time.

“Overadvance” means a Revolving Borrowing to the extent that, immediately after its having been made, Availability is less than zero.

“Participant” has the meaning specified therefor in Section 14 of this Agreement.

“Participant Register” has the meaning specified therefor in Section 14 of this Agreement.

“Patent and Trademark Security Agreement” means each Patent and Trademark Security Agreement executed and delivered by the applicable Loan Party and the Lender, in form and substance acceptable to the Lender.

“Patents” means patents and patent applications, including (i) the patents and patent applications listed on Schedule 5.26(b) to the Information Certificate, (ii) all continuations, divisionals, continuations-in-part, re-examinations, reissues, and renewals thereof and improvements thereon, (iii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past, present, or future infringements thereof, (iv) the right to sue for past, present, and future infringements thereof, and (v) all of each Loan Party’s rights corresponding thereto throughout the world.

“Patriot Act” has the meaning specified therefor in Section 5.18 of this Agreement.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Plan” means a pension plan (as defined in Section 3(2) of ERISA) maintained for employees of any Borrower or any of its Subsidiaries or any ERISA Affiliate and covered by Title IV of ERISA.

“Permitted Discretion” means a determination made in the exercise of reasonable (from the perspective of a secured lender) business judgment.

“Permitted Dispositions” means (i) the sale of any furniture, fixture or equipment that is no longer used or useful in the business of the Loan Parties, (ii) the sale of all or substantially all of the Loan Parties’ assets as a going concern in a single transaction or series of related transactions as approved by the Bankruptcy Court pursuant to the applicable provisions of the Bankruptcy Code, or other applicable law; provided that any such going concern sale shall be for cash consideration in an amount in excess of all outstanding Obligations and all Existing Liabilities, which amount shall be paid to the Lender for application to the Obligations and the Existing Liabilities, or (iii) a transaction or transactions combining the sale of certain of the Loan Parties’ business assets as a going concern and the permanent closing of all or a portion of the Loan Parties’ stores and the sale of all Collateral located therein through the retention by the Loan Parties of one or more independent, nationally recognized, professional retail inventory liquidation firms, reasonably acceptable to the Lender, as approved by the Bankruptcy Court pursuant to the applicable provisions of the Bankruptcy Code or other applicable law, which transaction or transactions shall be on terms reasonably satisfactory to the Lender and shall together, be for cash consideration in excess of all outstanding Obligations and all Existing Liabilities, which amount shall be paid to the Lender for application to the Obligations and the Existing Liabilities.

“Permitted Existing Debt” means the Indebtedness set forth on [Schedule P-3]; provided that such debt is subordinated to the Obligations and the “Obligations” (as defined in the Existing Credit Agreement) on terms acceptable to the Lender.

“Permitted Indebtedness” means:

- (a) Indebtedness evidenced by this Agreement or the other Loan Documents;
- (b) [Reserved]
- (c) endorsement of instruments or other payment items for deposit;
- (d) the incurrence by any Loan Party or its Subsidiaries of Indebtedness under Hedge Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with such Borrower's and its Subsidiaries' operations and not for speculative purposes;
- (e) Indebtedness incurred in respect of Bank Products (other than pursuant to Hedge Agreements) in the ordinary course of business and in any event, in accordance with an arrangement reasonably acceptable to the Lender;
- (f) Indebtedness composing Permitted Investments;
- (g) Indebtedness consisting of (i) unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations; (ii) unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with Permitted Dispositions; and (iii) unsecured guarantees with respect to Indebtedness of any Loan Party or one of its Subsidiaries, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness;
- (h) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to any Loan Party or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year;
- (i) Permitted Existing Debt; and
- (j) the Existing Liabilities.

"Permitted Intercompany Advances" means loans made by (a) a Loan Party to another Loan Party, (b) a Subsidiary of a Loan Party which is not a Loan Party to another Subsidiary of a Loan Party which is not a Loan Party, (c) a Subsidiary of a Loan Party which is not a Loan Party to a Loan Party so long as the parties thereto are party to the Intercompany Subordination Agreement.

"Permitted Investments" means:

- (a) Investments in cash and Cash Equivalents;
- (b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;

(c) advances made in connection with purchases of Goods or services in the ordinary course of business;

(d) Investments owned by any Loan Party or any of its Subsidiaries on the Closing Date and set forth on Schedule P-1;

(e) Permitted Intercompany Advances;

(f) Investments resulting from entering into (i) Bank Product Agreements, or (ii) agreements relative to Indebtedness that is permitted under clause (g) of the definition of Permitted Indebtedness;

(g) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries;

(h) Stock or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Loan Party or its Subsidiaries (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims;

(i) deposits of cash made in the ordinary course of business to secure performance of operating leases;

(j) non-cash loans to employees, officers, and directors of any Borrower or any of its Subsidiaries for the purpose of purchasing Stock in any Borrower so long as the proceeds of such loans are used in their entirety to purchase such stock in any Borrower;

(k) guarantees permitted under the definition of Permitted Indebtedness; and

(l) Investments in the form of capital contributions and the acquisition of Stock made by any Loan Party in any other Loan Party.

"Permitted Liens" means

(a) Liens granted to, or for the benefit of, Lender to secure the Obligations;

(b) Liens for unpaid taxes, assessments, or other governmental charges or levies that either (i) are not yet delinquent, or (ii) do not have priority over Lender's Liens and the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests;

(c) judgment Liens arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default under Section 9.3 of the Agreement;

(d) Liens set forth on Schedule P-2; provided, however, that, to qualify as a Permitted Lien, any such Lien described on Schedule P-2 shall only secure the Indebtedness that it secures on the Closing Date;

(e) the interests of lessors under operating leases and non-exclusive licensors under license agreements;

(f) purchase money Liens or the interests of lessors under Capital Leases to the extent that such Liens or interests secure purchase money indebtedness and so long as (i) such Lien attaches only to the asset purchased or acquired and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired or any Refinancing Indebtedness in respect thereof;

(g) Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is the subject of permitted Refinancing Indebtedness and so long as the replacement Liens only encumber those assets that secured the original Indebtedness;

(h) Liens arising by operation of law in favor of warehousemen, landlords, carriers, mechanics, materialmen, laborers, or suppliers, incurred in the ordinary course of business and not in connection with the borrowing of money, and which Liens either (i) are for sums not yet delinquent, or (ii) are the subject of Permitted Protests,

(i) Liens on amounts deposited to secure Loan Parties' and their Subsidiaries' obligations in connection with worker's compensation or other unemployment insurance,

(j) Liens on amounts deposited to secure Loan Parties' and their Subsidiaries' obligations in connection with the making or entering into of bids, tenders, or leases in the ordinary course of business and not in connection with the borrowing of money,

(k) Liens on amounts deposited to secure Loan Parties' and their Subsidiaries' reimbursement obligations with respect to surety or appeal bonds obtained in the ordinary course of business,

(l) with respect to any Real Property, easements, rights of way, and zoning restrictions that do not materially interfere with or impair the use or operation thereof,

(m) non-exclusive licenses of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(n) rights of setoff or bankers' liens upon deposits of cash in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such deposit accounts in the ordinary course of business,

(o) Liens on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness,

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

(q) Liens securing the Existing Liabilities.

"Permitted Preferred Stock" means and refers to any Preferred Stock issued by a Borrower (and not by one or more of its Subsidiaries) that is not Prohibited Preferred Stock.

"Permitted Protest" means the right of any Loan Party or any of their respective Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment; provided, that, (a) a reserve with respect to such obligation is established on such Loan Party's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by such Loan Party or its Subsidiary, as applicable, in good faith, and (c) while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Lender's Liens.

"Permitted Variance" means, with respect to disbursements under any Approved Budget, an amount not to exceed (a) 10% of the aggregate amounts set forth in such Approved Budget as "Total Disbursements" or (b) if such disbursement is an "Operating Disbursement," as identified in the Approved Budget, 20% of the amounts set forth on such line item in such Approved Budget. For the avoidance of doubt, an adverse variance exceeding the Permitted Variance would exist if (x) the aggregate disbursements are more than 110% of the amounts set forth under "Total Disbursements" or (y) operating disbursements are more than 120% of the amounts set forth in any line item identified as an "Operating Disbursement."

"Person" means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof

"Petition Date" has the meaning specified therefor in the recitals of this Agreement.

"Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) maintained for employees of any Borrower or any of its Subsidiaries or any ERISA Affiliate.

"Plan of Reorganization" means a plan filed in the Cases pursuant to Chapter 11 of the Bankruptcy Code and acceptable to the Lender in its sole discretion.

"Pledge Agreement" means a pledge agreement, in form and substance reasonably satisfactory to the Lender, made by the pledgor party thereto in favor of Lender, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Preferred Stock" means, as applied to the Stock of any Person, the Stock of any class or classes (however designated) that is preferred with respect to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such Person, over shares of Stock of any other class of such Person.

"Prepayment Event" means the occurrence of any of the following events:

(a) any sale, assignment or other disposition of property or assets, including a Permitted Disposition;

(b) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation, expropriation or similar proceeding, in any such case after the Closing Date, of, any asset of an Loan Party or any Subsidiary thereof, unless the proceeds therefrom are (i) used to repair, restore or replace the assets that are subject to such casualty or other insured damage or taking under power of eminent domain, condemnation, expropriation or similar proceeding within 180 days of the receipt of such proceeds by such Loan Party or such Subsidiary or (ii) required to be paid to the holder of a Lien on such property or asset having priority over the Lien of Lender; provided that any casualty or other damage to, or any taking under power of eminent domain or by condemnation, expropriation or similar proceeding of, any asset of a non-wholly owned Subsidiary that is not an Loan Party shall constitute a Prepayment Event only to the extent (i) the charter, by-laws or other organizational documents of such Subsidiary permit such payment and (ii) of the proceeds distributed to a Loan Party or a wholly-owned Subsidiary of a Loan Party;

(c) any incurrence of any Indebtedness by any Loan Party or any Subsidiary thereof (excluding Permitted Indebtedness); or

(d) any issuance by a Borrower (or its direct or indirect parent thereof) (or successor thereof) of any Stock.

"Prepetition Agent" has the meaning specified therefor in the recitals of this Agreement.

"Prepetition Financing Documents" has the meaning specified therefor in the recitals of this Agreement.

"Prepetition Lenders" has the meaning specified therefor in the recitals of this Agreement.

"Proceeds" has the meaning specified therefor in the definition of "Collateral" set forth in this Schedule 1.1(a).

"Production Certificate" means a Production Certificate issued by the FAA to any Person pursuant to the Aviation Laws certifying that the manufacturing, production, inspection and quality control capabilities of such Person to manufacture, produce and deliver airworthy aircraft comply with the requirements of the Aviation Laws, as the same now exist or may hereafter be amended, modified, supplemented, renewed, reissued or replaced.

"Professional Fees and Expenses" means, subject to any limitations contained in the DIP Orders, (a) allowed administrative expenses payable pursuant to 28 U.S.C. § 1930(a)(6), and (b) professional fees of, and costs and expenses incurred by, Case Professionals.

"Prohibited Preferred Stock" means any Preferred Stock that by its terms is mandatorily redeemable or subject to any other payment obligation (including any obligation to pay dividends, other than dividends of shares of Preferred Stock of the same class and series payable in kind or dividends of shares of common stock) on or before a date that is less than one (1) year after the Maturity Date, or, on or before the date that is less than one (1) year after the Maturity Date, is redeemable at the option of the holder thereof for cash or assets or securities (other than

distributions in kind of shares of Preferred Stock of the same class and series or of shares of common stock).

“Projections” means each Borrower’s forecasted (a) balance sheets, (b) profit and loss statements, (c) Availability projections, and (d) cash flow statements, all prepared on a basis consistent with such Borrower’s historical financial statements, together with appropriate supporting details and a statement of underlying assumptions.

“PTO” means the United States Patent and Trademark Office.

“Purchase Money Indebtedness” means Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within twenty (20) days after, the acquisition of any fixed assets for the purpose of financing all or any part of the acquisition cost thereof.

“Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Loan Party that has total assets exceeding \$10,000,000 at the time the relevant Guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

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

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Refinancing Indebtedness” means refinancings, renewals, or extensions of Indebtedness so long as:

(a) such refinancings, renewals, or extensions do not result in an increase in the principal amount of the Indebtedness so refinanced, renewed, or extended, other than by the amount of premiums paid thereon and the fees and expenses incurred in connection therewith and by the amount of unfunded commitments with respect thereto,

(b) such refinancings, renewals, or extensions do not result in a shortening of the average weighted maturity (measured as of the refinancing, renewal, or extension) of the Indebtedness so refinanced, renewed, or extended, nor are they on terms or conditions that, taken as a whole, are or could reasonably be expected to be materially adverse to the interests of Lender,

(c) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension must include subordination terms and conditions that are at least as favorable to the Lender as those that were applicable to the refinanced, renewed, or extended Indebtedness, and

(d) the Indebtedness that is refinanced, renewed, or extended is not recourse to any Person that is liable on account of the Obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended.

“Register” has the meaning specified therefor in Section 14 of this Agreement.

“Related Persons” means a Person’s Affiliates, officers, directors, employees, attorneys, and agents.

“Remedial Action” means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any way address Hazardous Materials in the indoor or outdoor environment, (b) prevent or minimize a release or threatened release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment, (c) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

“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.

“Reported Fee Accruals” means the amount of Professional Fees and Expenses which have been incurred, accrued or invoiced (but remain unpaid) prior to such time as the Lender notifies the Borrowers of the occurrence and continuation of an Event of Default. For purposes of determining the amount of the Carve Out, “Reported Fee Accruals” shall be equal to the aggregate “Professional Fees” reflected in the Approved Budget for the relevant time period minus any payments received on account thereof, which payments are reported to the Lender in accordance with the provisions of Section 6.1 hereof. Any Professional Fees and Expenses which have been incurred, accrued or invoiced (and remain unpaid) but are in excess of the amounts reflected on the Approved Budget for the relevant time period (subject to the Variance Report delivered pursuant to Section 6.1 hereof) shall not constitute “Reported Fee Accruals.”

“Representatives” has the meaning specified therefor in Section 17.8(a) of this Agreement.

“Restricted Junior Payment” means (a) any declaration or payment of any dividend or the making of any other payment or distribution on account of Stock issued by any Loan Party (including any payment in connection with any merger or consolidation involving any Loan Party) or to the direct or indirect holders of Stock issued by any Loan Party in their capacity as such (other than dividends or distributions payable in Stock (other than Prohibited Preferred Stock) issued by any Loan Party, or (b) any purchase, redemption, or other acquisition or retirement for value (including in connection with any merger or consolidation involving any Loan Party) of any Stock issued by any Loan Party.

“Restructuring Support Agreement” means the Restructuring Support Agreement dated October 9, 2018 by and among the Borrowers, the Lender, and the supporting parties thereto.

“Revolving Borrowing” means a borrowing of a Revolving Loan pursuant to Article 2.

“Revolving Commitment” means, as to the Lender, its obligation to make Revolving Loans to the Borrowers pursuant to Section 2.1, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite the Lender’s name on Schedule 1.1(b), as such amount may be adjusted from time to time in accordance with this Agreement.

“Revolving Loan Notice” means a notice of a Revolving Borrowing, pursuant to Section 2.2, which, if in writing, shall be substantially in the form of Exhibit G.

“Revolving Loans” has the meaning provided in Section 2.1.

“Roll-Up Loan” has the meaning specified therefor in Section 2.1(b) of this Agreement.

“Sanctioned Entity” means (a) a country or a government of a country, (b) an agency of the government of a country, (c) an organization directly or indirectly controlled by a country or its government, (d) a Person resident in or determined to be resident in a country, in each case, that is subject to a country sanctions program administered and enforced by OFAC.

“Sanctioned Person” means a person named on the list of Specially Designated Nationals maintained by OFAC.

“S&P” has the meaning specified therefor in the definition of Cash Equivalents.

“SEC” means the United States Securities and Exchange Commission and any successor thereto.

“Securities Account” means a securities account (as that term is defined in the Code).

“Security Interest” has the meaning specified therefor in Section 3.1 of this Agreement.

“Spare Parts” means goods consisting of finished aircraft rotors, fuselages, Engines, engine mounts, fuel pumps, cowlings, appliances, flight instruments, accessories, avionics (including, without limitation, radars, radar and navigation systems or electronic equipment) and other components and parts for an Aircraft which any Loan Party holds for incorporation into and assembly of an Aircraft owned by such Loan Party or for sale in the ordinary course of its business to third parties as replacement parts which are not attached to, incorporated into or affixed to any Aircraft. “Stock” means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

“Subsidiary” of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the shares of Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

“Supporting Obligations” means supporting obligations (as such term is defined in the Code), and includes letters of credit and guaranties issued in support of Accounts, Chattel Paper, documents, General Intangibles, instruments or Investment Related Property.

“Swap Obligation” means, with respect to any Loan Party, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

“Taxes” means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments and all interest, penalties or similar liabilities with respect thereto; provided, however, that, Taxes shall exclude any tax imposed on the net income or net profits of the Lender (including any branch profits taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which the Lender is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which the Lender’s principal office is located in each case as a result of a present or former connection between the Lender and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from the Lender having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under this Agreement or any other Loan Document).

“Termination Date” has the meaning specified therefor in Section 2.9 of this Agreement.

“Total Revolving Outstandings” means the aggregate outstanding principal amount of all Revolving Loans.

“Trademarks” means any and all trademarks, trade names, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including (i) the trade names, registered trademarks, trademark applications, registered service marks and service mark applications listed on Schedule 5.26(b) to the Information Certificate, (ii) all renewals thereof, (iii) all income, royalties, damages and payments now and hereafter due or payable under and with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iv) the right to sue for past, present and future infringements and dilutions thereof, (v) the goodwill of each Loan Party’s business symbolized by the foregoing or connected therewith, and (vi) all of each Loan Party’s rights corresponding thereto throughout the world.

“Type Certificate” means, as to any Aircraft, a Type Certificate with respect to such Aircraft issued by the FAA to any Borrower or any Guarantor pursuant to the Aviation Laws, as the same now exists or may hereafter be further amended, modified, supplemented, extended, renewed, restated or replaced.

“United States” means the United States of America.

“URL” means “uniform resource locator,” an internet web address.

“Variance Report” means a report prepared by the Administrative Borrower’s management reflecting on a line-item basis the Loan Parties’ actual performance compared to the

Approved Budget for the immediately preceding week and on a cumulative basis for the four immediately preceding weeks (or, if fewer than four weeks have elapsed since the Closing Date, cumulatively for the period after the Petition Date) and the percentage variance of the Loan Parties' actual results from those reflected in the then existing Approved Budget, along with management's explanation of such variance and any adverse variances that exceed the Permitted Variance, in each case in form and substance reasonably acceptable to the Lender. Any amendment, supplement or modification of a Variance Report must be approved in writing by the Lender in its sole discretion.

"Voidable Transfer" has the meaning specified therefor in Section 17.7 of this Agreement.

b. **Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, however, that, if any Borrower notifies Lender that such Borrower requests an amendment to any provision hereof to eliminate the effect of any change in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions) (an "Accounting Change") occurring after the Closing Date, or in the application thereof (or if Lender notifies any Borrower that it requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Lender and Borrowers agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lender and each Borrower after such Accounting Change conform as nearly as possible to their respective positions as of the date of this Agreement and, until any such amendments have been agreed upon, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. Whenever used herein, the term "financial statements" shall include the footnotes and schedules thereto. Whenever the term "Borrower" or "Loan Party" is used in respect of a financial covenant or a related definition, it shall be understood to mean Borrowers and their respective Subsidiaries on a consolidated basis or Loan Parties and their respective Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. 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 herein shall be made, without giving effect to any election under Accounting Standards Codification 825-10 (or any other financial accounting standard having a similar result or effect) to value any Indebtedness or other liabilities of any person at "fair value."

c. **Code.** Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein. The meaning of any term defined herein by reference to the Code will not be limited by reason of any limitation set forth on the scope of the Code, whether under Section 9-109 of the Code, by reason of federal preemption or otherwise.

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

where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in full in Dollars in cash or immediately available funds of all of the Obligations (including the payment of the Lender Expenses that have accrued irrespective of whether demand has been made therefor and the payment of any termination amount or prepayment premium then applicable other than unasserted contingent indemnification Obligations. Any reference herein to any Person shall be construed to include such Person’s successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record. References herein to any statute or any provision thereof include such statute or provision (and all rules, regulations and interpretations thereunder) as amended, revised, re-enacted, and for consolidated from time to time and any successor statute thereto. All references to the term “security interest” or “lien” used herein shall include without limitation an “international interest” as such term is defined in the Cape Town Convention (Aircraft Protocol) Laws.

e. **Construction Relating to Lender.** Notwithstanding anything to the contrary contained herein or in any of the Loan Documents, whenever in this Agreement or any of the other Loan Documents the words “judgment”, “discretion” or “determination, or words of similar import are used relating to the judgment, discretion or determination of the Lender, such words shall mean (unless otherwise expressly provided herein) and refer to the judgment, discretion or determination of the Lender. Any item or action requested by the Lender or words of similar import relating to the request by the Lender of any documents, agreements, deliverables, or any other item or action shall mean and refer to the request by the Lender and any requirement by Borrowers or any other Loan Party to deliver documents, agreements, deliverables or other items to Lender shall mean and refer to an obligation to deliver documents, agreements, deliverables or other items to Lender.

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

Schedule 1.1(b)
Revolving Commitment

<u>Lender</u>	<u>Revolving Commitment (other than the Roll Up Loan)</u>
Citiking International US LLC	\$8,000,000

Schedule 6.1

TO CREDIT AND SECURITY AGREEMENT

Deliver to Lender, each of the financial statements, reports, or other items set forth below at the following times in form and substance satisfactory to the Lender:

As soon as available, but in any event within thirty (30) days after the end of each month	(a) an unaudited consolidated and consolidating balance sheet, income statement, statement of cash flow, and statement of shareholder's equity with respect to Loan Parties and their respective Subsidiaries during such period and compared to the prior period and plan, prepared in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes; and
As soon as available, but in any event within one hundred twenty (120) days after the end of each fiscal year	(a) unaudited consolidated and consolidating financial statements of Loan Parties and their Subsidiaries for each such fiscal year, prepared in accordance with GAAP (such unaudited financial statements to include a balance sheet, income statement, statement of cash flow, and statement of shareholder's equity);
at least two Business Days prior to the furnishing or filing thereof,	copies of any statement, report or pleading proposed to be furnished to or filed with the Bankruptcy Court or the Creditors' Committee by the Loan Parties in connection with the Cases, other than (i) responses to ordinary course financial and operational information requests from the Creditors' Committee and (ii) items that are already delivered pursuant to the terms hereof (for example, the Approved Budgets); and
if and when filed by any Loan Party	(a) any material information that is provided by any Loan Party to its shareholders generally.

Schedule 6.2

TO CREDIT AND SECURITY AGREEMENT

Provide Lender with each of the documents set forth below at the following times in form and substance satisfactory to the Lender:

Every other week (no later than 7:00 p.m. (Eastern) on every other Thursday, commencing on the Thursday following the first full calendar week after the Closing Date)	(a) a Compliance Certificate
Monthly (no later than the thirtieth (30th) day of each month) or more frequently if requested by Lender	<p>(a) Inventory system/perpetual reports specifying the standard cost of each Borrower's and its Subsidiaries' Inventory, by location and by category, with additional detail showing additions to and deletions therefrom (delivered electronically in an acceptable format, if a Borrower has implemented electronic reporting);</p> <p>(b) an order backlog report for any Aircraft including: (i) the date of any applicable sales contract and the price of such Aircraft, (ii) the anticipated delivery date of such Aircraft, (iii) identification of any Liens on such Aircraft and the amount of liabilities secured thereby; (iv) the amounts of any security or other deposits and prepayments of the purchase price in respect of such Aircraft received and held any Loan Party, identifying whether any such amounts have been received by a Loan Party or are being held in escrow; (v) the amount of cash proceeds expected to be received by a Loan Party at closing upon the sale of such Aircraft and (vi) when sold, the final sale date; (d) a service backlog report for any Aircraft or Engine including (i) the anticipated dates of service of such Aircraft or Engine and (ii) the type, scope and nature of service to be provided;</p> <p>(c) a summary aging, by vendor, of each Borrower's and its Subsidiaries' accounts payable (delivered electronically in an acceptable format, if a Borrower has implemented electronic reporting);</p> <p>(d) a summary aging of each Borrower's Accounts.</p> <p>(e) the location of each Aircraft;</p> <p>(f) copies of all contracts and purchase orders for the sale of Aircraft by any Loan Party;</p>

	<p>(g) notice of all claims, offsets, or disputes asserted by Account Debtors with respect to each Borrower's and its Subsidiaries' Accounts;</p> <p>(h) copies of all Aircraft Registrations, Airworthiness Certificates and other FAA Certificates issued to any Loan Party;</p> <p>(j) a work-in process report for each Aircraft including (i) the Aircraft identification number, (ii) the Aircraft type, (iii) the anticipated completion date, (iv) the status of Engine installation, (v) the status of payments on such Engines and the existence of any Liens on such Engines, (vi) a general description of the status of the work on such Aircraft and an estimate of the completion percentage of such work-in-process;</p> <p>(k) a detailed report of all Engines acquired by Borrower during such month, and the related Purchase Money Indebtedness incurred with respect to such Engines; and</p> <p>(l) a detailed report of all Inventory, by location and by category, with additional detail showing additions to and deletions therefrom (delivered electronically in an acceptable format, if a Borrower has implemented electronic reporting).</p>
Annually (within 15 days after the end of each fiscal year), or more frequently, if requested by the Lender	a detailed list of each Borrower's and its Subsidiaries' customers, with address and contact information
Promptly upon request by the Lender	<p>(a) copies of purchase orders and invoices for Inventory and Equipment acquired by each Borrower or its Subsidiaries;</p> <p>(b) copies of invoices together with corresponding shipping and delivery documents and credit memos together with corresponding supporting documentation with respect to invoices and credit memos in excess of an amount determined in the sole discretion of the Lender from time to time,</p> <p>(c) such other reports and information as to the Collateral and as to each Loan Party and its Subsidiaries as Lender may reasonably request;</p>

	<p>(d) a detailed aging of each Borrower's Accounts, together with a reconciliation to the monthly Account roll-forward and supporting documentation for any reconciling items noted (delivered electronically in an acceptable format, if a Borrower has implemented electronic reporting); and</p> <p>(e) a reconciliation of Accounts aging, trade accounts payable aging, and Inventory perpetual of each Borrower to the general ledger and the monthly financial statements, including any book reserves related to each category.</p>
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EXHIBIT A
TO CREDIT AND SECURITY AGREEMENT
FORM OF COMPLIANCE CERTIFICATE

[on Borrowers' letterhead]

Citiking International US LLC
c/o
Thomas A. Pitta
Emmet, Marvin & Martin, LLP
120 Broadway 32nd Floor
New York, NY 10271
Email: tpitta@emmetmarvin.com

Re: Compliance Certificate dated [_____]

Ladies and Gentlemen:

Reference is made to that certain Senior Secured Superpriority Debtor In Possession Credit and Security Agreement (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement") dated as of _____, 2018, by and among Citiking International US, LLC (the "Lender"), and **ECLIPSE AEROSPACE, INC.**, a Delaware corporation ("Eclipse"), **BRIGADOON AIRCRAFT MAINTENANCE, LLC**, a Delaware limited liability company ("Brigadoon"), and together with Eclipse and any other Person that hereafter becomes a borrower, each a "Borrower", and collectively the "Borrowers"), and the Guarantors party thereto from time to time. Capitalized terms used in this Compliance Certificate have the meanings set forth in the Credit Agreement unless specifically defined herein.

Pursuant to Schedule 6.1 of the Credit Agreement, each of the undersigned Chief Financial Officer and [President][Chief Executive Officer] of Administrative Borrower and each of the undersigned Chief Financial Officer and [President][Chief Executive Officer] of the Borrowers, hereby certifies that:

1. Such officer has reviewed the terms of the Credit Agreement and has made, or caused to be made under his/her supervision, a review in reasonable detail of the transactions and condition of each Loan Party and its Subsidiaries and such review has not disclosed the existence on and as of the date hereof, and the undersigned does not have knowledge of the existence as of the date hereof, of any event or condition that constitutes a Default or Event of Default[, except [_____]].
2. Set forth on Schedule 1 hereof is a Variance Report.

3. Set forth on Schedule 2 hereof are any updates to the Information Certificate to make the Information Certificate most recently delivered to the Lender be true, correct and complete as of the date hereof.

4. The information and calculations set forth on Schedule 1 and Schedule 2 are true, correct and complete in all material respects.

IN WITNESS WHEREOF, this Compliance Certificate is executed by the undersigned this [] day of [], [].

ECLIPSE AEROSPACE, INC.

By: _____

Name: _____

Title: _____

SCHEDULE 1 TO COMPLIANCE CERTIFICATE

SCHEDULE 2 TO COMPLIANCE CERTIFICATE

EXHIBIT B

**TO CREDIT AND SECURITY AGREEMENT
FORM OF NOTE**

[FORM OF] NOTE

[____], 201[____]

New York, New York

FOR VALUE RECEIVED, the undersigned, **ECLIPSE AEROSPACE, INC.**, a Delaware corporation ("Eclipse"), **BRIGADOON AIRCRAFT MAINTENANCE, LLC**, a Delaware limited liability company ("Brigadoon"), and together with Eclipse and any other Person that hereafter becomes a borrower, each a "Borrower", and collectively the "Borrower", hereby unconditionally promises to pay to [____] (herein, together with any subsequent holder hereof, called the "Lender") in lawful money of the United States or such other currency as may be provided in the Credit Agreement (as defined below) and in immediately available funds, the principal amount of \$[____] or such lesser sum as may constitute Lender's Revolving Loans pursuant to the terms of the Credit Agreement on the date on which such outstanding principal amounts become due and payable pursuant to the terms of the Credit Agreement, in strict accordance with the terms thereof. Borrower likewise unconditionally promises to pay to Lender interest from and after the date hereof on the outstanding principal amount of Revolving Loans at such interest rates, payable at such times, and computed in such manner as are specified in the Credit Agreement, in strict accordance with the terms thereof.

This Term Note (this "Note") is issued pursuant to, and is a "Note" referred to in, the Senior Secured Superpriority Debtor In Possession Credit and Security Agreement dated _____, 2018 (as the same may be amended from time to time, the "Credit Agreement"), by and among Borrower and certain of its Affiliates from time to time party thereto, and Citiking International US, LLC, as Lender; and the Lender is and shall be entitled to all benefits thereof and of all Loan Documents executed and delivered in connection therewith. This Note is subject to the terms and conditions of the Credit Agreement, including, without limitation, certain restrictions on transfer or assignment as provided in the Credit Agreement. All capitalized terms used herein, unless otherwise defined herein, shall have the meanings ascribed to such terms in the Credit Agreement.

The repayment of the principal balance of this Note is subject to the provisions of the Credit Agreement. The entire unpaid principal balance and all accrued interest on this Note shall be due and payable in such amounts and on such dates as set forth in the Credit Agreement.

All payments of principal and interest shall be made in Dollars, in immediately available funds, to Lender for Lender's benefit as specified in the Credit Agreement.

Upon or after the occurrence of an Event of Default and for so long as such Event of Default exists, the principal balance and all accrued interest of this Note may be declared (or shall become) due and payable in the manner and with the effect provided in the Credit Agreement, and the unpaid principal balance hereof shall bear interest at the default rate as and when provided in the Credit Agreement. Borrower agrees to pay, and to save Lender harmless against,

any liability for the payment of, all costs and expenses, including, but not limited to, reasonable attorneys' fees, if this Note is collected by or through an attorney-at-law.

All principal amounts of Revolving Loans made by Lender pursuant to the Credit Agreement, and all accrued and unpaid interest thereon, shall be deemed outstanding under this Note and shall continue to be owing by Borrower until paid in accordance with the terms of this Note and the Credit Agreement.

In no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid to Lender for the use, forbearance or detention of money advanced hereunder exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable hereto; and, in the event of any such payment inadvertently paid by Borrower or inadvertently received by Lender, such excess sum shall be, at Borrower's option, returned to Borrower forthwith or credited as a payment of principal, but shall not be applied to the payment of interest. It is the intent hereof that Borrower not pay or contract to pay, and that Lender not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by Borrower under applicable law.

Time is of the essence of this Note. To the fullest extent permitted by applicable law, Borrower, for itself and its legal representatives, successors and assigns, expressly waives presentment, demand, protest, notice of dishonor, notice of non-payment, notice of maturity, notice of protest, presentment for the purpose of accelerating maturity, diligence in collection, and the benefit of any exemption or insolvency laws.

Wherever possible each provision of this Note shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Note. No delay or failure on the part of the Lender in the exercise of any right or remedy hereunder or under any other Loan Document shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise by Lender of any right or remedy preclude any other right or remedy. The Lender, at its option, may enforce its rights against any Collateral securing this Note without enforcing its rights against Borrower, any Guarantor of the indebtedness evidenced hereby or any other property or indebtedness due or to become due to Borrower. Borrower agrees that, without releasing or impairing Borrower's liability hereunder, the Lender may at any time release, surrender, substitute or exchange any Collateral securing this Note and may at any time release any party primarily or secondarily liable for the indebtedness evidenced by this Note.

The rights of Lender and obligations of Borrower hereunder shall be construed in accordance with and governed by the laws (without giving effect to the conflict of law principles thereof) of the State of New York.

IN WITNESS WHEREOF, Borrower has caused this Note to be executed and delivered by its duly authorized officers on the date first above written.

ECLIPSE AEROSPACE, INC.,
as a Borrower and as Debtor-In-Possession

By: _____
Name: _____
Title: _____

**BRIGADOON AIRCRAFT MAINTENANCE,
LLC,**
as a Borrower and as Debtor-In-Possession

By: _____
Name: _____
Title: _____

EXHIBIT D

**TO CREDIT AND SECURITY AGREEMENT
REPRESENTATIONS AND WARRANTIES**

5.1 Due Organization and Qualification; Subsidiaries.

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

(b) Set forth on Schedule 5.1(b) to the Information Certificate is a complete and accurate description of the authorized capital Stock of each Loan Party, by class, and, as of the Closing Date, a description of the number of shares of each such class that are issued and outstanding. Other than as described on Schedule 5.1(b) to the Information Certificate, there are no subscriptions, options, warrants, or calls relating to any shares of any Loan Party's capital Stock, including any right of conversion or exchange under any outstanding security or other instrument. No Loan Party is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital Stock or any security convertible into or exchangeable for any of its capital Stock.

(c) Set forth on Schedule 5.1(c) to the Information Certificate (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement), is a complete and accurate list of the Loan Parties' direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Stock authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by each Loan Party. All of the outstanding capital Stock of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(d) Except as set forth on Schedule 5.1(c) to the Information Certificate, there are no subscriptions, options, warrants, or calls relating to any shares of any Loan Party's or any Loan Party's Subsidiaries' capital Stock, including any right of conversion or exchange under any outstanding security or other instrument. No Loan Party nor any of its Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of such Loan Party's Subsidiaries' capital Stock or any security convertible into or exchangeable for any such capital Stock.

5.2 Due Authorization; No Conflict.

(a) As to each Loan Party, subject to the entry of the DIP Orders, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party.

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

5.3 Governmental Consents. Subject to the entry of the DIP Orders, no consent, approval, authorization, or other order or other action by, and no notice to or filing with, any Governmental Authority or any other Person is required (i) for the grant of a Security Interest by such Loan Party in and to the Collateral pursuant to this Agreement or for the execution, delivery, or performance of any Loan Documents by such Loan Party, or (ii) for the exercise by Lender of the voting or other rights provided for in this Agreement with respect to the Investment Related Property or the remedies in respect of the Collateral pursuant to this Agreement, except as may be required in connection with such disposition of Investment Related Property by laws affecting the offering and sale of securities generally. No Intellectual Property License of any Loan Party that is necessary to the conduct of such Loan Party's business requires any consent of any other Person in order for such Loan Party to grant the security interest granted hereunder in such Loan Party's right, title or interest in or to such Intellectual Property License.

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

5.5 Title to Assets; No Encumbrances. Each of the Loan Parties and its Subsidiaries has (a) good, sufficient and legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 6.1 and most recent collateral reports delivered pursuant to Section 6.2, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

5.6 Jurisdiction of Organization; Location of Chief Executive Office; Organizational Identification Number; Commercial Tort Claims.

(a) The exact legal name of (within the meaning of Section 9-503 of the Code) and jurisdiction of organization of each Loan Party and each of its Subsidiaries is set forth on Schedule 5.6(a) to the Information Certificate (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(b) The chief executive office of each Loan Party and each of its Subsidiaries is located at the address indicated on Schedule 5.6(b) to the Information Certificate (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(c) Each Loan Party's and each of its Subsidiaries' tax identification numbers and organizational identification numbers, if any, are identified on Schedule 5.6(c) to the Information Certificate (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(d) As of the Closing Date, no Loan Party and no Subsidiary of a Loan Party holds any Commercial Tort Claims that exceed \$100,000 in amount, except as set forth on Schedule 5.6(d) to the Information Certificate.

5.7 Litigation.

(a) Except for the Effect of Bankruptcy, there are no actions, suits, or proceedings pending or, to the knowledge of any Loan Party, after due inquiry, threatened in writing against a Loan Party or any of its Subsidiaries that (i) either individually or in the aggregate could reasonably be expected to result in a Material Adverse Change or (ii) seeks to enjoin, either directly or indirectly, the execution, delivery or performance by any Loan Party of the Loan Documents or the transactions contemplated thereby.

(b) Schedule 5.7(b) to the Information Certificate sets forth a complete and accurate description with respect to each of the actions, suits, or proceedings that could reasonably be expected to result in liabilities in excess of \$100,000 that, as of the Closing Date, is pending or, to the knowledge of any Loan Party, after due inquiry, threatened against a Loan Party or any of its Subsidiaries, of (i) the parties to such actions, suits, or proceedings, (ii) the nature of the dispute that is the subject of such actions, suits, or proceedings, (iii) the status, as of the Closing Date, with respect to such actions, suits, or proceedings, and (iv) whether any liability of the Loan Parties' and their Subsidiaries in connection with such actions, suits, or proceedings is covered by insurance.

5.8 Compliance with Laws. No Loan Party nor any of its Subsidiaries (a) is in violation of any applicable laws, rules, regulations, executive orders, or codes (including Environmental Laws and Aviation Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency

or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

5.9 No Material Adverse Change. All historical financial statements relating to the Loan Parties and their Subsidiaries that have been delivered by Borrowers to Lender have been prepared in accordance with GAAP (except, that, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, the Loan Parties' and their Subsidiaries' consolidated financial condition as of the date thereof and results of operations for the period then ended. Since _____, 20__, except for the Effect of Bankruptcy, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Change with respect to the Loan Parties and their Subsidiaries.

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

5.11 Employee Benefits.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the IRC and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the IRC has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the IRC and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the IRC, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Loan Parties, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Loan Parties, 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.

(c) No ERISA Event has occurred, and neither the Loan Parties nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) the Loan Parties and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the IRC) is 80% or higher and neither the Loan Parties nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 80% as of the most recent valuation date; (iv) neither

the Loan Parties nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Loan Parties nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.

5.12 Environmental Condition. Except as set forth on Schedule 5.12 to the Information Certificate and except to the extent that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, (a) to each Loan Party's knowledge, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been used by a Loan Party, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to each Loan Party's knowledge, after due inquiry, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) no Loan Party nor any of its Subsidiaries has received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by a Loan Party or its Subsidiaries, and (d) no Loan Party nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability.

5.13 Intellectual Property. Each Loan Party and its Subsidiaries own, or hold licenses in, all trademarks, trade names, copyrights, patents, and licenses that are necessary to the conduct of its business as currently conducted.

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

5.15 Deposit Accounts and Securities Accounts. Set forth on Schedule 5.15 to the Information Certificate is a listing of all of the Loan Parties' and their Subsidiaries' Deposit Accounts and Securities Accounts, including, with respect to each bank or securities intermediary (a) the name and address of such Person, and (b) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

5.16 Complete Disclosure. All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about each Borrower's industry) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information taken as a whole (other than

forward-looking information and projections and information of a general economic nature and general information about such Borrower's industry) hereafter furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided.

5.17 Material Contracts; No Default. Set forth on Schedule 5.17 to the Information Certificate (as such Schedule may be updated from time to time in accordance herewith) is a reasonably detailed description of the Material Contracts of each Loan Party and its Subsidiaries as of the most recent date on which Borrowers provided their Compliance Certificate pursuant to Section 6.1; provided, however, that, any Borrower may amend Schedule 5.17 to the Information Certificate to add additional Material Contracts so long as such amendment occurs by written notice to Lender on the date that such Borrower provides its Compliance Certificate. Except for matters which, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, each Material Contract (other than those that have expired at the end of their normal terms) (a) is in full force and effect and is binding upon and enforceable against the applicable Loan Party or its Subsidiary and, to such Borrower's knowledge, after due inquiry, each other Person that is a party thereto in accordance with its terms, (b) has not been otherwise amended or modified (other than amendments or modifications permitted by Section 7.7(b)), and (c) is not in default due to the action or inaction of the applicable Loan Party or its Subsidiary. No Default or Event of Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.18 Patriot Act. To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"). No part of the proceeds of the loans made hereunder will be used by any Loan Party or any of their Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

5.19 Indebtedness. Set forth on Schedule 5.19 to the Information Certificate is a true and complete list of all Indebtedness of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Closing Date that is to remain outstanding immediately after giving effect to the closing hereunder on the Closing Date and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Closing Date.

5.20 Payment of Taxes. Except as otherwise permitted under Section 6.5, all tax returns and reports of each Loan Party and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all

assessments, fees and other governmental charges upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable. Each Loan Party and each of its Subsidiaries have made adequate provision in accordance with GAAP for all taxes not yet due and payable. No Borrower knows of any proposed tax assessment against a Loan Party or any of its Subsidiaries that is not being actively contested by such Loan Party or such Subsidiary diligently, in good faith, and by appropriate proceedings; provided, that, such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

5.21 Margin Stock. No Loan Party nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No part of the proceeds of the loans made to Borrowers will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, or X of the Board of Governors of the United States Federal Reserve.

5.22 Governmental Regulation. No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

5.23 OFAC. No Loan Party nor any of its Subsidiaries is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. No Loan Party nor any of its Subsidiaries (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. No proceeds of any loan made hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity.

5.24 Employee and Labor Matters. There is (i) no unfair labor practice complaint pending or, to the knowledge of Borrowers, threatened against any Loan Party or any of its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against any Loan Party or any of its Subsidiaries which arises out of or under any collective bargaining agreement and that could reasonably be expected to result in a material liability, (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against any Loan Party or any of its Subsidiaries that could reasonably be expected to result in a material liability, or (iii) to the knowledge of Borrowers, after due inquiry, no union representation question existing with respect to the employees of any Loan Party or its Subsidiaries and no union organizing activity taking place with respect to any of the employees of any Loan Party or its Subsidiaries. No Loan Party or any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of Loan Parties and its Subsidiaries have not been in violation of the Fair

Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change. All material payments due from any Loan Party or its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of such Loan Party, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

5.25 Equipment. Each item of Equipment is of good, marketable and valid title.

5.26 Collateral.

(a) Real Property. Schedule 5.26(a) to the Information Certificate sets forth all Real Property owned by any of the Loan Parties as of the Closing Date.

(b) Intellectual Property. As of the Closing Date, Schedule 5.26(b) to the Information Certificate provides a complete and correct list of: (i) all registered Copyrights owned by any Loan Party, all applications for registration of Copyrights owned by any Loan Party, and all other Copyrights owned by any Loan Party and material to the conduct of the business of any Loan Party; (ii) all Intellectual Property Licenses entered into by any Loan Party pursuant to which (A) any Loan Party has provided any license or other rights in Intellectual Property owned or controlled by such Loan Party to any other Person or (B) any Person has granted to any Loan Party any license or other rights in Intellectual Property owned or controlled by such Person that is material to the business of such Loan Party, including any Intellectual Property that is incorporated in any Inventory, software, or other product marketed, sold, licensed, or distributed by such Loan Party; (iii) all Patents owned by any Loan Party and all applications for Patents owned by any Loan Party; and (iv) all registered Trademarks owned by any Loan Party, all applications for registration of Trademarks owned by any Loan Party, and all other Trademarks owned by any Loan Party and material to the conduct of the business of any Loan Party.

(i) all employees and contractors of each Loan Party who were involved in the creation or development of any Intellectual Property for such Loan Party that is necessary to the business of such Loan Party have signed agreements containing assignment of Intellectual Property rights to such Loan Party and obligations of confidentiality;

(ii) to each Loan Party's knowledge after reasonable inquiry, no Person has infringed or misappropriated or is currently infringing or misappropriating any Intellectual Property rights owned by such Loan Party, in each case, that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Change;

(iii) to each Loan Party's knowledge after reasonable inquiry, all registered Copyrights, registered Trademarks, and issued Patents that are owned by such Loan Party and necessary in to the conduct of its business are valid, subsisting and enforceable and in compliance with all legal requirements, filings, and payments and

other actions that are required to maintain such Intellectual Property in full force and effect; and

(iv) each Loan Party has taken reasonable steps to maintain the confidentiality of and otherwise protect and enforce its rights in all trade secrets owned by such Loan Party that are necessary in the business of such Loan Party;

(c) Motor Vehicles. Schedule 5.26(c) to the Information Certificate sets forth all motor vehicles owned by each Loan Party as of the Closing Date by model, model year and vehicle identification number.

(d) Valid Security Interest. This Agreement creates a valid security interest in the Collateral of each Loan Party, to the extent a security interest therein can be created under the Code, securing the payment of the Obligations. Except to the extent a security interest in the Collateral cannot be perfected by the filing of a financing statement under the Code, all filings and other actions necessary or desirable to perfect and protect such security interest have been duly taken or will have been taken upon the filing of financing statements listing each applicable Loan Party, as a debtor, and Lender, as secured party, in the jurisdictions listed next to such Loan Party's name on Schedule 5.6(a) to the Information Certificate. Upon the making of such filings, Lender shall have a first priority perfected security interest in the Collateral of each Loan Party to the extent such security interest can be perfected by the filing of a financing statement, subject to Permitted Liens which are purchase money Liens. Upon filing of the Copyright Security Agreement with the United States Copyright Office, filing of the Patent and Trademark Security Agreement with the PTO, and the filing of appropriate financing statements in the jurisdictions listed on Schedule 5.6(a) to the Information Certificate, all action necessary or desirable to protect and perfect the Security Interest in and to on each Loan Party's Patents, Trademarks, or Copyrights has been taken and such perfected Security Interest is enforceable as such as against any and all creditors of and purchasers from any Loan Party. All action by any Loan Party necessary to protect and perfect such security interest on each item of Collateral has been duly taken.

5.27 Insurance. The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 5.27 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Closing Date. Each insurance policy listed on Schedule 5.27 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

5.28 Inventory. Each item of Inventory is of good and merchantable quality, free from known defects.

5.29 Locations of Inventory and Equipment. The Inventory and Equipment (other than vehicles or Equipment out for repair) of the Loan Parties and their Subsidiaries are not stored with a bailee, warehouseman, or similar party and are located only at, or in-transit

between or to, the locations identified on Schedule 5.29 to the Information Certificate (as such Schedule may be updated pursuant to Section 6.14).

5.30 Aircraft.

(a) Each Loan Party has and has had at all applicable times all necessary FAA Certificates, Equipment, material agreements, material license agreements and intellectual property rights (or has valid and effective licenses for all of the foregoing) necessary in connection with the use of aircraft in the ordinary course of its business as presently conducted or proposed to be conducted and in accordance with all material requirements of Aviation Laws and other applicable laws and regulations, which FAA Certificates are set forth on Schedule 5.30(a) to the Agreement. Each such FAA Certificate is in full force and effect and is not subject to any proceedings for suspension, restriction, revocation or cancellation thereof. To the best of any Loan Party's knowledge, there does not exist any basis for the suspension, restriction, revocation or cancellation of any of such FAA Certificates.

(b) As disclosed on Schedule 5.30(b) to the Agreement, each Loan Party has not received any notice or citation for non-compliance with any FAA Certificates or any Aviation Laws in connection with the use of Aircraft in the ordinary course of its business as presently conducted or proposed to be conducted. With respect to any matter disclosed on Schedule 5.30(b) to the Agreement, each Loan Party is taking timely and appropriate action to implement all recommendations for the correction of any deficiencies in its operations or inspection, quality control or record-keeping procedures, which were made by the FAA following an inspection, review, investigation or audit of such operations or inspection, quality control or record-keeping procedures.

(c) All Aircraft have been duly registered with the FAA Registry pursuant to an Aircraft Registration, free and clear of all liens and security interests except in favor of Lender and except as expressly permitted under the Agreement, which make, model, registration and serial numbers for such Aircraft existing on the Closing Date are set forth on Schedule 5.30(c) to the Information Certificate. No Aircraft Registration exists as to any Aircraft which is not the subject of an Aircraft Mortgage Recordation. All Equipment consisting of Engines are free and clear of all liens and security interests except in favor of Lender and except as expressly permitted under the Agreement, which serial numbers for such Equipment consisting of Engines existing on the Closing Date are set forth on Schedule 5.30(c) to the Information Certificate.

(d) All Aircraft and Engines owned or hereafter manufactured or used in the business of Loan Parties or which are installed in or affixed or attached to any Aircraft that have takeoff horsepower of at least five hundred fifty (550) and all aircraft propellers now owned or hereafter manufactured or used in the business of Loan Parties or which are installed in or affixed or attached to any Aircraft that have takeoff shaft horsepower of more than seven hundred fifty (750) shall be subject to the Aircraft and Engines Security Agreement, and the security interest and international interest of Lender duly recorded with the FAA Registry and registered with the Cape Town International Registry.

5.31 Out of Formula Loans. No Overadvance exists at the time, or would result from the funding, of any Revolving Loan.

5.32 No Casualty. Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Change.

5.33 Brokers. No broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

5.34 Customer and Trade Relations. There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any material adverse modification or change in the business relationship of any Loan Party with any supplier material to its operations.

EXHIBIT E
TO CREDIT AND SECURITY AGREEMENT
INFORMATION CERTIFICATE¹
OF

Dated: [_____] , 20__

Citiking International US LLC
c/o
Thomas A. Pitta
Emmet, Marvin & Martin, LLP
120 Broadway 32nd Floor
New York, NY 10271
Email: tpitta@emmetmarvin.com

Reference is made to that certain Senior Secured Superpriority Debtor In Possession Credit and Security Agreement (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement") dated as of _____, 2018, by and among Citiking International US, LLC (the "Lender"), and ECLIPSE AEROSPACE, INC., a Delaware corporation ("Eclipse"), BRIGADOON AIRCRAFT MAINTENANCE, LLC, a Delaware limited liability company ("Brigadoon", and, together with Eclipse and any other Person that hereafter becomes a borrower thereunder, each a "Borrower", and collectively the "Borrowers"), and the Guarantors party thereto from time to. Capitalized terms used in this Compliance Certificate have the meanings set forth in the Credit Agreement unless specifically defined herein. Each of the undersigned (each a "Loan Party") represents and warrants to Lender the following information about each Loan Party (capitalized terms not specifically defined shall have the meaning set forth in the Agreement):

1. Attached as Schedule 5.1(b) is a complete and accurate description of (i) the authorized capital Stock of each Loan Party and its Subsidiaries, by class, and the number of shares issued and outstanding and the names of the owners thereof (including stockholders, members and partners) and their holdings, all as of the date of this Agreement, (ii) all subscriptions, options, warrants or calls relating to any shares of any Loan Party's or its Subsidiaries' capital Stock, including any right of conversion or exchange; (iii) each stockholders' agreement, restrictive agreement, voting agreement or similar agreement relating to any such capital Stock; and (iv) and organization chart of each Loan Party and all Subsidiaries.

2. Each Loan Party has ownership in the entities (including Subsidiaries) set forth on Schedule 5.1(c).

3. The Loan Parties use the following trade name(s) in the operation of their business (e.g. billing, advertising, etc.):

¹ Revised to conform to applicable provisions of the DIP agreement.

[]

4. Each of the Loan Parties is a registered organization of the following type:

[]

5. The exact legal name (within the meaning of Section 9-503 of the Code) of each Loan Party as set forth in its respective certificate of incorporation, organization or formation, or other public organic document, as amended to date is set forth in Schedule 5.5(a).

6. Each Loan Party is organized solely under the laws of the State set forth on Schedule 5.6(a). Each Loan Party is in good standing under those laws and no Loan Party is organized in any other State.

7. The chief executive office and mailing address of each Loan Party is located at the address set forth on Schedule 5.6(b) hereto.

8. The books and records of each Loan Party pertaining to Accounts, contract rights, Inventory, and other assets are located at the addresses specified on Schedule 5.6(b).

9. The identity and Federal Employer Identification Number of each Loan Party and organizational identification number, if any, is set forth on Schedule 5.6(c).

10. No Loan Party has any Commercial Tort Claims that exceed \$100,000 in amount, except as set forth on Schedule 5.6(d).

11. There are no judgments, actions, suits, proceedings or other litigation pending by or against or, to the knowledge of any Loan Party, threatened by or against any Loan Party and/or any of its Subsidiaries reasonably expected to result in liabilities in excess of \$100,000, except as set forth on Schedule 5.7(b).

12. Since its date of organization, the name as set forth in each Loan Party's organizational documentation filed of record with the applicable state authority has been changed as follows:

Date

Prior Name

13. Since the dates of their respective organization, the Loan Parties have made or entered into the following mergers or acquisitions:

14. Each Loan Party's assets are owned and held free and clear of Liens, mortgages, pledges, security interests, encumbrances or charges except as set forth below:

Name and Address of Secured Party	Description of Collateral	File No. of Financing Statement/Jurisdiction

15. Except where the failure to comply could not reasonably be expected to result in a Material Adverse Change, each Loan Party has been and remains in compliance with all environmental laws applicable to its business or operations except as set forth on Schedule 5.12.

16. The Loan Parties do not have any Deposit Accounts, investment accounts, Securities Accounts or similar accounts with any bank, securities intermediary or other financial institution, except as described in the Cash Management Order.

17. No Loan Party is a party to or bound by a collective bargaining or similar agreement with any union, labor organization or other bargaining agent except as set forth below (indicate date of agreement, parties to agreement, description of employees covered, and date of termination)

Name of Agreement	Date of Agreement	Parties to Agreement	Date of Expiration/Termination

18. Set forth on Schedule 5.17 is a reasonably detailed description of each Material Contract of each Loan Party and its Subsidiaries as of the date hereof.

19. Set forth on Schedule 5.19 is a true and complete list of all Indebtedness of each Loan Party and its Subsidiaries outstanding immediately prior to the date hereof.

20. No Loan Party has made any loans or advances or guaranteed or otherwise become liable for the obligations of any others, except as set forth below:

Name / Address of Debtor	Outstanding Balance of Loan as of [Date]	Secured / Unsecured	Due Date

21. No Loan Party has any Chattel Paper (whether tangible or electronic) or instruments as of the date hereof, except as follows:

22. No Loan Party owns or licenses any registered Trademarks, Patents, Copyrights or other Intellectual Property, and is not a party to any Intellectual Property License except as set forth on Schedule 5.26 (indicate type of Intellectual Property and whether owned or licensed, registration number, date of registration, and, if licensed, the name and address of the licensor).

23. Schedule 5.26(a) sets forth all Real Property owned by each Loan Party.

24. The Inventory, Equipment and other goods of each Loan Party are located only at the locations set forth on Schedule 5.29.

25. At the present time, there are no delinquent post-petition taxes due (including, but not limited to, all payroll taxes, personal property taxes, real estate taxes or income taxes) except as follows:

26. There are no consignment, bill and hold, sale or return, sale on approval or conditional sale arrangements with respect to any Inventory of any Borrower or any other Loan Party or other goods of any Loan Party except as set forth in Schedule 7.15.

27. No Borrower or other Loan Party has any Inventory stored with or in the possession of a bailee, warehouseman, processor or other third party except as set forth in Schedule 7.16.

28. Schedule 5.26(c) sets forth all motor vehicles owned by each Borrower and other Loan Party as of the date hereof, by model, model year and vehicle identification number.

29. Schedule 5.30(c) sets forth the make, model, registration and serial numbers for all Aircraft and all serial numbers for Equipment consisting of Engines existing on the date hereof.

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Lender shall be entitled to rely upon the foregoing in all respects and the undersigned is duly authorized to execute and deliver this Information Certificate on behalf of each Loan Party.

Very truly yours,

ECLIPSE AEROSPACE, INC.

By: _____

Name: _____

Title: _____

BRIGADOON AIRCRAFT MAINTENANCE,
LLC

By: _____

Name: _____

Title: _____

Schedule 5.1(b)

TO INFORMATION CERTIFICATE

**Capitalization of Loan Parties
and Subsidiaries**

Organization Chart

Loan Party	Authorized Shares/Issued Shares	Holder	Type of Rights/Stock (common/pref erred/option/ class)	Number of Shares (after exercise of all rights to acquire shares)	Percent Interest (on a fully diluted basis)

Schedule 5.1(c)

TO INFORMATION CERTIFICATE

Subsidiaries; Affiliates; Investments

Part 1 - Subsidiaries (More than 50% owned by a Loan Party)

Part 2 - Affiliates (Less than fifty (50%) percent Owned by a Loan Party)

Name	Jurisdiction of Organization	Percentage Owned

Schedule 5.5(a)

TO INFORMATION CERTIFICATE

Exact Legal Name

Schedule 5.6(a)

TO INFORMATION CERTIFICATE

Jurisdiction of Organization

Name	Jurisdiction of Organization

Schedule 5.6(b)

TO INFORMATION CERTIFICATE

Locations

Part 1 - Chief Executive Office

[_____]

[_____]

[_____]

Part 2 - Location of Books and Records

[_____]

[_____]

[_____]

Schedule 5.6(c)

TO INFORMATION CERTIFICATE

Federal Employer Identification Number

Organizational Identification Number

Name	Organizational Identification Number	Federal Employer Identification Number

Schedule 5.6(d)

TO INFORMATION CERTIFICATE

Commercial Tort Claims

Schedule 5.7(b)

TO INFORMATION CERTIFICATE

Judgments/ Pending Litigation

Schedule 5.12

TO INFORMATION CERTIFICATE

Environmental Compliance

Schedule 5.17

TO INFORMATION CERTIFICATE

Material Contracts

Name of Agreement	Date of Agreement	Parties to Agreement	Date of Expiration/ Termination

Schedule 5.19

TO INFORMATION CERTIFICATE

Existing Indebtedness

Part 1 - Direct Debt

Name/Address of Payee	Principal Balance as of [Date]	Nature of Debt	Term

Part 2 - Guarantees

Name/Address of Payee	Principal Balance as of [Date]	Nature of Debt	Term

Schedule 5.26**TO INFORMATION CERTIFICATE****Intellectual Property****Part 1 — Trademarks Owned**

Trademark	Registration Number	Registration Date	Expiration Date

Trademark Application	Application/Serial Number	Application Date

Part 2 — Trademarks Licensed

Trademark	Registration Number	Registration Date	Expiration Date

Trademark Application	Application/Serial Number	Application Date

Part 3 — Patents Owned

Trademark	Registration Number	Registration Date	Expiration Date

Trademark Application	Application/Serial Number	Application Date

Part 4 — Patents Licensed

Patent	Registration Number	Registration Date	Expiration Date

Patent Application	Application/Serial Number	Application Date

Part 5 — Copyrights Owned

Copyright	Registration Number	Registration Date

Part 6 — Copyrights Licensed

Copyright	Registration Number	Registration Date	Licensor

Part 7 — Other License Agreements

Name of Document	Date of Document	Licensor	Term	Licensed Intellectual Property

Schedule 5.26(a)
TO INFORMATION CERTIFICATE
Owned Real Estate

Schedule 5.26(c)

TO INFORMATION CERTIFICATE

Motor Vehicles

Schedule 5.29

TO INFORMATION CERTIFICATE

Locations of Inventory and Equipment

Locations of Inventory, Equipment and Other Assets

Address	Owned/Leased/Third Party	Name/Address of Lessor or Third Party, as Applicable
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EXHIBIT F
TO CREDIT AND SECURITY AGREEMENT
INTERIM FINANCING ORDER

[see attached]

EXHIBIT G**TO CREDIT AND SECURITY AGREEMENT****FORM OF REVOLVING LOAN NOTICE**

Date: _____, 2018

To: Citiking International US, LLC, as Lender

Ladies and Gentlemen:

Reference is made to that certain Senior Secured Superpriority Debtor In Possession Credit and Security Agreement (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Credit Agreement") dated as of _____, 2018, by and among Citiking International US, LLC (the "Lender"), and ECLIPSE AEROSPACE, INC., a Delaware corporation ("Eclipse"), BRIGADOON AIRCRAFT MAINTENANCE, LLC, a Delaware limited liability company ("Brigadoon"), and together with Eclipse and any other Person that hereafter becomes a borrower thereunder, each a "Borrower", and collectively the "Borrowers"), and the Guarantors party thereto from time to time. Capitalized terms used herein have the meanings set forth in the Credit Agreement unless specifically defined herein.

The Administrative Borrower hereby requests a Revolving Borrowing which will consist of the following:

	<u>Amount of Revolving Borrowing</u>	<u>Business Day of Proposed Revolving Borrowing</u>
<input type="checkbox"/>	\$ _____, _____, ____.	_____, 20 ____.
<input type="checkbox"/>	\$ _____, _____, ____.	_____, 20 ____.

The Administrative Borrower hereby represents and warrants that (a) the Revolving Borrowing requested herein complies with Section 2.2 and the other provisions of the Credit Agreement and (b) the conditions specified in Sections 4.1 and 4.2 of the DIP Credit Agreement have been satisfied on and as of the date specified in the table above.

Dated as of the date above first written.

ECLIPSE AEROSPACE, INC., as Administrative Borrower

By: _____
 Name: _____
 Title: _____

EXHIBIT H
TO CREDIT AND SECURITY AGREEMENT
CLOSING DATE APPROVED BUDGET

EXHIBIT 2

APPROVED BUDGET

ONE AVIATION CORPORATION and subsidiaries

DIP Cash Flow Forecast

(\$'s in 000's)

	Period #:							6-12	Terminal	TOTAL
Week Ended	11/16	11/23	11/30	12/7	12/14	12/21	12/28	11/16 - 12/28		
Total Receipts	\$215	\$125	\$100	\$150	\$150	\$150	\$1,065	\$1,955	\$0	\$1,955
Disbursements										
Inventory	(\$174)	(\$132)	(\$120)	(\$135)	(\$135)	(\$135)	(\$5)	(\$836)	\$0	(\$836)
Payroll & Payroll Related	(246)	(92)	(174)	(93)	(238)	(92)	(164)	(1,098)	-	(1,098)
Rent	(21)	(3)	(152)	(3)	(3)	(5)	(3)	(190)	-	(190)
Insurance	(28)	(44)	-	-	(72)	-	-	(145)	-	(145)
Taxes	-	(73)	(59)	(5)	(91)	-	-	(228)	(10)	(238)
IT / Equipment	(7)	(123)	(9)	(37)	-	-	(9)	(184)	-	(184)
Utilities	(4)	-	-	(86)	-	-	-	(90)	-	(90)
General Payables	(14)	(9)	(17)	(8)	(8)	(8)	(17)	(82)	-	(82)
Total Operating Disbursements	(\$494)	(\$475)	(\$531)	(\$367)	(\$547)	(\$240)	(\$198)	(\$2,852)	(\$10)	(\$2,862)
Operating Cash Flow	(\$279)	(\$350)	(\$431)	(\$217)	(\$397)	(\$90)	\$867	(\$897)	(\$10)	(\$907)
Restructuring & Other Non-Recurring										
Debtor's Professionals	-	(67)	(33)	-	(955)	-	(83)	(1,138)	(2,341)	(3,479)
Secured Creditor's Professionals	-	-	(118)	(50)	-	-	-	(168)	(107)	(275)
Unsecured Creditors	-	-	-	-	(135)	-	-	(135)	(365)	(500)
Chapter 11 Fees	-	-	-	-	-	-	-	-	(68)	(68)
Other Non-Recurring Costs	-	(55)	(55)	(50)	-	-	-	(160)	(141)	(301)
Total Restructuring & Other Non-Recurring	\$0	(\$122)	(\$206)	(\$100)	(\$1,090)	\$0	(\$83)	(\$1,601)	(\$3,021)	(\$4,622)
Total Disbursements	(\$494)	(\$597)	(\$737)	(\$467)	(\$1,636)	(\$240)	(\$281)	(\$4,452)	(\$3,031)	(\$7,484)
Net Cash Flow	(\$279)	(\$472)	(\$637)	(\$317)	(\$1,486)	(\$90)	\$784	(\$2,497)	(\$3,031)	(\$5,529)
Beginning Cash Balance	\$618	\$719	\$247	\$110	\$103	\$107	\$117	\$618	\$900	\$618
Net Cash Flow	(\$279)	(472)	(637)	(317)	(1,486)	(90)	784	(2,497)	(3,031)	(5,529)
DIP Draw - Cash	380	-	500	310	1,490	100	-	2,780	2,131	4,911
Repayment	-	-	-	-	-	-	-	-	-	-
Ending Cash Balance (min \$100k)	\$719	\$247	\$110	\$103	\$107	\$117	\$900	\$900	\$0	\$0
DIP Loan Balance										
Opening DIP Balance	\$1,993	\$2,373	\$13,508	\$14,026	\$14,336	\$15,826	\$15,926	\$1,993	\$16,061	\$1,993
DIP Draw - Cash	380	-	500	310	1,490	100	-	2,780	2,131	4,911
Proposed Roll-up	-	11,135	-	-	-	-	-	11,135	-	11,135
DIP Interest	-	-	18	-	-	-	135	153	193	346
Repayment	-	-	-	-	-	-	-	-	-	-
Ending DIP Loan Balance	\$2,373	\$13,508	\$14,026	\$14,336	\$15,826	\$15,926	\$16,061	\$16,061	\$18,385	\$18,385
Utility Deposit Ending Balance	\$29	\$29	\$29	\$29	\$29	\$29	\$29	\$29	\$29	\$29

Note:

Assumes exit from bankruptcy and end of professional fee activity on December 28, 2018.

EXHIBIT 3

Approved Budget

DIP Budget**Exhibit 2**

Vendor	8/21/20	8/28/20	9/4/20	9/11/20	9/18/20	9/25/20	10/2/20	10/9/20	Total
Payroll & Payroll Related									
Eclipse									
One Aviation	\$ 145,000	\$ 80,000	\$ 145,000	\$ 80,000	\$ 145,000	\$ 80,000	\$ 145,000	\$ 80,000	\$ 900,000
Temps									-
Health Insurance			78,500				78,500	-	157,000
Dental Insurance			3,575				3,575	-	7,150
Vision Insurance			645				645	-	1,290
401k (withheld from payroll)	6,300	11,500	6,300	11,500	6,300	11,500	6,300	11,500	71,200
Life insurance			2,325				2,325	-	4,650
									-
Fixed									
Rent- ABQ	-		88,761				88,761	-	177,522
Rent- (SP10)			30,588				30,588	-	61,176
Rent- Suburban Properties, Aurora, IL			17,100				17,100	-	34,200
City of Aurora 1.5% fee	2,500		2,500				2,500	-	7,500
Rent- Grand Rapids	5,754		5,754				5,754	-	17,263
Fincham Storage	8,485		8,485				8,485	-	25,455
Insurance - Aviation				42,440					42,440
Insurance - GL & WC	16,653				16,653				33,306
IT (joint Expense)			3,754				3,754	-	7,508
Equipment Leases/Other									-
D&O Insurance									-
									-
Variable									
Inventory, Consumables & Services	100,000	50,000	100,000	50,000	100,000	100,000	100,000	100,000	700,000
NRE fee Phostrex	-	-	-	-	-	-	-	-	-
Essex Contract Cure	-	-	-	-	-	-	-	-	-
Freight	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	20,000
Travel and Entertainment	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	12,000
Facilities	1,500	1,500	3,650	1,500		1,500	20,000	1,500	31,150
Office related	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	20,000
Utilities (joint expense)	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	60,000
Telecommunications & IT opex	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	80,000
									-
Employees Expenses	2,000	2,000	2,000	2,000	2,000	2,000	2,000	2,000	16,000
Legal and Accounting Professionals									-
									-
Cores		3,900							3,900

Total Costs	312,193	172,900	522,937	211,440	293,953	219,000	539,287	219,000	2,490,710
Revenue	75,000	75,000	75,000	75,000	75,000	75,000	75,000	75,000	600,000
Other									
Net Operations	237,193	97,900	447,937	136,440	218,953	144,000	464,287	144,000	1,890,710

Overdue Requirements

Rent & Utilities

Back CAM in Aurora	9,244								9,244
Deferred Rent Albuquerque	43,184		43,184				43,184		129,552
August Rent Albuquerque	89,021								89,021
Deferred Rent Minnesota	4,600								4,600
August Rent Minnesota	5,754								5,754
Grand Rapids	4,031								4,031
Deferred Rent Aurora	6,413								6,413
Utilities	20,000		20,000						40,000

Insurance

Workers Compensation per month (AFCC	16,653			16,653					33,306
Aviation insurance per month (AFCC Fin	42,440			42,440					84,880

Inventory

Inventory in AP	86,342								86,342
NRE Essex	25,000	25,000	25,000	25,000					100,000
Essex Contract Cure	25,000	25,000	25,000	25,000					100,000

Total Budgeted Cost

\$ 614,875	\$ 147,900	\$ 561,121	\$ 245,533	\$ 218,953	\$ 144,000	\$ 507,471	\$ 144,000	\$ 2,583,853
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EXHIBIT B

Redline of Proposed Senior DIP Order to Existing Final DIP Order

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re:

~~ONE AVIATION CORPORATION, et al.,~~¹

~~Debtors.~~

÷

~~xx~~ **Chapter 11**

÷

~~Case No. 18-12309 (CSS)~~

*

Jointly Administered

In re:

ONE AVIATION CORPORATION, et al.,¹

Debtors.

÷

Chapter 11

÷

Case No. 18-12309 (CSS)

÷

Jointly Administered

RE: Docket No. _____

÷

X

**AMENDED AND RESTATED FINAL ORDER (I) AUTHORIZING
DEBTOR BORROWERS TO (A) OBTAIN POST-PETITION FINANCING
PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1)
AND 364(e), (B) GRANT SENIOR LIENS AND SUPERPRIORITY
ADMINISTRATIVE EXPENSE STATUS, AND (C) UTILIZE CASH COLLATERAL
PURSUANT TO 11 U.S.C. § 363; (II) GRANTING ADEQUATE PROTECTION TO
PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363
AND 364; AND (III) GRANTING RELATED RELIEF**

¹ The Debtors (defined herein) in these chapter 11 cases, along with the last four digits of each debtor's tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The Debtors' corporate headquarters is located at 3250 Spirit Drive SE, Albuquerque, NM 87106.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, as applicable, are: ONE Aviation Corporation (9649); ACC Manufacturing, Inc. (1364); Aircraft Design Company (1364); Brigadoon Aircraft Maintenance, LLC (9000); DR Management, LLC (8703); Eclipse Aerospace, Inc. (9000); Innovatus Holding Company (9129); Kestrel Aircraft Company, Inc. (2053); Kestrel Brunswick Corporation (6741); Kestrel Manufacturing, LLC (1810); Kestrel Tooling Company (9439); and OAC Management, Inc. (9986). The Debtors' corporate headquarters is located at 3250 Spirit Drive SE, Albuquerque, NM 87106.

Upon the motion (the “**Motion**”)² of ONE Aviation Corporation and its affiliated debtors as debtors in possession (collectively, the “**Debtors**” and “**Debtors in Possession**”) in the above-captioned cases (the “**Cases**”), pursuant to Bankruptcy Code sections 105, 361, 362, 363, 364 and 507, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Rule 2002-1, and 4001-2 and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), seeking entry of an interim order and a final order (this “**Final A&R Order**”) *inter alia*:

(i) authorizing Eclipse Aerospace, Inc. (“**Eclipse**”) and Brigadoon Aircraft Maintenance, LLC (together with Eclipse each of the Debtors other than ONE Aviation Corporation (collectively, the “**Debtor Borrowers**,” and individually, each a “**Debtor Borrower**”), and ONE Aviation Corporation as Guarantor, each as a debtor and debtor-in-possession, to enter into

(i)(a) that certain Senior Secured Superpriority Debtor-in-Possession Credit and Security Agreement DIP Loan Term Sheet, dated as of October 9 August 28, 201820, in the form of the agreement attached as **Exhibit 1** hereto (as amended, supplemented or otherwise modified from time to time, the “**Senior DIP Facility Agreement**”), among the Debtor Borrowers and Citiking International US LLC (the “**SEF OA LLC**, as the assignee of DWC Pine Investments I, Ltd. (the “**Senior DIP Lender**”), and authorizing the Debtor Borrowers to enter into all related documents, orders and agreements (together with the Senior DIP Facility Agreement, the “**Senior DIP Facility Documents**”);

and

(b) that certain Senior Secured Superpriority Debtor-in-Possession Credit and Security Agreement, dated as of October 9, 2018 (as amended, supplemented or otherwise modified from time to time, the “**Junior DIP Facility Agreement**”), in the form of the agreement attached hereto as **Exhibit 1** to that certain *Final Order (I) Authorizing Debtor Borrowers to (A) Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), (B) Grant Senior Liens and Superpriority Administrative Expense Status, and (C) Utilize Cash Collateral Pursuant to 11 U.S.C. § 363; (II) Granting*

² Capitalized terms used in this Final A&R Order but not defined herein shall have the meanings ascribed to such terms in the DIP Facility Documents, which shall include the Senior DIP Loan Term Sheet (in each case, as defined below).

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Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363 and 364; and (III) Granting Related Relief, entered on November 27, 2018 (the “**Existing Final DIP Order**”), among the Debtor Borrowers and Citiking International US LLC (the “**Junior DIP Lender**”), and authorizing the Debtor Borrowers to enter into all related documents, orders and agreements (together with the Junior DIP Facility Agreement, the “**Junior DIP Facility Documents**”), attached hereto as **Exhibit 2**:

- (ii) authorizing the Debtor Borrowers to obtain a super-senior secured super priority ~~revolving multi-draw term~~ loan facility (as described herein, the “**Senior DIP Facility**”), which shall consist of a superpriority revolving loan facility with commitments to lend up to approximately \$~~19.1~~ 9.75 million, and such other financial accommodations, allocated as follows:

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- (a) Senior New Money Loans. A superpriority priming new money ~~revolving multi-draw term~~ loan facility with commitments to lend up to approximately \$~~8.0~~ 2.75 million (the “**Senior New Money Commitments**” and the revolving loans made thereunder, the “**Senior New Money Loans**”); and
- (b) Senior Roll-Up Loans. The Prepetition First Lien Obligations (as defined below) owed to ~~the DIP Lender~~ DWC Pine Investments I, Ltd. under that certain Credit and Security Agreement, dated as of July 20, 2012 (as amended or otherwise modified prior to the date hereof, the “**Prepetition First Lien Credit Agreement**,” and the loans thereunder the “**Prepetition First Lien Loans**”), by and among Debtor Borrowers Eclipse Aerospace, Inc. and Brigadoon Aircraft Maintenance, LLC, as borrowers thereunder (collectively, the “**Prepetition First Lien Debtor Borrowers**” and each a “**Prepetition First Lien Debtor Borrower**”), One Aviation Corporation as guarantor thereunder (the “**Prepetition First Lien Guarantor**”), the lenders thereto and their predecessors, successors and assigns (collectively, the “**Prepetition First Lien Lenders**”), Cantor Fitzgerald Securities, as administrative agent and collateral agent for the Prepetition First Lien Lenders (in such capacity, the “**Prepetition First Lien Agent**” and together with the Prepetition First Lien Lenders, the “**Prepetition First Lien Parties**”), in the ~~amount of approximately \$11.13 million, including but not limited to any amounts described herein in paragraph F(ix) and any fees and expenses owing to the Prepetition First Lien Agent, will be rolled up into roll-up loans (the “principal amount of \$7.0 million~~ (with such Prepetition First Lien Loans of DWC Pine Investments I, LTD (“DW”) to be assigned to SEF OA LLC (i.e., the Senior DIP Lender) following the entry of this Final A&R Order and Buyer’s payment of \$7,000,000 to acquire DW’s Prepetition First Loans along with the rights under the Senior DIP Facility) (the “Senior Roll-Up Loans”) under the Senior DIP Facility, effective upon entry of this Final A&R Order, in

accordance with the terms of the Senior DIP Facility Agreement and this Final A&R Order; and

(iii) authorizing the Debtor Borrowers to obtain a junior secured super priority revolving loan facility (as described herein, the “Junior DIP Facility”), which shall consist of a superpriority revolving loan facility with commitments to lend up to approximately \$19.1 million, and such other financial accommodations, allocated as follows:

(a) Junior New Money Loans. A superpriority priming new money revolving facility with commitments to lend up to approximately \$8.0 million (the “**Junior New Money Commitments**” and the revolving loans made thereunder, the “**Junior New Money Loans**”);

(b) Junior Roll-Up Loans. The Prepetition First Lien Obligations (as defined below) owed to the Junior DIP Lender under the Prepetition First Lien Credit Agreement in the amount of approximately \$11.13 million, including but not limited to any amounts described herein in paragraph F(x) and any fees and expenses owing to the Prepetition First Lien Agent, will be rolled-up into roll-up loans (the “**Junior Roll-Up Loans**”) under the Junior DIP Facility, effective upon entry of this Final A&R Order, in accordance with the terms of the Junior DIP Facility Agreement and this Final A&R Order; and

~~(iii)~~(iv) authorizing and directing the Debtor Borrowers to use the proceeds of the Senior DIP Facility and the Junior DIP Facility (collectively, the “DIP Facilities”) as expressly provided in the Senior DIP Facility Documents and solely in accordance with the budget attached hereto as Exhibit 3 (the “Approved Budget”);

~~(iv)~~(v) authorizing the Debtor Borrowers to execute and deliver the Senior DIP Facility Agreement and the ~~other~~ Junior DIP Facility Agreement (collectively, the “DIP Facility Agreements”) and the other Senior DIP Facility Documents and Junior DIP Facility Documents (collectively, the “DIP Facility Documents”) and to perform such other acts as may be necessary or desirable in connection with the DIP Facility Documents;

~~(v)~~(vi) 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 Debtor Borrowers to grant the Senior DIP Lender and the Junior DIP Lender (collectively, the “**DIP Lenders**”) superpriority allowed administrative expense claim status in the Cases and any Successor Case (as defined herein) in respect of all respective obligations, joint and several, owing under the DIP Facility Documents to the DIP Lenders

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(including without limitation all “Obligations,” or “Senior DIP Obligations”, as defined therein, the “**DIP Obligations**”);

(b) pursuant to section 364(c)(2) of the Bankruptcy Code, authorizing the ~~Debtor Borrowers~~ Debtors to grant to the DIP Lenders 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 ~~Debtor Borrowers~~ Debtors to grant to the Senior DIP Lender a senior first-priority priming lien on and security interest in all of the DIP Collateral and to the Junior DIP Lender a second-priority priming lien on and security interest in (subject only to the lien of the Senior DIP Lender) all of the DIP Collateral, in each case subject to the priorities set forth herein;

~~(vi)~~(vii) authorizing (a) the Senior DIP Lender to terminate the respective funding commitments under the Senior DIP Facility Agreement, and (b) the Senior DIP Lender to terminate the Debtor Borrowers’ 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 Senior DIP Facility Agreement) on terms specified herein and in the Senior DIP Facility Agreement;

~~(vii)~~(viii) granting liens to the DIP Lenders (first priority to the Senior DIP Lender and second priority to the Junior DIP Lender) on the proceeds (“**Avoidance Action Proceeds**”) of the Debtor Borrowers’ 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 (each, an “**Avoidance Action**”);

~~(viii)~~(ix) authorizing the Debtor Borrowers, among other things, to use for any of the Debtor Borrowers or for any of the other Debtors, 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 Debtor Borrowers’ 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)~~(x) authorizing the waiver of the ~~Debtor Borrowers~~ 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)(xi) 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 and this Final A&R Order;

(xi)(xii) the waiver of any applicable stay (including under Rule 6004 of the Bankruptcy Rules) and the provision of immediate effectiveness of this Final ~~Order~~ A&R Order;

(xii)(xiii) pursuant to Bankruptcy Rule 4001, that a final hearing (the “**Final Hearing**”) on the Motion be held before this Court to consider entry of this Final A&R Order to (a) authorize the Debtor Borrowers to borrow under the DIP Facility Documents, on a final basis, in an amount not to exceed an amount equal to the DIP Facility; (b) authorize the Debtor Borrowers’ use of Cash Collateral; and (c) grant the liens, priority claims, and adequate protection described herein;

(xiii) granting the ~~Debtor Borrowers~~ Debtors such other and further relief as is just and proper;

(xiv) 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 Final Hearing; and *Declaration of Michael Wyse-James Patrick Carroll in Support of Chapter 11 Petition and First Day Motions* ~~the Debtors’ Additional DIP Financing and Sale Motions and Motion to Shorten~~; and notice of the Final Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), 9014, and Local Rule 2002-1, 4001-1(a), and 5005-4, and 9013-1(m); and the Final Hearing 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 final relief requested is necessary to avoid immediate and irreparable harm to the Debtor Borrowers, the other Debtors, and their respective estates, and otherwise is fair and reasonable and in the best interests of the Debtor Borrowers, the other Debtors, their respective 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 AND DETERMINED that:

A. Petition Date. On October 9, 2018, 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 Delaware (the “**Court**”) commencing the Cases. On November 27, 2018, the Court entered the Existing Final DIP Order.

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B. Debtors 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 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated as of February 29, 2012, over these proceedings, and over the persons and property affected hereby. 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 October 22, 2018, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors (the “**Committee**”).

E. Debtor Borrowers’ Stipulations. After consultation with their attorneys and financial advisors, and without prejudice to the rights of parties in interest as set forth in ~~paragraphs 32, 34 and 40~~ paragraph 38 herein, the Debtor Borrowers admit, stipulate, acknowledge and agree that (collectively, paragraphs E(i) through E(x) below are referred to herein as the “**Debtor Borrowers’ Stipulations**”):

(i) Prepetition First Lien Documents. As of the Petition Date, Eclipse Aerospace, Inc. and Brigadoon Aircraft Maintenance, LLC, as borrowers, and ONE Aviation Corporation, as guarantor, were parties to the Prepetition First Lien Credit

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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 First Lien Documents**”).

(ii) *Prepetition First Lien Obligations.* As of the Petition Date, the aggregate principal amount owed by the Prepetition First Lien Debtor Borrowers and Prepetition First Lien Guarantor under the Prepetition First Lien Loan Documents, without defense, counterclaim, or offset of any kind in respect of the Prepetition First Lien Documents, was not less than \$59.72 million, consisting of not less than \$11.13 million in principal amount of revolving credit obligations under the senior secured revolving credit facility (the “**Prepetition First Lien Revolving Facility**”) and not less than \$48.59 million in principal amount outstanding under the senior secured term loan facility (the “**Prepetition First Lien Term Facility**”) and together with the Prepetition First Lien Revolving Facility, the “**Prepetition First Lien Facility**”), both made available to the Prepetition First Lien Debtor Borrowers pursuant to that certain Prepetition First Lien Credit Agreement (together with any additional amounts paid or incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition First Lien Documents, including, but not limited to, the amounts described herein in paragraph F(ix) and any fees and expenses owing to the Prepetition First Lien Agent, and including all “Obligations” as further defined in the DIP Facility Agreement, and the amount of interest at the Default Rate (as such terms are defined in the Prepetition First Lien Documents), the “**Prepetition First Lien Obligations**”).

(iii) *Prepetition Second Lien Series A-1 Note Documents.* As of the Petition Date, Eclipse Aerospace, Inc. was a party to the following subordinated secured notes (as

each may be amended, waived, supplemented or modified from time to time, the “**Prepetition Second Lien Series A-1 Notes**” together with all related documents, guaranties and agreements, if any, as the same may be amended, waived, supplemented or modified from time to time, collectively, the “**Prepetition Second Lien A-1 Note Documents**”):

- a. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Holland Family Trust (as holder) (“**Holland Family Trust**”) issued in the aggregate principal amount of \$5,564,625.00 with an interest rate of 3.75% and due on October 20, 2017;
- b. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Alfred Mann Living Trust (as holder) (“**Alfred Mann Living Trust**”) issued in the aggregate principal amount of \$2,555,027.78 with an interest rate of 3.75% and due on October 20, 2017;
- c. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Global Eclipse, LLC (as holder) (“**Global Eclipse**”) issued in the aggregate principal amount of \$4,113,212.50 with an interest rate of 3.75% and due October, 2017;
- d. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the James H. Clutter (as holder) (“**Clutter**”, and together with the Holland Family Trust, Alfred Mann Living Trust and Global Eclipse, collectively, the “**Prepetition Second Lien Note Holders**” and together with the Prepetition First Lien Parties, collectively, the “**Prepetition Secured Parties**”) issued in the aggregate principal amount of \$3,091,458.33 with an interest rate of 3.75% and due October, 2017;

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(iv) *Prepetition Second Lien Series A-2 Note Documents.* As of the Petition

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Date, Eclipse Aerospace, Inc. was a party to the following subordinated secured notes (as each may be amended, waived, supplemented or modified from time to time, the

“Prepetition Second Lien Series A-2 Notes” (and together with the Prepetition Second Lien Series A-1 Notes, collectively, the **“Prepetition Second Lien Notes”**) together with all related documents, guaranties and agreements, if any, as the same may be amended, waived, supplemented or modified from time to time, collectively, the **“Prepetition Second Lien A-2 Note Documents”** and together with the Prepetition Second Lien A-1 Note Documents, collectively, the **“Prepetition Second Lien Documents”**) (together, the Prepetition Second Lien Documents and the Prepetition First Lien Documents, as the same may be amended, waived, supplemented or modified from time to time, the **“Prepetition Loan Documents”**):

- a. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Holland Family Trust dated 1/12/2004 (as holder) (as defined herein, “Holland Family Trust”) issued in the aggregate principal amount of \$12,246,646.93 with an interest rate of 3.75% and due on October 20, 2017;
- b. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Alfred E. Mann Living Trust dated 04/09/99 (as holder) (as defined herein, the “Alfred Mann Living Trust”) issued in the aggregate principal amount of \$8,394,299.11 with an interest rate of 3.75% and due on October 20, 2017;
- c. Amended and Restated Senior Subordinated Secured Note Due 2017, dated April 20, 2015, between Eclipse Aerospace, Inc. (as maker) and the Alfred E. Mann Living Trust (as holder) (as defined herein, the “Alfred Mann Living Trust”) issued in the aggregate principal amount of \$1,288,632.71 with an interest rate of 3.75% and due on October 20, 2017.

(v) *Prepetition Second Lien Obligations.* As of the Petition Date, Eclipse Aerospace, Inc. was indebted to the Prepetition Second Lien Note Holders, in the aggregate principal amount of approximately \$15,324,323.61 with respect to the obligations under the Prepetition Second Lien A-1 Note Documents and approximately

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\$21,929,578.75 with respect to the obligations under the Prepetition Second Lien A-2 Note Documents (together with any amounts paid or incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition Second Lien Documents, including all “Obligations” as further defined in the ~~DIP Facility Agreement~~ Prepetition Second Lien Documents, the “**Prepetition Second Lien Obligations**”).

(vi) *Intercreditor and Subordination Agreement.* As of the Petition Date, Eclipse Aerospace, Inc. was party to that Amended and Restated Intercreditor and Subordination Agreement, dated as of April 20, 2015, executed by each of the Prepetition Second Lien Note Holders, The Bank of New York Mellon, N.A., as collateral agent for the Prepetition Second Lien Note Holders, and Wilmington Trust, National Association, as administrative agent for the Prepetition First Lien Lenders, and as the same may be amended, restated, supplemented, waived and/or otherwise modified from time to time in accordance with the terms thereof and of this Agreement (the “**Existing Intercreditor and Subordination Agreement**”). Pursuant to the Existing Intercreditor and Subordination Agreement, among other things, the Prepetition Second Lien Obligations are subordinated to the Prepetition First Lien Obligations.

(vii) *Prepetition Collateral and Prepetition Liens.* As more fully set forth in the Prepetition First Lien Documents, prior to the Petition Date, the Prepetition First Lien Debtor Borrowers granted first-priority security interests in and liens (collectively, the “**Prepetition First Liens**”) on substantially all of the property of the Prepetition First Lien Debtor Borrowers (collectively, the “**Prepetition Collateral**”) to the Prepetition First Lien Agent on behalf of the Prepetition First Lien Lenders to secure repayment of the Prepetition First Lien Obligations. As more fully set forth in the Prepetition Second

Lien Documents and to the extent applicable, prior to the Petition Date, Eclipse Aerospace, Inc. granted, to the extent valid and applicable, second lien security interests in and liens (the “**Prepetition Second Liens**” and, together with the Prepetition First Liens, the “**Prepetition Liens**”) on the Prepetition Collateral owned by Eclipse Aerospace, Inc. to the Prepetition Second Lien Note Holders to secure payment of the Prepetition Second Lien Obligations. The priority of the Prepetition Liens is subject to the terms of the Existing Intercreditor and Subordination Agreement; provided, however, that upon entry of this Final A&R Order, the portion of the Prepetition First Lien Obligations “rolled-up” into the Senior DIP Facility (i.e., the Senior Roll-Up Loans) shall no longer be subject to the Existing Intercreditor and Subordination Agreement, and the rights and priorities of the Senior DIP Lender related to such Senior Roll-Up Loans shall be governed exclusively by the terms of this Final A&R Order.

(viii) *Prepetition Secured Indebtedness and Prepetition Liens.* The Debtor Borrowers acknowledge and agree that:

- a. the Prepetition First Lien Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtor Borrowers;
- b. the Prepetition First Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable, and properly perfected;
- c. as of the Petition Date, the Prepetition First Liens have priority over any and all other liens on the Prepetition Collateral, including, without limitation, the Prepetition Second Liens, subject only to certain liens otherwise permitted by the Prepetition First Lien Documents (to the extent any such permitted liens were valid, binding, enforceable, properly perfected, non-avoidable and senior in priority to the Prepetition First Liens as of the Petition Date) (the “**Permitted Prior Senior Prepetition Liens**”); and
- d. ~~as of the Petition Date, the Prepetition Second Liens were junior to the Prepetition First Liens and the Permitted Prior Senior Prepetition Liens.~~

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(ix) *No Offsets or Claims.* The Debtor Borrowers acknowledge and agree that:

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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 First Liens or the Prepetition First Lien Obligations exist, and no portion of the Prepetition First Liens or the Prepetition First 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; and

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b. the Debtor Borrowers 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 First Lien Parties or any of their affiliates, agents, attorneys, advisors, professionals, officers, directors or employees arising out of, based upon or related to the Prepetition First Lien Documents or Prepetition First Lien Obligations.

(x) *Cash Collateral.* The Debtor Borrowers represent that all of the Debtor

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Borrowers' 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 ~~First Lien~~ Secured Parties.

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

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

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(ii) *Request for Post-Petition Financing and Use of Cash Collateral.* The Debtor Borrowers seek authority to enter into the DIP Facility Agreements. The DIP Lenders shall have no obligation to make loans or advances under the DIP Facilityies except to the extent required under the DIP Facility Agreements and no obligation to waive any conditions required thereunder. The Debtor Borrowers 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 Debtor Borrowers' need to use Cash Collateral and to obtain credit as set forth in the DIP Facility Agreements is immediate and critical in order to enable the ~~Debtor Borrowers~~ Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtor Borrowers 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 Facilityies and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtor Borrowers and the other Debtors, their respective subsidiaries, their estates, creditors and equity holders, and the possibility for maximizing the value of their businesses. The Debtor Borrowers 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 Facilityies 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 A&R Order therefore are in the best interests of the ~~Debtor Borrowers~~ Debtors' estates.

(iv) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangements, and capital structure, the Debtor Borrowers are unable to reasonably obtain post-petition financing from sources other than the DIP Lenders on terms more favorable than those set forth in the DIP Facility Documents. The

Debtor Borrowers have been unable to reasonably obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtor Borrowers 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 Debtor Borrowers and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtor Borrowers 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~~-post-petition basis is not otherwise available without granting the DIP Lenders: (1) perfected security interests in and liens on (each as provided herein) all of the Debtor Borrowers' existing and after-acquired assets with the priorities set forth herein; (2) superpriority claims; and (3) the other protections set forth in this Final A&R Order.

(v) *Use of Proceeds.*

- a. As a condition to entry into the DIP Facility Agreements, the extensions of credit under the DIP Facility~~ies~~ and the authorization to use Cash Collateral, the Senior DIP Lender requires, and the Debtor Borrowers have agreed, that proceeds of the DIP Facility~~ies~~ 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 Agreements (including without limitation the Permitted Variance), (y) this Final A&R Order, and (z) the Carve-Out.
- b. The Debtor Borrowers 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 unless otherwise permitted or directed by an order of the Bankruptcy Court.

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- c. The proceeds of the DIP Facilityies and Cash Collateral shall be used solely as provided in the DIP Facility Agreements, including, to the extent provided therein, (i) to exchange the revolving portion of Prepetition First Lien Loans for ~~Roll-Up Loans~~, (ii) ~~Junior Roll-Up Loans~~, (ii) to exchange \$7 million of the Prepetition First Lien Loans held by the Senior DIP Lender (with such Prepetition First Lien Loans of DW to be assigned to SEF OA LLC (i.e., the Senior DIP Lender) following the entry of this Final A&R Order and Buyer's payment of \$7,000,000 to acquire DW's Prepetition First Loans along with the rights under the Senior DIP Facility) (inclusive, as appropriate, of any Junior Roll-Up Loans held by the Senior DIP Lender) for Senior Roll-Up Loans; (iii) to provide working capital and letters of credit from time to time to the extent set forth in the Approved Budget; (iii) for other general corporate purposes of the Debtor Borrowers and other 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 of this Court, which orders shall be in form and substance reasonably satisfactory to the Senior DIP Lender and approved by the Court, in each case in a manner consistent with the Approved Budget, the Senior DIP Facility Agreement, and the terms and conditions contained herein.

(vi) *Willingness to Provide Financing.* The Senior DIP Lender has indicated a willingness to provide financing to the Debtor Borrowers subject to the entry of this Final A&R Order, including findings that such financing is essential to the Debtor Borrowers' estates, that the Senior DIP Lender is extending credit to the Debtor Borrowers as set forth in the Senior DIP Facility Agreement in good faith, and that the Senior 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 Final A&R Order or any other order. As a condition to the entry into the Senior DIP Facility Documents, the extension of credit

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under the Senior DIP Facility and the authorization to use Cash Collateral, the Debtor Borrowers, the Senior DIP Lender has agreed that proceeds of DIP Collateral and all payments and collections received by the Debtor Borrowers shall be applied solely as set forth in the Senior DIP Facility Documents.

(vii) *Business Judgment and Good Faith Pursuant to Section 364(e).* The extension of credit under the DIP Facility~~ies~~ and the DIP Facility Documents is fair, reasonable, and the best available to the Debtor Borrowers under the circumstances, reflect the Debtor Borrowers' 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~~ies~~ and the provisions regarding the use of Cash Collateral were negotiated in good faith and at arm's length among the Debtor Borrowers and the DIP Lenders, 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~~ies~~, 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~~ies~~ 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~~ies~~ 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~~ Lenders are therefore

entitled to the protections and benefits of section 364(e) of the Bankruptcy Code and this Final A&R Order.

(viii) *Priming of Prepetition Liens.* The priming of the Prepetition Liens on the Prepetition Collateral by the DIP Liens will enable the Debtor Borrowers to obtain the DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors. The Prepetition First Lien Parties have acted in good faith in consenting to the (i) Debtor Borrowers' use of the Prepetition Collateral, including, without limitation, the Cash Collateral, pursuant to the terms of this Final A&R Order, (ii) priming of their Prepetition Liens by the DIP Liens on all Prepetition Collateral, and (iii) entry of this Final A&R Order and the granting of the relief set forth herein, and their reliance on the assurances referred to herein is in good faith.

(ix) *Priming of Junior DIP Liens.* The priming of the Junior DIP Liens on the Prepetition Collateral by the Senior DIP Liens will enable the Debtor Borrowers to obtain the Senior DIP Facility and to continue to operate their businesses for the benefit of their estates and creditors.

~~(ix)(x)~~ *Adequate Protection.* The Prepetition First Lien Agent and Prepetition First Lien Parties are entitled to and shall receive, adequate protection in the form of (I) current cash reimbursement of actual and documented fees and expenses and other disbursements of the Prepetition First Lien Parties, ~~including the reasonable documented fees and expenses of the legal and financial advisors to each of the Prepetition First Lien Parties, including Ashby limited to King & Geddes Spalding LLP, Emmet, Marvin & Martin, LLP~~ One firm to serve as local counsel to SEF OA LLC, Richards Kibbe & Orbe LLP, Lewis Roca Rothgerber Christie LLP and Daugherty, Fowler, Peregrin, Haught and

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~~Ashby & JensonGeddes, Riemer & Braunstein LLP, Morris, Nichols, Arsht & Tunnell LLP, P.A.~~ whether incurred before or after the Petition Date, ~~limited to the dollar amounts set forth in the Approved Budget~~; and (II) subject to the priorities set forth in paragraphs 13 and 14 below, the Senior Adequate Protection Lien and the Senior Adequate Protection Superpriority Claim (each as defined below), (III) a funded escrow account (the “**Funded Escrow**”) in the sum of \$50,000 to secure any contingent indemnification obligation under the Prepetition First Lien Credit Documents, and (IV) the right to receive certain information and reports from the Debtor Borrowers with respect to the business, results of operation and financial condition of the Debtor Borrowers and their subsidiaries, as may be requested by the Prepetition First Lien Agent. The Prepetition Second Lien Parties are entitled to and shall receive adequate protection in the form of, and subject to the priorities set forth in paragraphs 13 and 14 below, the Junior Adequate Protection Lien (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 Debtor Borrowers’ 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)(xi)~~ *Sections 506(c) and 552(b)*. In light of (i) the agreement of the DIP Lenders and the Prepetition First Lien Parties to subordinate their liens and superpriority claims, as applicable, to the Carve-Out, and the Prepetition First Lien 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~~ Out, the DIP Liens and the DIP Superpriority Claim, ~~and~~ (iii) the Approved Budget covering all administrative costs projected by the Debtor Borrowers and their subsidiaries, the DIP Lenders and the Prepetition First Lien 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.* Notice of the Final Hearing and the emergency relief requested in the Motion has been provided by the Debtor Borrowers, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including: (i) the U.S. Trustee; (ii) the Securities and Exchange Commission; (iii) the Internal Revenue Service; ~~the parties included on the Debtors’ consolidated list of thirty (30) largest unsecured creditors~~ (iv) the Committee; (v) counsel to the Junior DIP Lender and counsel to the Senior DIP Lender; (vi) ~~other~~ the Debtors’ prepetition secured lenders; ~~and~~ (vii) financial institutions where the Debtors hold bank accounts; and (viii) those parties who have formally filed requests for notice in the Chapter 11 Cases pursuant to Bankruptcy Rule 2002. Under the circumstances, the notice given by the Debtor Borrowers of the Motion, the relief requested therein, complies with Bankruptcy Rules 4001(b) and (c) and the Local Rules.

(xii) 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:

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

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2. Use of Prepetition Collateral Approved. Subject to the terms of the DIP Facility Documents, this Final A&R Order, and the Approved Budget, the Debtor Borrowers 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 final relief sought in the Motion and to the entry of this Final A&R Order to the extent not withdrawn or resolved are hereby overruled on the merits in their entirety. Subject to the terms of this Final A&R Order, the rights of all parties in interest to object to the final relief sought by the Motion are reserved in full.

DIP Facility Authorization

4. Authorization of the DIP Facility Documents. The Debtor Borrowers are hereby authorized to execute, issue, deliver, enter into, and adopt, as the case may be, the DIP Facility Agreements and the other DIP Facility Documents to be delivered pursuant hereto or thereto or in connection herewith or therewith. The Debtor Borrowers are hereby authorized to borrow money under the DIP Facility Documents, on a final basis, and request extensions of credit under the DIP Facility Documents in accordance with the terms of this Final A&R Order and the DIP Facility Documents.

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5. Authorized Action. In furtherance of the foregoing and without further approval of this Court, the Debtor Borrowers are authorized to perform all acts, to make, execute and deliver all instruments and documents that may be necessary or required for performance by the Debtor Borrowers under the DIP Facility Documents and the creation and perfection of the DIP Liens described in, provided for and perfected by this Final A&R Order and the DIP Facility

Documents. Subject to paragraph 15, the Debtor Borrowers are hereby authorized to pay, in accordance with this Final A&R Order, 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 Lenders's attorneys, advisers, accountants and other consultants. All fees shall be fully earned upon entry of this Final A&R Order and payable in accordance with the DIP Facility Documents.

6. Validity of DIP Obligations. Upon entry of this Final Order ~~(and with respect to the Roll-Up Loans, subject to the Challenge Period and any Challenge Proceeding) and execution and delivery~~ A&R Order, the DIP Facility Documents shall represent valid and binding obligations of the Debtor Borrowers, enforceable against the Debtor Borrowers and their estates in accordance with their terms, and subject to the terms of this Final A&R Order. The DIP Facility Documents and this Final A&R Order constitute and evidence the validity and binding effect of the DIP Obligations of the Debtor Borrowers, which DIP Obligations shall be enforceable, jointly and severally, against the Debtor Borrowers, 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 Lenders under the DIP Facility Documents or this Final A&R 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 Debtor Borrowers to the DIP Lenders under the DIP Facility Documents, including without limitation all principal, interest, costs, fees, expenses and other amounts owed pursuant to the DIP Facility Documents.

7. No Obligation to Extend Credit. The DIP Lenders shall have no obligation to make loans or advances under ~~the DIP Facility~~ their respective DIP Facilities until the conditions precedent to the closing and the making of such extensions of credit under the applicable DIP Facility Documents have been satisfied in full or waived.

8. Use of DIP Facilities Proceeds. From and after the Petition Date, the Debtor Borrowers are authorized to use extensions of credit under the DIP Facilityies only for the purposes specifically set forth in this Final A&R Order, the DIP Facility Documents and in compliance with the Approved Budget. The Debtor Borrowers 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 to (a) exchange the revolving portion of Prepetition First Lien Loans for Junior Roll-Up Loans; and to exchange \$7 million of the Prepetition First Lien Loans held by the Senior DIP Lender (with such Prepetition First Lien Loans of DW to be assigned to SEF OA LLC (i.e., the Senior DIP Lender) following the entry of this Final A&R Order and Buyer's payment of \$7,000,000 to acquire DW's Prepetition First Loans along with the rights under the Senior DIP Facility) (inclusive, as appropriate, of any Junior Roll-Up Loans held by the Senior DIP Lender) for Senior Roll-Up Loans; (b) to pay fees, costs and expenses of the DIP Lenders (i.e., SEF OA LLC and Citiking) incurred in connection with the transactions contemplated by the DIP Facility Agreements; (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 Debtor Borrowers and their subsidiaries 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 of the Junior Roll-Up Loans and the Senior Roll-Up Loans shall be subject to the Carve-Out, and the reservation of rights of parties in interest in paragraph ~~32, 34 and 40~~ 38 of 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 First Lien Obligations or Prepetition First Liens), the Debtor Borrowers’ Roll Up of the revolving portion of the Prepetition First Lien Facility (the “Prepetition First Lien Revolving Obligations”)~~ shall be A&R Order, but are hereby deemed to be indefeasible, final and not subject to any challenge, ~~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 First Lien Revolving Obligations that are challenged shall be excluded from the Roll Up (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 to the extent that such Roll Up Exclusion Amount is found or agreed to be secured by Prepetition First Liens.~~

9. DIP Superpriority Claims. ~~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 Debtor Borrowers, 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 Debtor Borrowers, 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), 507(b), 552(b), or 726 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 Debtor Borrowers and their estates and all proceeds thereof, subject only to liens secured thereby and the Carve-Out. The DIP Superpriority Claims held by the Senior DIP Lender shall be senior and prior in all respects to the DIP Superpriority Claims held by the Junior DIP Lender.

DIP Liens and Collateral.

10. Effective immediately upon entry of this Final A&R 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 ~~Debtor Borrowers~~ 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 ~~the any~~ any DIP Lender of any DIP Collateral, the DIP ~~Lender is~~ Lenders are hereby granted, 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

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~~Debtor-Borrowers-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 which shall be deemed to be for the benefit of the DIP Lenders), documents (as defined in the UCC), 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 ~~Borrower~~ held by ~~the any~~ DIP Lender, including all property of every description, in the custody of or in transit to ~~the any~~ DIP Lender for any purpose, including safekeeping, collection or pledge, for the account of such Debtor ~~Borrower~~ or as to which such Debtor ~~Borrower~~ 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) the proceeds of any Avoidance Actions; and (h) to the extent not covered by the foregoing, all other assets or property of the ~~Debtor-Borrowers-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. The DIP Liens held by the Senior DIP Lender (the “**Senior DIP Liens**”) shall be senior and prior in all respects to the DIP Liens held by the Junior DIP Lender (the “**Junior DIP Liens**”).

11. Until the indefeasible and irrevocable repayment of the Prepetition First Lien Obligations (if applicable), the Prepetition First Liens shall be deemed continuing liens for the benefit of and deemed assigned to the DIP Lenders to secure the DIP Obligations (as to which

the Senior DIP Lender shall have priority over the Junior DIP Lender). All of the following agreements and other items related to the Prepetition First Liens remain in full force and effect and shall inure to the benefit of the DIP Lenders and the Prepetition First Lien Parties (as to which the Senior DIP Lender shall have priority over the Junior DIP Lender and the Prepetition First Lien 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 First Lien Parties on any Debtor Borrower's assets (real or personal) in connection with the Prepetition First Lien Obligations. Each of the Security Documents under the Prepetition First Lien Documents shall secure the DIP Obligations *mutatis mutandis*. Any liens, claims or interests subordinated to the Prepetition First Liens as of the Petition Date and the Carve-Out shall likewise be deemed subordinate to the DIP Liens and the Carve-Out. Any liens, claims or interests subordinated to the Junior DIP Liens and the Carve-Out shall likewise be deemed subordinate to the Senior DIP Liens and the Carve-Out.

12. DIP Lien Priority.

(a) *DIP Liens.* The Junior DIP Liens shall be junior only to the (i) the Senior DIP Liens, (ii) Permitted Prior Senior Prepetition Liens, (iii) any valid, perfected, unavoidable liens or security interests in existence as of the Petition Date, or that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b) and (iv) the (iii) Carve-Out, and shall otherwise be senior in priority and superior to the 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. The Senior DIP Liens shall be junior only to the Carve-Out, and shall otherwise be senior in priority and superior to all Permitted Prior Senior Prepetition Liens, liens or security interests in existence as of the Petition Date, or that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b), 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; provided always that the Junior DIP Liens shall be junior to the Senior DIP Liens.

(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 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, 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~~ 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 Debtor Borrowers' estates pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens; provided always that the Senior DIP Liens shall be senior to the Junior DIP Liens.

Adequate Protection

13. Adequate Protection Liens.

(a) *Prepetition First Lien 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 First Lien Parties in the Prepetition Collateral, including Cash

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Collateral, against any diminution in value resulting from the Debtor Borrowers' 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 Debtor Borrowers hereby grant to the Prepetition First Lien Agent, on behalf of itself and the Prepetition First Lien Lenders, 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 Debtor Borrowers of mortgages, security agreements, pledge agreements, financing statements, or other agreements) and shall be subject and subordinate only to the DIP Liens, the Permitted Prior Senior Prepetition Liens, and to any valid, perfected, unavoidable liens or security interests in existence as of the Petition Date, or that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b), and the Carve-Out and otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(b) *Prepetition Second Lien Parties - Junior 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 Second Lien Parties in the Prepetition Collateral owned by Eclipse Aerospace, Inc. against any Diminution in Value, Eclipse Aerospace, Inc. hereby grants to the Prepetition Second Lien Note Holders, to the extent applicable (*i.e.*, to the extent that the Prepetition Second Lien Parties have valid and perfected Prepetition Second Liens in the Prepetition Collateral owned by Eclipse Aerospace, Inc.), a valid and perfected replacement and additional security interest in, and lien on (the "**Junior Adequate Protection Lien**" and, together with the Senior Adequate Protection Lien, the "**Adequate Protection Liens**") the DIP

Collateral owned by Eclipse Aerospace, Inc. To the extent applicable, the Junior Adequate Protection Lien is and shall be valid, binding, enforceable and fully perfected *nunc pro tunc* to the Petition Date and shall (i) be subject and subordinate only to the DIP Liens, the Permitted Prior Senior Prepetition Liens, and to any valid, perfected, unavoidable liens or security interests in existence as of the Petition Date, or that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b); the Carve-Out, the Senior Adequate Protection ~~Lien~~ Liens and the Prepetition First Liens; (ii) otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral; and (iii) to the extent there at any time remains outstanding and unpaid Prepetition First Lien Obligations, be subject in all respects to the Existing Intercreditor and Subordination Agreement, as amended, modified or waived (or deemed amended, modified or waived) hereby and by the DIP Facility Documents.

(c) *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.

14. Adequate Protection Superpriority Claim.

(a) *Superpriority Claim of Prepetition First Lien Agent.* As further adequate protection of the interests of the Prepetition First Lien Parties, the Prepetition First Lien Agent, on behalf of itself and the Prepetition First Lien Lenders, is hereby granted an allowed administrative claim against the Debtor Borrowers' estates under section 503(b) of the

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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 First Lien 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 Debtor Borrowers 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), 546(c), 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 Claims and (ii) the Carve-Out.

15. Costs, Fees, Expenses, and Indemnification.

(a) *DIP Lenders.* The Debtor Borrowers are authorized to pay any and all reasonable out-of-pocket expenses of the DIP ~~Lender~~ Lenders (i.e., SEF OA LLC and Citiking) in connection with the DIP Facilityies, 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 creation, perfection or protection of the liens under the DIP Facility Documents (including all search, filing and recording fees); (iii) the on-going

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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; (iv) the enforcement of the DIP Facility Documents; (v) any refinancing or restructuring of the DIP Facilityies in the nature of a “work-out”; and (vi) any legal proceeding relating to or arising out of the DIP Facilityies 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 Debtor Borrowers, the professionals for the DIP Lenders shall deliver a copy of their respective invoices to counsel for the Committee and the U.S. Trustee. The invoices for such fees and expenses shall not be required to comply with any U.S. Trustee guidelines related to the payment of fees and expenses of retained estate professionals, shall include sufficient information to determine the reasonableness of such fees and expenses, and shall not be subject to application or allowance by the Court. Any objections raised by the Debtor Borrowers, the U.S. Trustee, or the Committee with respect to such invoices within ten (10) business 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 Debtor Borrowers. Such fees and expenses shall not be subject to any offset, defense, claim, counterclaim, or diminution of any type, kind or nature whatsoever. Notwithstanding anything in this Final A&R Order to the contrary, the Debtor Borrowers shall not be permitted to pay any of the expenses, costs, or fees of the Junior DIP Lender until such time as the Senior DIP Facility (including the Senior Roll-Up Loans) has been repaid in full.

(b) *Indemnification of DIP Lenders.* The DIP Lenders shall have no liability to any third party, and shall not be deemed to be in control of the operations of the Debtor Borrowers or the other Debtors, or to be acting as a “responsible person” or managing agent with respect to the operation or management of the Debtor Borrowers or the other Debtors. The Debtor Borrowers shall indemnify and hold harmless the DIP Lenders, and ~~its~~ 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 Agreements and Debtor Borrowers’ use of the financing provided thereunder. This indemnification shall survive and continue for the benefit of all such persons or entities.

(c) *Prepetition First Lien Parties.* As additional adequate protection of the Prepetition First Lien Parties’ security interests in the Prepetition Collateral, the Debtor Borrowers are authorized to provide adequate protection in the form of (i) current cash reimbursement of actual and documented fees and expenses and other disbursements of the Prepetition First Lien Parties, whether incurred before or after the Petition Date or set forth in the Approved Budget, (ii) the Funded Escrow account to be maintained by the Debtor Borrowers for the benefit of the Prepetition First Lien Lenders in the sum of \$50,000 to secure any contingent indemnification obligation under the Prepetition First Lien Credit Documents, 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 First Lien Documents, the DIP Facility Agreements and this Final A&R Order. Payment of professional fees and expenses of the Prepetition First Lien Parties shall not be subject to allowance by the Court. Notwithstanding the foregoing, at the same time such invoices are delivered to the Debtor Borrowers, the professionals for the Prepetition First Lien Parties shall deliver a copy of their respective

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invoices to counsel for the Committee and the U.S. Trustee. The invoices for such fees and expenses shall not be required to comply with any U.S. Trustee guidelines related to the payment of fees and expenses of retained estate professionals, shall include sufficient information to determine the reasonableness of such fees and expenses, and shall not be subject to application or allowance by the Court. Any objections raised by the Debtor, the U.S. Trustee or the Committee with respect to such invoices within ten (10) business 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 Debtor Borrowers. Such fees and expenses shall not be subject to any offset, defense, claim, counterclaim or diminution of any type, kind or nature whatsoever. Notwithstanding anything in this Final A&R Order to the contrary, the Debtor Borrowers shall not be permitted to pay any of the expenses, costs, or fees of the Junior DIP Lender until such time as the Senior DIP Facility (including the Senior Roll-Up Loans) has been repaid in full.

Provisions Common to DIP Financing and Use of Cash Collateral Authorizations

16. Carve-Out.

(a) *Carve-Out.* All claims and liens granted by this Final A&R Order are subject to the Carve-Out, to the extent provided herein. As used in this Final A&R Order and the DIP Facility Documents, the term “**Carve-Out**” shall mean an amount equal to the sum of (i) all fees required to be paid to the clerk of the Court or any claims and noticing agent acting in such capacity and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code *plus* interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) fees and expenses of up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); and (iii) allowed and unpaid claims for unpaid fees, costs, and expenses (the “**Allowed Fees**”) incurred by persons or

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firms retained by the Debtor Borrowers or the Committee, ~~if any,~~ whose retention is approved by the Bankruptcy Court pursuant to section 327, 328, and 1103 of the Bankruptcy Code (collectively, the “**Professional Persons**”), subject to the terms of this Final A&R Order and any other ~~interim-final~~ or other compensation order entered by the Bankruptcy Court that are incurred or earned (A) at any time before delivery by the DIP Lenders of a Carve-Out Trigger Notice (as defined below) (the “**Pre-Trigger Date Fees**”), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice, subject to any limits imposed by the Approved Budget ~~to be distributed on a pro rata basis, this Final Order, or the Final A&R Order~~ or otherwise on fees permitted to be incurred in connection with any permitted investigations of claims and defenses against any Prepetition Secured Parties; and (B) starting the first day after the delivery of written notice (which may be by electronic mail) (the “**Carve-Out Trigger Notice**”) of an Event of Default (such date on which the Event of Default occurs, the “**Trigger Date**”) and the continuation thereof to the Debtor Borrowers, the Debtor Borrowers’ counsel, the U.S. Trustee, and counsel for the Committee, ~~if any,~~ in an aggregate amount not to exceed \$750,000 (the, ~~“**Post-EoD Carve-Out Amount**”~~) ~~to be distributed pro rata; provided, that~~ nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in clauses (i), (ii), (iii)(A) or (iii)(B) above, on any grounds. Notwithstanding the foregoing, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (a) the initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the Prepetition First Lien Parties or the holders of the indebtedness under the Prepetition First Lien Credit Agreement (whether in such capacity or otherwise) or (ii) challenging the amount, validity, perfection, priority, or enforceability of or asserting any defense, counterclaim,

or offset to, the obligations and the liens and security interests granted under the DIP Facility Documents or the indebtedness under the Prepetition First Lien Credit Agreement (whether in such capacity or otherwise), including, in each case, without limitation, for lender liability or pursuant to sections 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (b) attempts to modify any of the rights granted to the DIP Lenders, the Prepetition First Lien Lenders, or the Prepetition First Lien Agent; (c) attempts to prevent, hinder, or otherwise delay any of the DIP Lenders' or the Prepetition First Lien Lenders' assertion, enforcement or realization upon any Collateral in accordance with the DIP Loan Documents and the Final A&R Order; (d) paying any amount on account of any claims arising before the commencement of the Cases unless such payments are approved by an order of the Bankruptcy Court; or (e) after delivery of a Carve-Out Trigger Notice, any success, completion, back-end or similar fees; ~~provided that no more than an aggregate of \$20,000 of the proceeds of the New Money Loans, the DIP Collateral, the Prepetition Collateral, proceeds of the foregoing and the Carve Out may be used by the Committee in respect of the investigation of the claims and liens of the Prepetition First Lien Parties, solely to the extent set forth in the Final Order (but not to litigate, object to, or challenge any of the foregoing) and potential claims, counterclaims, causes of action, or defenses against the Prepetition First Lien Parties, solely to the extent set forth in the Final Order (but not to litigate any of the foregoing).~~

(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 Junior DIP Facility as provided herein and in the Junior DIP Facility Documents, the Junior 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, and the

Senior DIP Lender shall be responsible for funding the portion of the Carve-Out provided for in the Senior DIP Facility Documents. Nothing in this Final A&R Order or otherwise shall be construed: (i) to obligate ~~the any~~ DIP Lender, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtor Borrowers 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 Lenders, 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.* On the day on which a Carve-Out Trigger Notice is given to the Debtors, such Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an aggregate amount equal to (1) the Pre-Trigger Date Fees plus (2) the Post-EoD Carve-Out Amount, and the Debtors shall deposit and hold any such amounts in a segregated account in trust for the Professional Persons (the “**Carve-Out Escrow Account**”). 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 A&R 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 Lenders and the Prepetition Secured Parties to object to the allowance and payment of such fees and expenses. So long as no Termination Event (as defined below) has occurred and is continuing, the Debtor Borrowers 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 Professional Person (including ordinary course professionals).

17. Modification of DIP Facility Documents. The Debtor Borrowers and the DIP Lenders are hereby authorized, subject to the DIP Facility Agreements, 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, (i) no waiver, modification, or amendment of any of the provisions of the Senior DIP Facility Agreements shall be effective unless set forth in writing, signed on behalf of the Debtor Borrowers and the Senior DIP Lender and (ii) no waiver, modification, or amendment of any of the provisions of the Junior DIP Facility

Agreements shall be effective unless set forth in a writing, signed on behalf of the Debtor Borrowers and the Junior DIP Lender and consented to by the Senior DIP Lender.

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

19. 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 A&R Order, including, without limitation, to (a) permit the Debtor Borrowers to grant the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and the Adequate Protection Superpriority Claims, and (b) authorize the Debtor Borrowers to pay, and the DIP Lenders~~s~~ and the Prepetition First Lien Parties and to retain and apply, payments made in accordance with this Final A&R Order.

20. Right to Credit Bid. The Senior DIP Lender shall have the right to credit bid up to the full amount of the outstanding loans under the Senior DIP Facility including any accrued interest and expenses and the Senior Roll-Up Loans, in any sale of DIP Collateral, as provided for in section 363(k) of the Bankruptcy Code, whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

20-21. Automatic Perfection of DIP Liens and Adequate Protection Liens.

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(a) This Final A&R 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 Lenders or the Prepetition Secured Parties to the priorities granted herein.

(b) Notwithstanding the foregoing, the DIP Lenders and the Prepetition First Lien 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 DIP Lenders or any Prepetition First Lien 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 A&R Order.

(c) The Debtor Borrowers are authorized to execute and deliver promptly upon demand to the DIP Lenders or the Prepetition Secured Parties all such financing statements,

mortgages, control agreements, notices and other documents as the DIP Lenders or the Prepetition Secured Parties may reasonably request. The Debtor Borrowers are authorized to, and shall, execute and deliver to the DIP Lenders and the Prepetition First Lien Parties such agreements, financing statements, mortgages, instruments and other documents as the Prepetition First Lien Parties may reasonably request to evidence, confirm, validate, or perfect the DIP Liens or the Adequate Protection Liens; and the failure by the Debtor Borrowers 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 DIP Lenders and the Prepetition Secured Parties, each in its discretion, may file a photocopy of this Final A&R 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 A&R Order, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

(e) Subject to 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 (i) the consent or approval of one or more landlords or other parties or (ii) 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. 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 DIP Lenders or the Prepetition Secured Parties in accordance with the terms of this Final A&R Order.

21-22. Other Automatic Perfection Matters. To the extent that any Prepetition Agent is the secured party under any account control agreements, listed as loss payee under any of the Debtor Borrowers' insurance policies, or is the secured party under any Prepetition Loan Document, the DIP ~~Lender is~~ Lenders are also deemed to be the secured party under such account control agreements, loss payee under the Debtor Borrowers' insurance policies, and the secured party under each such Prepetition Loan Document, 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 A&R Order and the DIP Facility Documents. The Prepetition First Lien Agent shall serve as agent for the DIP Lenders for purposes of perfecting the DIP Lenders's security interests in and liens on all Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

22-23. Proceeds of Subsequent Financing. If the Debtor Borrowers, 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 First Lien Obligations, including subsequent to the confirmation of any plan of reorganization or liquidation with respect to the Debtor Borrowers and the Debtor Borrowers' estates, then all cash proceeds derived from such credit or debt shall immediately be turned over to the DIP Lenders to be applied in accordance with this Final A&R Order and the DIP Facility Documents (first to the Senior DIP Lender until all Senior DIP Obligations are paid in full, and then to the Junior DIP Lender).

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~~23~~24. 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 Lenders to extend credit under the DIP Facility~~ies~~, the Debtor Borrowers 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 terms of the DIP Facility Documents, (ii) subject to the Cash Management Order, as may be modified, with the prior written consent of the Senior 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 Senior DIP Lender. Other than as expressly required pursuant to the DIP Facility Agreements, the Cash Management Order or this Final A&R Order, no modifications to the Debtor Borrowers' cash management system existing as of the Petition Date may be made without the prior approval of the Senior DIP Lender.

~~24~~25. Application of Proceeds of Collateral Payments and Collections. After repayment in full in cash of all DIP Obligations (first to the Senior DIP Lender until all Senior DIP Obligations are paid in full, and then to the Junior DIP Lender) any remaining proceeds of the DIP Collateral shall be applied to the Debtor Borrowers' 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 A&R Order.

~~25~~26. Termination Event. The occurrence of an Event of Default under the DIP Facility Agreements is referred to herein as a "**Termination Event**."

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26-27. Rights and Remedies Following Termination Event.

(a) *Termination.* Immediately upon the occurrence and during the continuation of a Termination Event, the Senior DIP Lender, with no further action of this Court, may notify the Debtor Borrowers in writing that a Termination Event has occurred and is continuing (such notice, a “**Termination Notice**” and the date of any such notice, 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 Debtor Borrowers, counsel to the Committee (if one has been formed, or if one has not been formed, the Debtors’ consolidated 30 largest creditors), the U.S. Trustee, and the notice parties for the Prepetition Second Lien Parties. 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 Senior DIP Lender under the Senior DIP Facility Agreement, the Senior 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 Senior 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 Debtor Borrowers, (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 Senior DIP Facility and the Senior DIP Facility Documents as to any future liability or obligation of the Senior DIP Lender but without affecting

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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 Senior 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 Debtor Borrowers 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-non-~~ Debtor affiliates) that are not in the ordinary course of business or otherwise in furtherance of the administration of the Cases.

27-28. Good Faith under Section 364 of the Bankruptcy Code; No Modification or Stay of this Final A&R Order. The Senior DIP Lender has acted in good faith in connection with this Final A&R Order and ~~their~~its reliance on this Final A&R Order is in good faith. Based on the findings set forth in this Final A&R Order and the record made during the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final A&R Order are hereafter modified, amended or vacated by a subsequent order of the Court, or any other court, the Senior DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code.

~~28-29. 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 the DIP Lenders. The DIP Lenders shall not be required to file proofs of claim or requests for approval of administrative expenses authorized by this Final A&R Order in any of the Cases or any Successor Case, and the provisions of this Final A&R Order, ~~and, upon the entry thereof, the Final Order,~~ relating to the amount of the DIP Obligations, the Prepetition First 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.

~~29-30. Rights of Access and Information.~~ Without limiting the rights of access and information afforded the DIP Lenders under the DIP Facility Documents, the Debtor Borrowers shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Lenders and the Prepetition First Lien Parties, reasonable access to the Debtor Borrowers' premises, knowledgeable officers of the Debtor Borrowers, 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.

~~30-31. Intercompany Obligations.~~ To the extent any Debtor Borrower owes any obligation or indebtedness to any other Debtor Borrower or any subsidiary or affiliate of any Debtor Borrower (the "**Intercompany Obligations**"), such Intercompany Obligations shall be subordinated to the DIP Obligations and the Prepetition First Lien Obligations, and the guarantees (if any) thereof, until the DIP Obligations and the Prepetition First Lien Obligations are indefeasibly repaid in full. For avoidance of all doubt, any Intercompany Obligations shall be subordinated to the Adequate Protection Superpriority Claims.

34-32. Prohibited Use of DIP Facilities, DIP Collateral, Cash Collateral, Carve-Out,

Etc. Without the prior written consent of the Senior DIP Lender, the DIP Facilities, the DIP Collateral, and the Cash Collateral may not be used:

- a. for the payment of interest and principal with respect to the Prepetition Second Lien Obligations or any other prepetition indebtedness of the Debtor Borrowers 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; (iii) prepetition sales, use and real property taxes; (iv) prepetition amounts due in respect of insurance financings, premiums and brokerage fees; (v) payment of fees and expenses (including fees and expenses of professionals) of the DIP Lenders; (vi) other “first day” interim and final orders permitting payment of prepetition claims; (vii) cure amounts reasonably acceptable to the DIP Lenders under leases and executory contracts assumed with approval of the Court; (viii) the Prepetition First Lien Loan Obligations solely to the extent of current cash interest and expenses; and (ix) other Prepetition Indebtedness to the extent authorized by the Bankruptcy Court and set forth in the Approved Budget;
- b. subject to this Final Order ~~A&R 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 the DIP Lenders under the DIP Facility Agreements, the other DIP Facility Documents, this Final A&R Order including preventing, hindering or otherwise delaying the exercise of any rights, remedies, claims or defenses by the DIP Lenders under the DIP Facility Agreements, the other DIP Facility Documents, this Final A&R Order or (y) the rights, remedies, claims or defenses of the Prepetition First Lien Parties under the Prepetition Loan Documents, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtor Borrowers or the 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 First Lien Obligations, Prepetition First Liens (as set forth in the DIP Facility Agreements); (B) for monetary, injunctive or other affirmative relief against the DIP Lenders or the Prepetition First Lien Parties or their respective collateral; or (C) preventing, hindering or otherwise delaying the exercise by the DIP Lenders or the Prepetition First Lien Parties of any rights and remedies under this Final A&R Order, the DIP Facility Documents, the Prepetition Loan Documents or applicable law, or the enforcement or realization (whether by foreclosure, credit bid,

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further order of the Court or otherwise) by the DIP Lender, ~~the Prepetition First Lien Parties Lenders~~ 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 Senior 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 Debtor Borrowers (including so-called "Topping Fees," "Exit Fees" and other similar amounts) without prior written consent by the Senior DIP Lender, unless otherwise set forth in accordance with the Approved Budget;
- f. to object to, contest, or interfere with, in any way, the Senior DIP Lender's ~~or the Prepetition First Lien 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 A&R Order, or seek to prevent the Senior DIP Lender ~~or the Prepetition First Lien 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 First Lien Obligations, and/or the DIP Lenders's commitments under the DIP Facility Documents remain outstanding, without the consent of the Senior DIP Lender, ~~the Prepetition First Lien Parties,~~ 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 Senior DIP Lender;
- j. to object to or challenge in any way the claims, liens, or interests held by or on behalf of the DIP Lenders or the Prepetition First Lien Parties ~~provided, however, that, if the Committee is appointed, not more than \$20,000 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 the 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 Lenders or the Prepetition First Lien 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 First Lien Obligations, the Prepetition Liens, or any other rights or interests of the DIP Lenders or the Prepetition First Lien 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 Agreements.

32. — ~~Reservation of Certain Third-Party Rights and Bar of Challenges and Claims.~~

~~The stipulations and admissions contained in this Final Order, including the Debtor Borrowers' Stipulations, shall be binding on the Debtor Borrowers in all circumstances. The stipulations and admissions contained in this Final Order, including the Debtor Borrowers' Stipulations (only with respect to the Prepetition First Lien Secured Parties), shall be binding on the Debtor Borrowers' estates and each other party in interest, including, without limitation, the Committee, unless, and solely to the extent that (a) any such party in interest, including the Committee has timely filed a motion seeking authority to commence an adversary proceeding (subject to the limitations set forth in paragraph 35 hereof) against the Prepetition First Lien Secured Parties in connection with any matter related to the Prepetition First Lien Documents or the Prepetition Collateral (a "Challenge Proceeding") by no later than the date that is seventy five (75) days from the entry of this Interim Order or the date on which a plan of reorganization or liquidation is confirmed, if earlier (the "Challenge Period"). The Challenge Period may only be extended with the written consent of the Prepetition First Lien Agent (as to the Prepetition First Lien 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, the 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 Debtor Borrowers' Stipulations, all waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to the Prepetition First Lien Parties' claims, liens, and interests shall be of full force and effect and forever binding upon the Debtor Borrowers, the Debtor Borrowers' estates and all creditors, interest holders, and other parties in interest in the Cases and any Successor Case;~~
- ~~e. — any and all prepetition claims or causes of action against the Prepetition First Lien Parties relating in any way to the Debtor Borrowers or the Prepetition First Lien Documents shall be forever waived and released by~~

- the Debtor Borrowers, the Debtor Borrowers' 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 First 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 First 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 First Lien Documents and the Prepetition First Liens on the Prepetition Collateral shall not be subject to any other or further challenge by the Debtor Borrowers, the Committee or any other party in interest, each of whom shall be enjoined from seeking to exercise the rights of the Debtor Borrowers' 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 Debtor Borrowers with respect thereto).~~

33. ~~Notwithstanding anything to the contrary in this Final Order, including the Debtor Borrowers' Stipulations, the Challenge Period shall not apply to the Prepetition Second Lien Parties and the Prepetition Second Lien Obligations. The Debtor Borrowers' Stipulations set forth in paragraph (E)(iii), (iv), (v) and (viii) shall have no binding effect whatsoever.~~

34. ~~If any Challenge Proceeding is timely commenced, the admissions and stipulations contained in this Final Order, including the Debtor Borrowers' Stipulations, shall nonetheless remain binding and preclusive (as provided in this paragraph) on the Debtor Borrowers, 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 the Committee, standing or authority to pursue any cause of action belonging to the Debtor Borrowers or their estates, including, without limitation, claims and defenses with respect to the Prepetition First Lien Documents or the Prepetition First Liens 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 34 (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtor Borrowers' estates), be deemed to be a party other than the Debtor Borrowers and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations, stipulations and waivers of the Debtor Borrowers in this Final Order.~~

~~35.33. No Third Party Rights.~~ Except as explicitly provided for herein, this Final A&R~~4~~

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Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

~~36-~~34. Limitations on Charging Expenses. Upon entry of theis Final A&R 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 Lenders or the DIP Collateral or the First Lien 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 the DIP Lenders and/or any Prepetition First Lien 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.

~~37-~~35. Section 552(b). The “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Lenders or the Prepetition First Lien Parties, with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral or the DIP Collateral.

~~38-~~36. No Marshaling/Applications of Proceeds. Upon entry of theis Final A&R Order, neither the DIP Lenders nor the Prepetition First Lien Parties shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral.

~~39-~~37. Discharge Waiver. The Debtor Borrowers 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 or the Senior DIP Lender agrees to differing treatment; *provided* that the Debtors’ proposed plan of reorganization provides that, on the effective date of such plan, the Senior DIP

Obligations shall be converted into equity in the Reorganized Debtor. Except as otherwise agreed to by the Senior DIP Lender, the Debtor Borrowers shall not propose or support any plan or sale of all or substantially all of the Debtor Borrowers' assets or entry of any confirmation order or sale order that is not conditioned upon the payment in full, in cash of all Senior DIP Obligations.

~~40-38.~~ Rights Preserved. Other than as expressly set forth in this Final A&R Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Lenders and the Prepetition First Lien Parties are preserved. Nothing contained herein shall be deemed to be a finding by this Court or an acknowledgement by the Prepetition First Lien Parties that the adequate protection granted herein does in fact adequately protect the Prepetition First Lien Parties against any post-petition diminution in value of the Prepetition Collateral. Nothing in this order is intended to change or otherwise modify the prepetition priorities among the prepetition secured creditors of the Debtors, including any lien rights or recoupment rights of Henry Orlosky, individually and as Trustee of the Orlosky Family Trust, Dated 2/19/97, and Kathryn Orlosky, as Trustee of the Orlosky Family Trust, Dated 2/19/97 (collectively, the "Orloskys"), if any, to the extent such liens or rights are valid, enforceable, nonavoidable and perfected.

~~41-39.~~ No Waiver by Failure to Seek Relief. The failure or delay of the DIP Lenders or the Prepetition First Lien Parties to seek relief or otherwise exercise their respective rights and remedies under this Final A&R Order, the Prepetition Loan Documents, 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 Lenders or the Prepetition Secured Parties.

42.40. Binding Effect of Final A&R 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 A&R 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 Debtor Borrowers, the DIP Lenders, the Prepetition First Lien Parties, the Prepetition Second Lien Note Holders (to the extent applicable), all other creditors of the Debtor Borrowers, the 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.

43.41. No Modification of Final A&R Order. The Debtor Borrowers irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the Senior DIP Lender, (i) any modification, stay, vacatur or amendment to this Final A&R Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtor Borrowers (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; and (b) without the prior written consent of the Senior DIP Lender and the Prepetition First Lien Agent, (i) any order allowing use of Cash Collateral other than this Final A&R 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). The Debtor Borrowers irrevocably waive any right to seek any material amendment, modification or

extension of this Final A&R Order without the prior written consent, as provided in the foregoing, of the Senior DIP Lender and/or Prepetition First Lien Agent, as applicable, and no such consent shall be implied by any other action, inaction or acquiescence of the Prepetition First Lien Parties or the Senior DIP Lender.

44-42. Final A&R Order Controls. This Final A&R 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 A&R 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 A&R Order, the provisions of this Final A&R Order shall govern and control.

45-43. Survival. The provisions of this Final A&R 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 A&R Order, including the claims, liens, security interests and other protections granted to the Prepetition First Lien Parties and the DIP Lenders pursuant to this Final A&R Order and/or the Prepetition Loan Documents (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 A&R Order until all DIP Obligations and all Prepetition First Lien Obligations have been paid in full.

46.44. Preservation of Rights Granted Under this Final ~~Order~~ A&R 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 A&R Order to the DIP Lenders 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 Debtor Borrowers' 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 First Lien Obligations shall have been indefeasibly paid in full, the Debtor Borrowers shall not seek, and it shall constitute an Event of Default under the DIP Facility Agreement if any of the Debtor Borrowers seek, or if there is entered (i) any stay, vacatur, rescission or modification of this Final A&R Order without the prior written consent of the Senior DIP Lender, and no such consent shall be implied by any other action, inaction or acquiescence by the Senior 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 Senior 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 Final A&R Order, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Final A&R Order until all DIP Obligations and all Prepetition First Lien 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 Final A&R 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.

~~47.45.~~ Notwithstanding anything herein or in the DIP Facility ~~Agreement~~Agreements, the Existing Final DIP Order, the other DIP Facility Documents, the DIP Motion, the Sale Motion or any other ~~First Day Motion (as defined in the First Day Declaration)~~motion to the contrary, neither the entry of this Final A&R Order nor any of the relief granted hereunder, and nothing contained in any other order ~~granting any other First Day Motion~~entered by the Court (or for the avoidance of doubt, any plan or disclosure statement (including as amended or supplemented after the date hereof) proposed or to be proposed by any party or subsequently approved or confirmed by the Court), is intended to, or shall, impair in any way any claim, right, or remedy of DWC Pine Investments I, Ltd., or any affiliate or assignee (including the Senior DIP Lender) thereof (collectively, “**DW**”) under any of the “Purchase and Sale Agreement,” the “Continuing Obligations Agreement,” the “Escrow Agreement,” or the “Intercreditor Agreement” (as any of the foregoing may have been or may be amended, modified, or clarified by the parties thereto) between DW and Citiking International US LLC (with its various affiliates, “**Citiking**”) or any other claim, right, or remedy that DW may have with respect to Citiking, or any related or affiliated parties — expressly including, for the avoidance of doubt, the right to declare, at any time, (i) the Junior DIP Liens to be subordinate to the Prepetition First Liens and (ii) (x) any obligation of any Debtor with respect to the Junior DIP Facility and (y) any other obligation of any Debtor with respect to any amount advanced to the Debtors by or on

behalf of Citiking (or any related or affiliated party) prior to the date hereof to be subordinate in right of repayment and otherwise to the Debtors' obligations to DW under the Prepetition First Lien Loan Documents, in either case to the extent such obligations (collectively) exceed the amount of the "Loans," as described in Section 6(c) of the Continuing Obligations Agreement, and upon any such declaration, such Junior DIP Liens, such obligations with respect to the Junior DIP Facility, and/or such other obligations, as the case may be, shall immediately be so subordinated — all of which are hereby expressly reserved. ~~As a precondition to entry of this Order, Citiking (individually and on behalf of its various related and affiliates parties, has acknowledged and affirmed (and otherwise does not dispute) the foregoing rights and remedies of DW.~~ Furthermore, the entry of this Order is without prejudice to (x) DW's right to challenge any other relief sought by the Debtors, Citiking, or any related or affiliated parties from the Court at any time in the future and (y) DW's ability to assert that the Court is the improper forum for (or without jurisdiction or the requisite adjudicatory authority to decide) disputes between DW and Citiking (or any related or affiliated party) or ~~any of~~ the "Purchase and Sale Agreement," the "Continuing Obligations Agreement," the "Escrow Agreement," or the "Intercreditor Agreement" (as any of the foregoing may have been or may be amended, modified, or clarified by the parties thereto) between DW and Citiking. The Prepetition First Lien Loans of DW are to be assigned to SEF OA LLC (i.e., the Senior DIP Lender) following the entry of this Final A&R Order and Buyer's payment of \$7,000,000 to acquire DW's Prepetition First Loans along with the rights under the Senior DIP Facility), such that DW shall not at any time be obligated to itself fund any portion of the loans under the Senior DIP Facility, which shall be funded solely by SEF OA LLC as the Senior DIP Lender.

46. Existing Final DIP Order. Any provisions of the Existing Final DIP Order that are inconsistent with the provisions of this Final A&R Order are hereby expressly reversed.

~~48. 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 November 6, 2018 at 1:00 p.m. (ET) before the Honorable Christopher S. Sontehi, United States Bankruptcy Judge, Courtroom No. 6, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Wilmington, Delaware 19801.~~

~~49. Notice of Final Hearing. Within three (3) Business Days of the date of the entry of this Final Order, the Debtors shall serve, by United States mail, first class postage prepaid, a copy of the Motion and this Final 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 thirty (30) largest unsecured creditors; (e) counsel to the DIP Lender; (f) notice parties for each of the Prepetition Second Lien Note Holders; and (g) any party that has filed prior to such date a request for notices under Bankruptcy Rule 2002 with the Court; and (h) any proposed counsel for the Committee.~~

47. Standstill by Junior DIP Lender. All rights and remedies of the Junior DIP Lender under the Junior DIP Facility Documentation, the Prepetition First Lien Credit Agreement, and/or this Final A&R Order or to the Junior DIP Obligations are hereby made expressly junior to, subject to, and subordinate in all respects to those of the Senior DIP Lender. Without the express written consent of the Senior DIP Lender, the Junior DIP Lender is hereby barred, restricted, and prohibited in this Court or in any other court or proceeding from exercising or enforcing any right or remedy, seeking to realize upon any of the DIP Collateral, or exercising any right of consent, veto, approval, or otherwise under the Prepetition First Lien Credit Agreement or the Junior DIP Facility Documentation or any agreement, document, or instrument relating thereto, including any right to any senior, priority, *pari passu* or pro rata treatment of its claims thereunder or under the Junior DIP Facility with those of the Senior DIP Lender thereunder or under the Senior DIP Facility.

~~50. 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) counsel to the Debtors and Debtors in Possession; (b) the U.S. Trustee; (c) counsel to the Committee; (d) counsel to the DIP Lender; (e) and notice parties for each of the Prepetition Second Lien~~

Lenders; so that such objections are filed with the Court and received by said parties on or before at 4:00 p.m. Eastern Time on October 30, 2018 with respect to entry of the Final Order.

~~51-48. Retention of Jurisdiction.~~ The Court shall retain jurisdiction to enforce this Final

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A&R Order according to its terms to the fullest extent permitted by applicable law.

Dated: _____, 2018

Wilmington, Delaware

The Honorable _____

United States Bankruptcy Judge

EXHIBIT 1

Senior DIP Facility Agreement

~~DIP FACILITY AGREEMENT~~

EXHIBIT 2

APPROVED BUDGET
Junior DIP Facility Agreement

EXHIBIT 3

Approved Budget

EXHIBIT C

DW Agreements

EXHIBIT C-1

Continuing Obligations Agreement

CONTINUING OBLIGATIONS AGREEMENT

SELLER: DWC PINE INVESTMENTS I, LTD

Address: 590 Madison Avenue
13th Floor
New York, NY 10022
Attention: Joel Biran

Telephone:

Email: dw.legal@dwpartners.com and joel.biran@dwpartners.com

BUYER: CITIKING INTERNATIONAL US, LLC

Address: 14 Wall Street
20th Floor
New York, NY 10005
Attention: Huan Wang, Secretary

Telephone:

Email: citikingus@gmail.com

DATE OF THIS AGREEMENT: July 10, 2018

BORROWER:

1. Defined Terms. Reference is made to the LSTA Purchase and Sale Agreement for Distressed Trades, dated the date hereof, made by Seller (the “Purchase Agreement”). This is the Continuing Obligations Agreement referred to therein. Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Purchase Agreement.

2. Default Interest. Buyer agrees that if the Second Installment or the Third Installment is not paid within fifteen (15) days after the date such payment is due, such amount shall thereafter bear interest at an interest rate per annum equal to 15%, to the fullest extent permitted by applicable laws. Accrued and unpaid interest on past due amounts (“Default Interest”) shall be due and payable upon demand.

3. Negative Covenants

Buyer hereby covenants and agrees that on the Settlement Date and thereafter until the date that the Final Installment is paid in full, Buyer shall not, directly or indirectly:

(a) Negative Pledge. Create, incur, assume or suffer to exist any Encumbrance upon any of its property, assets or revenues, whether now owned or hereafter acquired, except for the following:

(i) Encumbrances in favor of the Seller;

(ii) Encumbrances for taxes not yet due or which are being contested in good faith; and

(iii) bankers' liens, rights of setoff and other similar Encumbrance existing solely with respect to cash and cash equivalents on deposit in one or more accounts maintained by the Buyer in each case in the ordinary course of business in favor of the bank or banks with which such accounts are maintained.

(b) Replacement of Agent. Cause the Requisite Lenders (as defined in the Credit Agreement) to give direction to terminate or replace Cantor Fitzgerald ("Cantor") as Agent without cause, without the prior consent of Seller;

(c) Release of Liens. Cause the Requisite Lenders (as defined in the Credit Agreement) to give direction to the Agent to release Liens against the assets of the Borrower, forgive debt of the Borrower, or initiate a foreclosure, assignment for the benefit of creditors, receivership, liquidation, or any other similar proceeding against the Borrower;

(d) Eviction or Suspension of License. Cause the entry of an order of eviction with respect to Borrower's and Guarantor's premises in Albuquerque, NM or an order suspending the Borrower's FAA production certificate as a result of the failure of the Buyer to fund the rent obligations payable under the existing lease or the amounts required to satisfy the requirements of the FAA in accordance with the report from the Borrower's most recent FAA inspection, respectively;

(e) Insolvency Proceedings, Etc. Cause the Borrower to institute or consent to the institution of any proceeding under Chapter 7 of the Bankruptcy Code, or permit any proceeding under Chapter 7 of the Bankruptcy Code relating to the Borrower (or cause or permit an existing proceeding under Chapter 11 of the Bankruptcy Code to be converted to a proceeding under Chapter 7 of the Bankruptcy Code) (collectively, a "Chapter 7 Case") as a result of the failure of Buyer to advance to the Borrower such funds as are reasonable and necessary to avoid the institution of such a Chapter 7 Case;

(f) Borrower Liens. Permit Borrower to sell, license or transfer, or grant any Lien superior to the Liens of the Agent any of the Collateral, excluding ordinary course transactions;

(g) Censure or Conviction. Cause or permit the censure or conviction of Buyer by any Governmental Authority, which censure or conviction renders Buyer unable to comply with the terms of this Agreement and the other Operative Documents; and

(h) Change in Control. Permit Chenliang Zhang to cease to (i) own, beneficially and of record, directly or indirectly, in the aggregate at least a majority of the equity interests of Buyer and (ii) have the right to make all decisions with respect to the affairs of Buyer.

4. Plan of Reorganization. Upon Borrower's filing of a motion for approval of sale of assets, or confirmation of a plan of reorganization, Buyer shall cause the sale or plan to provide for either (a) use of any cash proceeds thereof to satisfy any amounts remaining owed by

Buyer to Seller hereunder or under the other Operative Documents, or (b) the granting to Seller of liens upon the assets of the Borrower or its successor securing the amounts remaining owed by Buyer to Seller hereunder or under the other Operative Documents.

5. Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. Buyer fails to pay the Second Installment, the Third Installment, or any other amount payable hereunder or under any other Loan Document on the date such payment is due; or

(b) Other Defaults. Buyer fails to perform or observe any other covenant or agreement (not specified in clause (a) of this Section 5) contained herein on its part to be performed or observed.

6. Remedies After Default.

(a) If any Event of Default occurs and is continuing, the Buyer will immediately notify the Seller of such Event of Default. Seller may, in its sole discretion, then deliver a notice of default to the Buyer specifying the Event of Default (the "Default Notice").

(b) (i) Thirty days after delivery of a Default Notice under Section 5(a) hereof or (ii) immediately after delivery of a Default Notice under Section 5(b) hereof, Seller may, at its option, repurchase the Loans from Buyer (the "Repurchase") by (A) directing the Agent to record the Escrowed Assignment (as defined in the Escrow Agreement), whereby Seller shall become the sole owner of the Loans, which Loans shall be subject to the Intercreditor Agreement dated as of November 10, 2017, between Huiyin Chengtou Equity Investment Fund Management Co., Ltd. and Citiking International Limited and DW, and (B) paying to the Buyer an amount equal to the sum of (1) any portion of the Purchase Price previously paid by the Buyer, minus (2) any Default Interest and other amounts owing or payable by Buyer to Seller hereunder, minus (3) \$1,000,000 (the "Default Payment"). Following such Repurchase, Seller and Buyer will cooperate in good faith to cause the cure of the Event of Default, if such cure is possible.

(c) Buyer and Seller hereby agree that following the Repurchase, any indebtedness of the Borrower to Buyer (including, without limitation, debtor-in-possession loans) that exceeds the amount of the Loans (the "Buyer Subordinated Debt") shall be subordinate to any and all obligations of the Borrower to Seller with respect to the Transferred Rights. The Buyer hereby further agrees that the Borrower shall not make, and the Buyer will not enforce its right to receive, payments on the Buyer Subordinated Debt unless and until all obligations of the Borrower to Seller with respect to the Transferred Rights have been paid in full.

(d) If, within (i) forty-five days after delivery of a Default Notice under Section 5(a) hereof or (ii) fifteen days after delivery of a Default Notice under Section 5(b) hereof, as appropriate (the "Cure Period"), Buyer has cured the Event of Default specified in the Default Notice, and no other Events of Default have occurred and are continuing, Buyer may, at its option, repurchase the Loans from Seller for a purchase price equal to any amounts paid to

Buyer by Seller pursuant to clause (b)(ii)(B) of this Section 6 plus the reinstatement of the Buyer's obligation to pay the remaining Installments on the relevant Installment Payment Dates.

7. Security Interest. In order to secure the obligations of Buyer under this Agreement and the other Operative Documents, Buyer hereby grants to Seller a continuing lien and security interest in the Loans, the Credit Documents, all of the proceeds thereof, and any and all other assets of Buyer (the "Buyer Collateral"). Buyer covenants that there are no existing liens against it or against the Buyer Collateral. Buyer authorizes Seller to file a UCC-1 financing statement in order to perfect Seller's security interest in the Buyer Collateral upon the execution of this Agreement. Notwithstanding the foregoing, Seller agrees that it will not take any action to foreclose on the Buyer Collateral or take any other action or remedy given to a secured party under applicable law, including, but not limited to, the Uniform Commercial Code of the State of New York, but will be limited to the remedies specified in Section 6 hereof.

8. Prepayment. Buyer shall have the right to prepay the Purchase Price in full at any time prior to the Final Installment Date. Upon the payment of the Purchase Price in full, title to the Loans shall vest indefeasibly with the Buyer and this Agreement shall have no further force and effect.

9. Governing Law; Counterparts; Signatures. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving regard to conflicts of law principles. Each party submits to the jurisdiction of the federal or state courts located in the Borough of Manhattan, State of New York and agrees that any litigation relating to this Agreement shall be brought only in such courts. Each party hereto consents to service of process by certified mail at its address listed above. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or electronic transmission in portable document format (.pdf) shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or electronic transmission in portable document format (.pdf) also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

10. Further Assurances. Each party hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments and documents, and to take all such action as the other party may reasonably request, promptly upon the request of such party, in order to effectuate the intent and purpose of, and to carry out the terms of, this Agreement.

11. Entire Agreement. This Agreement and the other Operative Documents constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings or representations pertaining to the subject matter hereof, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically and expressly set forth herein. No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by the parties and no waiver of any provision

of this Agreement, nor consent to any departure by either party from it, shall be effective unless it is in writing and signed by the affected party, and then such waiver or consent shall effective only in the specific instance and for the specific purpose for which given.

12. WAIVER OF JURY TRIAL. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE 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 PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

13. Notice. All demands, notices, consents, and communications hereunder shall be in writing and shall be deemed to have been duly given when hand-delivered or duly deposited in the mails, by certified or registered mail, postage prepaid-return-receipt requested, to the addresses set forth above, or such other address as may be furnished hereafter by notice in writing. All payments by Seller to Buyer and Buyer to Seller under this Agreement shall be made in the lawful currency of the United States by wire transfer of immediately available funds to Seller and Buyer, as applicable, in accordance with the wire instructions specified in the Purchase Price Letter.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement by their duly authorized representatives as of the date first written above.

SELLER:

DWC PINE INVESTMENTS I, LTD.

By: Houdin Honarvar

Name: Houdin Honarvar

Title: Director

BUYER:

CITIKING INTERNATIONAL US, LLC

By: _____

Name: Huan Wang

Title: Secretary

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement by their duly authorized representatives as of the date first written above.

SELLER:

DWC PINE INVESTMENTS I, LTD

By: _____

Name: Houdin Honarvar

Title: Director

BUYER:

CITIKING INTERNATIONAL US, LLC

By: _____

Name: Huan Wang

Title: Secretary

EXHIBIT C-2

Letter Agreement

LETTER AGREEMENT

SELLER: DWC PINE INVESTMENTS I, LTD

Address: 590 Madison Avenue
13th Floor
New York, NY 10022
Attention: Robert Clark

Telephone:

Email: dw.legal@dwpartners.com and robert.clark@dwpartners.com

BUYER: CITIKING INTERNATIONAL US, LLC

Address: 14 Wall Street
20th Floor
New York, NY 10005
Attention: Huan Wang, Secretary

Telephone:

Email: citikingus@gmail.com

DATE OF THIS AGREEMENT: July 25, 2019

1. Defined Terms. Reference is made to the LSTA Purchase and Sale Agreement for Distressed Trades, dated July 10, 2018, made by Seller (the "Purchase Agreement"). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Purchase Agreement.

2. Partial Payment. Buyer agrees to pay to Seller a principal payment to be applied towards partial satisfaction of the Purchase Price in the amount of \$4,000,000 (the "July 2019 Payment") on July 25, 2019.

3. Amount Due. Upon payment of the July 2019 Payment, Buyer and Seller agree that the amount due under the Purchase Agreement as of the date hereof in total satisfaction of Buyer's obligations equals \$12,150,000.00 (the "Amount Due"). The Buyer and Seller agree that the prior payment of \$1,683,500 was credited as \$1,000,000 of principal and \$683,500 of interest. The Amount Due shall be reduced by any further principal payment including either the Outside Date Payment (as defined below) or any prepayment.

4. Interest. The Amount Due shall bear interest at an interest rate per annum equal to 12% on an actual/360 basis to the fullest extent permitted by applicable law. Accrued and unpaid interest ("Interest") shall be due and payable on the last business day of each month. Interest shall accrue from July 25, 2019. The first interest payment date shall be the last business day in August, 2019.

5. Further Agreement. It is the intention of Buyer and Seller that the Company shall withdraw its pending Motion to Sell under Section 363 of the Bankruptcy Code of 1986, as amended, and, in its place, file a plan of reorganization (the “Plan”) that will incorporate the following terms:

(i) Seller will not object to the Plan but payment of all obligations of Buyer to Seller (or a conversion to exit financing as described below) shall be added as a condition precedent to the Plan being declared effective;

(ii) Payment of the Amount Due and the declaration of effective date of the Plan shall occur on or before October 31, 2019 (the “Outside Date”);

(iii) If the Amount Due is not paid by the Outside Date and/or the Plan has not been declared effective by the Outside Date, Seller will make a payment of \$2,500,000 towards principal reduction of the Amount Due (the “Outside Date Payment”) in exchange for a thirty-day extension of the Outside Date;

(iv) At the end of the thirty-day extension period, either: (i) the Seller must be paid the Amount Due or (ii) the Plan must be declared effective and the Seller shall have received the mutually agreed upon exit financing debt;

(v) Upon receipt of the Outside Date Payment on or before the Outside Date, Seller will allow the Company to have the Plan declared effective, and any remaining Amounts Due (as further reduced by the Outside Date Payment and any prepayment) shall be converted to an exit financing debt of the newly emerged company from bankruptcy (the “NewCo”) with all of Newco’s assets and equity as collateral securing the loan;

(vi) Upon either (i) payment in full of the remaining Amount Due or (ii) conversion of the remaining Amount Due into an exit financing debt of NewCo, (a) Seller shall release liens it holds on the assets of Buyer under the Purchase Agreement, and (b) Buyer and Seller shall mutually release each other from any and all claims, whether arising by contract or otherwise, up to such time;

(vii) The parties agree that the exit financing, if needed, will have a maturity date of July 31, 2020, with standard and commercially reasonable terms including liens against the assets and equity of NewCo (and for the avoidance of doubt, the terms shall provide for a release of such liens in connection with a refinancing of such loan that repays the loan in full, and the Seller shall use commercially reasonable efforts as needed in connection with such release), with an interest rate of 12% per annum on an actual/360 basis to be paid in cash on the last business day of each month with a \$2,000,000 principal payment due on April 30, 2020 and

(viii) Upon complete satisfaction of any and all Amounts Due, Seller shall remove any and all liens it has placed against Buyer, the Company or NewCo, if any.

6. Prepayment. Buyer shall have the right to prepay the Amount Due, either in full or partial payments, at any time. For the avoidance of doubt, interest accrues on the Amount Due, reflecting any reductions due to prepayment.

7. Governing Law; Counterparts; Signatures. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving regard to conflicts of law principles. Each party submits to the jurisdiction of the federal or state courts located in the Borough of Manhattan, State of New York and agrees that any litigation relating to this Agreement shall be brought only in such courts. Each party hereto consents to service of process by certified mail at its address listed above. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or electronic transmission in portable document format (.pdf) shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or electronic transmission in portable document format (.pdf) also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

8. Further Assurances. Each party hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments and documents, and to take all such action as the other party may reasonably request, promptly upon the request of such party, in order to effectuate the intent and purpose of, and to carry out the terms of, this Agreement.

9. Entire Agreement. This Agreement, the LSTA Confirmation, the Escrow Agreement, the Purchase Agreement, the Continuing Obligations Agreement and the Purchase Price Letter constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings or representations pertaining to the subject matter hereof, whether oral or written. There are no warranties, representations or other agreements between the parties in connection with the subject matter hereof except as specifically and expressly set forth herein. No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by the parties and no waiver of any provision of this Agreement, nor consent to any departure by either party from it, shall be effective unless it is in writing and signed by the affected party, and then such waiver or consent shall effective only in the specific instance and for the specific purpose for which given.

10. WAIVER OF JURY TRIAL. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY LEGAL PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE 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 PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.


11. Notice. All demands, notices, consents, and communications hereunder shall be in writing and shall be deemed to have been duly given when hand-delivered or duly deposited in the mails, by certified or registered mail, postage prepaid-return-receipt requested, to the addresses set forth above, or such other address as may be furnished hereafter by notice in writing. All payments by Seller to Buyer and Buyer to Seller under this Agreement shall be made in the lawful currency of the United States by wire transfer of immediately available funds to Seller and Buyer, as applicable, in accordance with the wire instructions specified in the Purchase Price Letter.

[signature page follows]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement by their duly authorized representatives as of the date first written above.

SELLER:

DWC PINE INVESTMENTS I, LTD

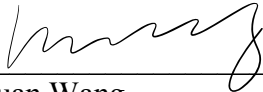
By: 

Name: Houdin Honarvar

Title: Director

BUYER:

CITIKING INTERNATIONAL US, LLC

By: 

Name: Huan Wang

Title: Secretary

EXHIBIT C-3

PSA



PURCHASE AND SALE AGREEMENT FOR DISTRESSED TRADES

TRANSACTION SPECIFIC TERMS

THIS PURCHASE AND SALE AGREEMENT FOR DISTRESSED TRADES is dated as of the Agreement Date and entered into by and between Seller and Buyer to govern the purchase and sale of the Loans, the Commitments (if any) and the other Transferred Rights, in accordance with the terms, conditions and agreements set forth in the LSTA Standard Terms and Conditions for Purchase and Sale Agreement for Distressed Trades published by the LSTA as of June 9, 2017 (the "Standard Terms"). The Standard Terms are incorporated herein by reference without any modification whatsoever except as otherwise agreed herein by the Parties and as specifically supplemented and modified by the terms and elections set forth in the Transaction Summary and Sections A through H below. The Standard Terms and the Transaction Specific Terms together constitute a single integrated Purchase and Sale Agreement for Distressed Trades governing the Transaction. With respect to the Transaction, the Parties agree to be bound by the Standard Terms and the Transaction Specific Terms set forth herein.

<u>TRANSACTION SUMMARY</u>	
Trade Date:	July 10, 2018
Agreement Date:	July 10, 2018
Seller:	DWC Pine Investment I, Ltd.
Seller MEI¹:	
Buyer:	Citiking International US, LLC
Buyer MEI²:	
Credit Agreement:	Credit and Security Agreement dated as of July 20, 2012 as amended, from time to time, through Amendment No. 21 as of February 15, 2018
Borrower:	Eclipse Aerospace, Inc.
Purchase Amount(s):	\$26,105,837.15
Tranche(s):	Term Loan in the amount of \$23,260,865.27, plus Revolving Loans in the amount of \$2,844,971.88
CUSIP Number(s), if available:	
Pre-Settlement Date Accruals Treatment:	<input type="checkbox"/> Settled Without Accrued Interest <input checked="" type="checkbox"/> Trades Flat <input type="checkbox"/> Paid on Settlement Date
Type of Assignment:	<input checked="" type="checkbox"/> Original Assignment <input type="checkbox"/> Secondary Assignment

¹ Insert Markit Entity Identifier for Seller, if available.

² Insert Markit Entity Identifier for Buyer, if available.

Borrower in Bankruptcy:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Delivery of Credit Documents:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Netting Arrangements:	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
Flip Representations:	Yes <input type="checkbox"/> ³	No <input checked="" type="checkbox"/>
Step-Up Provisions:	Yes <input type="checkbox"/> ⁴	No <input checked="" type="checkbox"/>
Transfer Notice	Shift Date ⁵ : Yes <input type="checkbox"/> ⁶	No <input checked="" type="checkbox"/>

1. DEFINITIONS

Capitalized terms used in this Agreement shall have the respective meanings ascribed thereto in Section 1 of the Standard Terms, as supplemented by Section A of the Transaction Specific Terms and as otherwise may be provided in other provisions of this Agreement. Terms defined in the Credit Agreement and not otherwise defined in this Agreement shall have the same meanings in this Agreement as in the Credit Agreement. Except as otherwise expressly set forth herein, each reference herein to “the Agreement,” “this Agreement,” “herein,” “hereunder” or “hereof” shall be deemed a reference to this Agreement. If there is any inconsistency between the Transaction Specific Terms and the Standard Terms, the Transaction Specific Terms shall govern and control.

In this Agreement:

“Agent” means Cantor Fitzgerald Securities.

“Assignment” means the [specify name of applicable document form] that is in the form specified in the Credit Agreement for an assignment of the Loans and Commitments (if any) and any Required Consents to such assignment [specify any other relevant assignment or consent documents required under the Credit Agreement, e.g., Notice of Assignment].

“Bankruptcy Case” select one:

³ The Parties cannot specify “Yes” to both “Flip Representations” and “Step-Up Provisions” unless they set forth appropriate modifications in Section H. Neither “Flip Representations” nor “Step-Up Provisions” applies to original assignments.

⁴ The Parties cannot specify “Yes” to both “Flip Representations” and “Step-Up Provisions” unless they set forth appropriate modifications in Section H. Neither “Flip Representations” nor “Step-Up Provisions” applies to original assignments.

⁵ Specify the Shift Date only if “Yes” is specified opposite “Step-Up Provisions” and if the second box is selected in the definition of Covered Prior Seller. The Shift Date is the date published by the LSTA and is that date determined by the LSTA to be the date on which market convention for transferring the Debt shifted from par documentation to distressed documentation (the “Shift Date”). The Parties shall include the Shift Date published by the LSTA, or, if the Shift Date has not been published by the LSTA, either party may request in writing (a “Shift Date Request”) that the LSTA determine whether market convention for transferring the Debt has shifted from par documentation to distressed documentation and, if it so determines, to select and publish the Shift Date. To submit a Shift Date Request, send a request that includes the name of Borrower, the title and date of the Credit Agreement, the deal CUSIP (or facility CUSIP, if appropriate), and name of the administrative agent under the Credit Agreement to the LSTA at Istashiftdates@lsta.org. The Shift Date published by the LSTA shall be binding on the parties.

⁶ “Yes” can be elected only if “Yes” is specified opposite “Borrower in Bankruptcy” in the Transaction Summary.

X not applicable.

☐ means [the case under the Bankruptcy Code pending before the Bankruptcy Court in which Borrower is a debtor, In re _____, No. _____].

"Bankruptcy Court" select one:

X not applicable.

☐ means [the United States Bankruptcy Court for the _____ District of _____ (and, if appropriate, the United States District Court for that District)].

"Bar Date" select one:

X not applicable.

☐ none has been set.

☐ means [specify applicable date, if any].

"Buyer Purchase Price" select one:

X not applicable.

☐ means the purchase price payable by Buyer to Original Buyer pursuant to the Netting Letter (this applies if there are three (3) parties involved in the netting arrangement).

☐ means the purchase price payable by Buyer to Penultimate Buyer pursuant to the Netting Letter (this applies if there are four (4) or more parties involved in the netting arrangement).

"Commitments" select one:

X none.

☐ means [identify applicable commitment tranche(s) using Credit Agreement definitions] in the principal amount of \$/£/€ _____ [in each case specify the aggregate amount of the Loans, the Unfunded Commitments and the portion, if any, of the Commitments that is irrevocably "frozen" (i.e., that is not subject to future drawing)].

"Covered Prior Seller" select one:

X not applicable.

☐ means each Prior Seller that transferred the Loans and Commitments (if any)⁷ on or after the Shift Date [but prior to the transfer pursuant to which _____⁸ transferred such Loans and Commitments (if any) on a distressed documentation basis pursuant to the Purchase and Sale Agreement for Distressed Trades dated as of _____, as set forth in the Annex].⁹

"Filing Date" select one:

X not applicable.

☐ means [identify date on which Borrower filed Bankruptcy Case].

"Loans" means Term Loans and Revolving Loans in the aggregate outstanding principal amount of \$25,768,831.03

"Netting Letter" select one:

X not applicable.

☐ means that certain Multilateral Netting Agreement in the form currently published by the LSTA dated on or as of the Agreement Date among Seller, Buyer [and] [,] Original Buyer [, Penultimate Buyer] and [describe any other parties to the Netting Letter]].

⁷ If applicable to only a portion of the Loans and Commitments (if any), specify the portion that applies, e.g., "each Prior Seller that transferred the [Name of applicable Covered Prior Seller] Loans (as defined in Section 1 of the Annex)."

⁸ Specify the first Entity that transferred the Loans and Commitments (if any) on a distressed documentation basis on or after the Shift Date.

⁹ The bracketed language applies where the relevant Predecessor Transfer Documents include a distressed trade that settled after the par/near par trade which settled on or after the Shift Date.

"Original Buyer" select one:

☒ not applicable.

☐ means [specify original buyer in the netting arrangement].

"Penultimate Buyer" select one:

☒ not applicable.

☐ none ("none" is applicable if there are only three (3) parties involved in the netting arrangement).

☐ means [_____].

"Required Consents" means [specify consent(s), acknowledgement(s) and/or notice(s) required by the Transaction Documents to transfer the Transferred Rights].

"Seller Purchase Price" select one:

☒ not applicable.

☐ means the purchase price payable by Original Buyer to Seller pursuant to the Netting Letter.

"Transfer Fee" means \$3,500.

"Unfunded Commitments" means none..

2. **SECTION 4 (SELLER'S REPRESENTATIONS AND WARRANTIES)**

The following specified terms shall apply to the sections referenced in this Section B:

	<u>Flat Representation</u>	<u>Flip Representation</u>	<u>Step-Up Representation</u>
	If "No" is specified opposite both "Flip Representations" and "Step-Up Provisions" in the Transaction Summary, the following subsections of Section 4 shall apply:	If "Yes" is specified opposite "Flip Representations" in the Transaction Summary, the following subsections of Section 4 shall apply:	If "Yes" is specified opposite "Step-Up Provisions" in the Transaction Summary, the following subsections of Section 4 shall apply:
Section 4.1(d) (<u>Title</u>)	Section 4.1(d)(i)	Section 4.1(d)(ii)	Section 4.1(d)(i)
Section 4.1(e) (<u>Proceedings</u>)	Section 4.1(e)(i)	Section 4.1(e)(i)	Section 4.1(e)(ii)
Section 4.1(f) (<u>Principal Amount</u>)	Section 4.1(f)(i)	Section 4.1(f)(ii)	Section 4.1(f)(i)
Section 4.1(g) (<u>Future Funding</u>)	Section 4.1(g)(i)	Section 4.1(g)(ii)	Section 4.1(g)(iii)
Section 4.1(h) (<u>Acts and Omissions</u>)	Section 4.1(h)(i)	Section 4.1(h)(i)	Section 4.1(h)(ii)
Section 4.1(i) (<u>Performance of Obligations</u>)	Section 4.1(i)(i)	Section 4.1(i)(i)	Section 4.1(i)(ii)
Section 4.1(l) (<u>Setoff</u>)	Section 4.1(l)(i)	Section 4.1(l)(i)	Section 4.1(l)(ii)
Section 4.1(t) (<u>Consents and Waivers</u>)	Section 4.1(t)(i)	Section 4.1(t)(i)	Section 4.1(t)(ii)
Section 4.1(u) (<u>Other Documents</u>)	Section 4.1(u)(i)	Section 4.1(u)(i)	Section 4.1(u)(ii)
Section 4.1(v) (<u>Proof of Claim</u>)	Section 4.1(v)(i)	Section 4.1(v)(ii)	Section 4.1(v)(i)

Section 4.1(k) (Purchase Price); Netting Arrangements.

If "Yes" is specified opposite Netting Arrangements in the Transaction Summary, Section 4.1(k) shall be amended in its entirety as follows:

"(k) [intentionally omitted]."¹⁰

Section 4.1(r) (Predecessor Transfer Agreements).

- ☐ Seller acquired the Transferred Rights from Immediate Prior Seller pursuant to Predecessor Transfer Agreements relating to par/near par loans.
- ☐ Seller acquired the Transferred Rights from Immediate Prior Seller pursuant to Predecessor Transfer Agreements relating to distressed loans.
- ☐ Seller acquired the Transferred Rights from Immediate Prior Seller pursuant to Predecessor Transfer Agreements relating to both par/near par loans and distressed loans.
- X Not applicable.

Section 4.1(u) (Other Documents).

- X None.
- ☐ The following: _____.

Section 4.1(v) (Proof of Claim).

- ☐ The Proof of Claim was duly and timely filed, on or prior to the Bar Date, by
 - ☐ the Agent on behalf of the Lenders.
 - ☐ Seller or a Prior Seller.
- ☐ The Bar Date specified in the Transaction Specific Terms has been set in the Bankruptcy Case and no Proof of Claim has been filed.
- ☐ No Bar Date has been set in the Bankruptcy Case and no Proof of Claim has been filed.
- X Not applicable.

3. SECTION 5 (BUYER'S REPRESENTATIONS AND WARRANTIES)

3.1 Section 5.1(n) (Buyer Status). [Specify Buyer's status for purposes of determining any Required Consents, minimum assignment amount requirements or Transfer Fee requirements.]

- ☐ Buyer is not a Lender.
- X Buyer is a Lender.
- ☐ Buyer is an Affiliate [substitute Credit Agreement defined term if different] (as defined in the Credit Agreement) of a Lender.
- ☐ Buyer is an Approved Fund [substitute Credit Agreement defined term if different] of a Lender.

3.2 If "Yes" is specified opposite "Delivery of Credit Documents" in the Transaction Summary, Buyer represents and warrants that it (i) was not a Lender on the Trade Date and (ii) requested copies of the Credit Documents from Seller on or prior to the Trade Date.

4. SECTION 6 (INDEMNIFICATION)

Section 6.1 (Seller's Indemnities); Step-Up Indemnities.

(i) If "Yes" is specified opposite "Step-Up Provisions" in the Transaction Summary, Seller's indemnities contained in Section 6.1(b) shall apply (and the alternate indemnities contained in Section 6.1(a) shall not apply).

(ii) If "No" is specified opposite "Step-Up Provisions" in the Transaction Summary, Seller's indemnities contained in Section 6.1(a) shall apply (and the alternate indemnities contained in Section 6.1(b) shall not apply).

¹⁰ Seller should add, and Buyer should cause Original Buyer or Penultimate Buyer, as applicable, to add, a comparable representation to the Netting Letter in lieu of this representation.

5. SECTION 7 (COSTS AND EXPENSES)

- ☐ The Transfer Fee shall be paid by Seller to the Agent and the Purchase Price shall be increased by an amount equal to
- ☐ one-half thereof.
 - ☐ other relevant fraction or percentage, _____, thereof.
- ☐ The Transfer Fee shall be paid by Buyer to the Agent and Buyer shall receive a credit to the Purchase Price equal to
- ☐ one-half thereof.
 - ☐ other relevant fraction or percentage, _____, thereof.
- ☐ The Transfer Fee shall be paid and allocated in the manner specified in the Netting Letter.
- ☐ The Transfer Fee has been waived by the Agent and, accordingly, no adjustment to the Purchase Price shall be made in respect thereof.
- X There is no Transfer Fee and, accordingly, no adjustment to the Purchase Price shall be made in respect thereof.

6. SECTION 8 (DISTRIBUTIONS; INTEREST AND FEES; PAYMENTS)

6.1 Section 8.2 (Distributions); Step-Up Distributions Covenant.

(i) If "Yes" is specified opposite "Step-Up Provisions" in the Transaction Summary, Seller's covenants contained in Section 8.2(b) shall apply (and the alternate covenants contained in Section 8.2(a) shall not apply).

(ii) If "No" is specified opposite "Step-Up Provisions" in the Transaction Summary, Seller's covenants contained in Section 8.2(a) shall apply (and the alternate covenants contained in Section 8.2(b) shall not apply).

6.2 Section 8.5 (Wire Instructions).

Buyer's Wire Instructions:

Redacted with Redact-It

Seller's Wire Instructions:

Redacted with Redact-It

7. SECTION 9 (NOTICES)

Buyer's Address for Notices and Delivery:

Citiking International US, LLC
14 Wall Street, 20th Floor
New York, NY 10005
Attention: Huan Wang, Secretary
Telephone: 631-880-2989
Electronic Mail Address: citikingus@gmail.com

Seller's Address for Notices and Delivery:

DWC Pine Investments I, Ltd.
590 Madison Avenue, 13th Floor
New York, NY 10022
Attn: DW Legal
Email: DW.Legal@dwpartners.com and joel.biran@dwpartners.com

8. SECTION 27 (ADDITIONAL PROVISIONS)

The following additional provisions, including any modifications to existing provisions, apply:

The Agreement is amended by deleting the text of the definitions of "Operative Documents" and "Settlement Date" and substituting therefor the following:

"Operative Documents" means (i) this Agreement, (ii) the Assignment, (iii) the Purchase Price Letter, (iv) if "Yes" is specified opposite "Transfer Notice" in the Transaction Summary, the Transfer Notice, (v) the Continuing Obligations Agreement, and (vi) the Escrow Agreement.

"Settlement Date" means the date on which Seller receives the First Installment.

The following definitions are added to the Agreement:

"Continuing Obligations Agreement" means the Continuing Obligations Agreement, dated the date of this Agreement, between Buyer and Seller that specifies the obligations of Seller and Buyer with respect to the Transferred Rights after the payment of the First Installment.

"Escrow Agreement" means the Escrow Agreement, dated the date hereof, among Buyer, Seller, and the Agent.

"Final Installment" means \$7,650,000.

"First Installment" means \$2,000,000.

"Second Installment" means \$7,500,000.

"Installments" means the First Installment, the Second Installment and the Final Installment, collectively.

Section 3.2 of the Agreement is amended by deleting the word "Purchase Price" in clause (d) thereof and substituting therefor "First Installment"

The Agreement is amended by inserting the following at the end of Article 8 as Section 8.7:

Notwithstanding anything to the contrary in the Confirmation, or the Operative Documents, the Purchase Price shall be paid in three installments. Buyer shall pay to seller, the First Installment on the date of this Agreement, the Second Installment on or before 5 p.m. (New York Time) on August 24, 2018 (the **"Second Installment Date"**), and the Final Installment on or before 5 p.m. (New York Time) on October 8, 2018 (the **"Final Installment Date"** and together with the Second Installment Date, the **"Installment Dates"**).



IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement by their duly authorized officers or representatives as of the Agreement Date.

SELLER

DWC PINE INVESTMENTS I, LTD.

By: Houdin Honarvar

Name: Houdin Honarvar
Title: Director

BUYER

CITIKING INTERNATIONAL US, LLC

By: _____

Name: Huan Wang
Title: Secretary



IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement by their duly authorized officers or representatives as of the Agreement Date.

SELLER

DWC PINE INVESTMENTS I, LTD.

By: _____
Name: Houdin Honarvar
Title: Director

BUYER

CITIKING INTERNATIONAL US, LLC

By: _____
Name: Huan Wang
Title: Secretary

ANNEX TO PURCHASE AND SALE AGREEMENT FOR DISTRESSED TRADES¹

1. If "Secondary Assignment" is specified opposite "Type of Assignment" in the Transaction Summary, list of Predecessor Transfer Agreements² and principal amount, as of the Settlement Date, of the portion of the Loans and Commitments (if any) thereunder assigned hereby for purposes of Section 4.1(r) and Section 5.1(k)(i) hereof, and designation as to whether such Predecessor Transfer Agreements relate to par/near par loans or distressed loans. N/A
2. List of Credit Agreement and any other Credit Documents delivered pursuant to Section 4.1(s) hereof.³ N/A
3. Description of Proof of Claim (if any).⁴ N/A
4. Description of Adequate Protection Order (if any).⁵ N/A
5. List any exceptions to Section 4.1(w) (Notice of Impairment).⁶ N/A
6. The amount of any PIK Interest that accreted to the principal amount of the Loans on or after the Trade Date but on or prior to the Settlement Date is \$/£/€ _____.⁷ N/A

¹ For purposes of Sections 1 through 6 in this Annex, terms such as "none", "not applicable", "n/a", "irrelevant" and "zero" should be given the same meaning.

² List (i) any Predecessor Transfer Agreement to which Seller is a party, (ii) any Predecessor Transfer Agreement of Prior Sellers relating to distressed loans delivered to Seller by Immediate Prior Seller and (iii) any Predecessor Transfer Agreement of Prior Sellers relating to par loans listed in any Predecessor Transfer Agreement described in the preceding clause (ii).

³ If not applicable, so state.

⁴ May apply only if "Yes" is specified opposite "Borrower in Bankruptcy" in the Transaction Summary. If not applicable, so state. If applicable, note that according to the Standard Terms, failure to state is not failure to convey rights or obligations with respect thereto.

⁵ May apply only if "Yes" is specified opposite "Borrower in Bankruptcy" in the Transaction Summary. If not applicable, so state. If applicable, note that according to the Standard Terms, failure to state is not failure to convey rights or obligations with respect thereto.

⁶ If none, so state.

⁷ In addition to the terms listed in footnote 1 of this Annex, amounts listed as 0 or 0.00, with or without a currency sign, should be given the same meaning.