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PROPOSED ATTORNEYS FOR DEBTORS

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: § **Chapter 11**
§
ERICKSON INCORPORATED, et al.,¹ § **Case No. 16-34393-hdh**
§
Debtors. § **(Joint Administration Requested)**

**DEBTORS’ EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363 AND 364
AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION ON A
SUPER-PRIORITY SECURED AND PRIMING BASIS, (B) GRANT LIENS AND
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (C) USE CASH
COLLATERAL OF THE EXISTING FIRST LIEN PARTIES AND EXISTING
SECOND LIEN PARTIES, (D) GRANT ADEQUATE PROTECTION TO THE
EXISTING FIRST LIEN PARTIES AND EXISTING SECOND LIEN PARTIES,
AND (E) ENTER INTO DIP REVOLVING CREDIT FACILITY AND DIP TERM
FACILITY; (II) MODIFYING THE AUTOMATIC STAY; (III) SCHEDULING A
FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND
4001(C); AND (IV) GRANTING RELATED RELIEF**

Erickson Incorporated and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), file the *Debtors’ Emergency*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Erickson Incorporated (7561); EAC Acquisition Corporation (3733); Erickson Helicopters, Inc. (5052); Erickson Transport, Inc. (9162); Evergreen Helicopters International, Inc. (1311); Evergreen Equity, Inc. (9209); and Evergreen Unmanned Systems, Inc. (3961). The location of the Debtors’ service address is 5550 SW Macadam Avenue, Suite 200, Portland, OR 97239.



*Motion for Entry of Interim and Final Orders (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 Authorizing the Debtors to (A) Obtain Postpetition on a Super-Priority Secured and Priming Basis, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of the Existing First Lien Parties and Existing Second Lien Parties, (D) Grant Adequate Protection to the Existing First Lien Parties and Existing Second Lien Parties, and (E) Enter Into DIP Revolving Credit Facility and DIP Term Facility; (II) Modifying the Automatic Stay; (III) Scheduling A Final Hearing Pursuant to Bankruptcy Rules 4001(B) and 4001(C); and (IV) Granting Related Relief (this “**Motion**”), and respectfully represent:*

Preliminary Statement²

1. The Debtors business is capital intensive. The Debtors urgently need a significant amount of financing in order to continue operations and avoid immediate and irreparable harm. The DIP Facilities are the result of extensive and intense negotiations between and among the Debtors and the Existing First Lien Lenders and Ad-Hoc Noteholders. The DIP Facilities provide the only means for the Debtors to preserve and enhance value and avoid immediate and irreparable harm.

2. The DIP Facilities are unique and complex, but reflect the only terms under which the Debtors are able to obtain the significant financing necessary to preserve value and pursue reorganization of their estates. The parties’ agreement to the terms of DIP Facilities also allowed the Debtors access to significant prepetition financing from the Existing First Lien Lenders. The additional prepetition funding provided by the Existing First Lien Lenders was necessary to fund critical expenses, including payroll, to provide the Debtors with an orderly transition into the Chapter 11 Cases.

² Terms not defined in this Preliminary Statement are defined elsewhere in this Motion.

3. The DIP Facilities includes unique features including a gradual “roll-up” of the Existing First Lien Obligations and two (2) different debtor-in-possession financing facilities provided by two (2) different lender groups. The Existing First Lien Lenders are providing a DIP Revolving Facility. The Backstop Parties (consisting of certain Second Priority Noteholders) are providing a DIP Term Facility in the amount of \$66,670,000. The DIP Facilities allow the Debtors access to significant and necessary financing immediately while preserving the bargained for Senior Liens and payment priority of the Existing First Lien Lenders.

4. The roll-up feature of the DIP Revolving Facility is justified under the circumstances because, among other things: (i) the Existing First Lien Lenders agreed to provide significant additional prepetition financing which allowed the Debtors to pay expenses, including payroll, necessary for the Debtors to enter into the Chapter 11 Cases with minimal disruption; (ii) the Existing First Lien Lenders are consenting to the use of cash; (iii) the Existing First Lien Lenders have demanded adequate protection of their interests in the First Lien Collateral and the Debtors have agreed, in connection with the DIP Facilities, for the application of the cash proceeds of the First Lien Collateral to be first applied against the Existing First Lien Obligations; (iv) the Existing First Lien Lenders are consenting to the DIP Term Facility; (v) the roll-up amounts of the DIP Revolving Facility will be junior to the Existing First Lien Facility; (vi) it will result in a decrease in aggregate Prepetition First Lien Obligations; (vii) subject to certain conditions, the Existing First Lien Lenders are waiving a \$7 million Refinancing Accommodation Fee; (viii) accrual of \$500,000 in bi-weekly financing fees will cease upon interim approval of this Motion; and (ix) it allows the Debtors uninterrupted use of their employee corporate credit card program provided by the Existing First Lien Agent.

5. The DIP Term Facility is justified under the circumstances because, among other things, the DIP Term Facility: (i) does not prime the Existing First Lien Facility or the DIP Revolving Facility; (ii) allows the Second Priority Noteholders to participate in the DIP Term Facility; (iii) allows the Debtors to avoid immediate and irreparable harm by providing significant capital that is critical to preserving and enhancing the value of the Debtors' businesses; (iv) provides adequate protection to the Second Priority Noteholders; and (v) avoids timely, costly, and risky priming litigation that the Debtors would not have the resources to pursue under the circumstances.

6. The Debtors are at a critical junction and the DIP Facilities provide the necessary financing to allow the Debtors to pursue a reorganization. Despite diligent efforts, the Debtors were unable to negotiate acceptable terms on debtor-in-possession financing proposals from potential third-party lenders due to, among other things, the expedited need for liquidity, the limited time for potential third-party lenders to conduct adequate due diligence, and potential third-party lenders' unwillingness to engage in a priming dispute with the Prepetition Secured Parties. Further, the Debtors do not have unencumbered assets available to support third party financing. The complexity of the Debtors' prepetition capital structure contributed to a situation where the DIP Facility reflects the only viable option for the Debtors to obtain the financing they critically need.

Jurisdiction and Venue

7. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

8. The Debtors, together with their non-debtor affiliates (collectively, “**Erickson**”), are a vertically-integrated manufacturer and operator of the powerful heavy-lift Erickson S-64 Aircrane helicopter (the “**Aircrane**”), and are a leading global provider of aviation services. Erickson currently possesses a diverse fleet of 69 rotary-wing and fixed-wing aircraft that support a variety of government and civil customers worldwide. These customers rely on Erickson for a broad range of aerial services, including critical supply and logistics for deployed military forces, humanitarian relief, firefighting, timber harvesting, infrastructure construction, and crewing.

9. Included among Erickson’s fleet are 20 Aircranes, for which Erickson owns the Type and Production Certificates. Erickson manufactures the Aircranes and related components for sale to government and commercial customers. Erickson also provides aftermarket support and maintenance, repair, and overhaul services for the Aircranes and other aircraft.

10. To facilitate a further restructuring of the Debtors’ businesses, on the date hereof (the “**Petition Date**”), each of the Debtors commenced cases (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Chapter 11 Cases. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Cases, and no committees have been appointed or designated.

11. Additional information about Erickson’s businesses, capital structure, and the circumstances leading to the commencement of the Chapter 11 Cases can be found in the

Declaration of David Lancelot in Support of the Debtors' Chapter 11 Petitions and First Day Motions (the "**Lancelot Declaration**"), filed concurrently herewith.

Relief Requested

12. By this Motion, the Debtors request entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "**Interim Order**"), and a final order (the "**Final Order**") to be submitted to the Court for approval in connection with the final hearing on this Motion (the "**Final Hearing**"):

(i) authorizing the Debtors to obtain postpetition financing pursuant to sections 363 and 364 of the Bankruptcy Code, by entering into a first lien super-priority priming debtor-in-possession revolving credit facility in favor of the DIP Revolving Agent (as defined below) on an interim and final basis;

(ii) authorizing the Debtors to obtain postpetition financing pursuant to sections 363 and 364 of the Bankruptcy Code, by entering into a second lien super-priority priming term debtor-in-possession term loan credit facility of \$49,000,000 on an interim basis and a total aggregate amount of \$66,670,000 on a final basis, in favor of the DIP Term Agent (as defined below) on an interim and final basis;

(iii) authorizing the Debtors to enter into definitive documentation related to the postpetition financing, including credit agreements consistent with the terms and conditions of the Interim Order and Final Order;

(iv) granting priming liens under section 364(d)(1) of the Bankruptcy Code and superpriority claims under section 364(c)(1) of the Bankruptcy Code to and on behalf of and for the benefit of the DIP Lenders in all DIP Collateral in accordance with the Interim Order and the Final Order to secure any and all of the Obligations under the DIP Facilities, in accordance with the terms and conditions of the Prepetition Intercreditor Agreement (as defined below), as may be amended by the DIP Intercreditor Agreement (as defined below);

(v) approving certain stipulations by the Debtors with respect to the Prepetition Loan Documents and the Prepetition Liens, subject to certain "Objection Provisions" therein;

(vi) modifying the automatic stay, under section 362 of the Bankruptcy Code, in favor of the DIP Agents, to the extent necessary and required by the DIP Facilities, including, but not limited to, permitting the DIP Lenders to accelerate the repayment of amounts due and to terminate all commitments under the DIP Facility following the DIP Remedies Notice Period (as defined in the Interim Order);

(vii) granting adequate protection replacement liens and section 507(b) claims to the Existing First Lien Lenders and the Second Priority Noteholders, consistent with the terms and conditions of the Prepetition Intercreditor Agreement, as amended by the DIP Intercreditor Agreement;

(viii) subject to, and only effective upon the entry of, a final order granting such relief, limiting the Debtors’ right to surcharge against collateral pursuant to section 506(c) of the Bankruptcy Code; and

(ix) scheduling the Final Hearing within 30 days of the entry of the Interim Order and approving notice with respect thereto in accordance with Bankruptcy Rule 4001(c)(2).

Concise Statement of the Material Terms of the DIP Credit Agreement and Interim Order³

13. Pursuant to, and in accordance with, Bankruptcy Rule 4001(b), the following is a concise statement of the material provisions of the DIP Facilities:

List of Material Terms		Reference⁴
Cash Collateral	<p>Entities with interest in Cash Collateral:</p> <ul style="list-style-type: none"> - Existing First Lien Lenders (first lien) - Second Priority Noteholders (second lien) <p>Purposes for the use of Cash Collateral:</p> <ul style="list-style-type: none"> - As adequate protection of the interests of the Existing First Lien Lenders, application of the First Lien Collateral and cash collateral in reduction of the Prepetition First Lien Obligation - Repayment of Existing First Lien Obligations <p>Material terms for use of Cash Collateral:</p> <ul style="list-style-type: none"> - Duration of use of Cash Collateral: Term of the Interim Order or Final Order, as applicable. Outside date of 6 months. - Subject to DIP Budget - Subject to terms of the DIP Facilities <p>Adequate protection to First Lien Agent and First Lien Lenders:</p> <ul style="list-style-type: none"> - Cash payments of interest on a current basis, calculated at the non-default rate under the Existing First Lien Credit Agreement (without prejudice to the right to assert claims for default interest) - Payments in cash on a current basis of all reasonable and documented fees, costs and expenses of the Existing First Lien Parties’ legal counsel and their respective professional advisors 	<p>IO ¶ C(v) IO ¶ D(v)</p> <p>IO ¶ 5</p> <p>IO ¶¶ 4, 22</p> <p>IO ¶ 11</p>

³ This concise statement is qualified in its entirety by reference to the applicable provisions of the DIP Loan Documents or the Interim Order, as applicable. To the extent there exists any inconsistency between this concise statement and the provisions of the DIP Loan Documents, the provisions of the DIP Loan Documents shall control and the Interim Order shall control over the DIP Credit Agreement. Any capitalized terms used but not defined in the concise statement shall have the meanings ascribed to such terms in the DIP Credit Agreement or the Interim Order, as applicable.

⁴ References are to the DIP Term Sheet (“TS”) attached hereto as **Exhibit A** to the Interim Order, or the Interim Order (“IO”).

	List of Material Terms	Reference⁴
	<ul style="list-style-type: none"> - Additional adequate protection replacement liens on all property of the Debtors’ estates , whether prepetition or postpetition (except for Chapter 5 causes of action, but subject to a final order, the additional adequate protection replacement liens will encumber proceeds of Chapter 5 causes of actions), in the same relative priority, and to the extent of the post-petition diminution in value, of its prepetition collateral and subject to the Carve-Out - Super-priority claim pursuant to section 507(b) of the Bankruptcy Code, to the extent of the post-petition diminution in value of their prepetition collateral and subject to the Carve-Out <p>Adequate protection to Second Priority Noteholders:</p> <ul style="list-style-type: none"> - Interest, calculated at the non-default rate, under the Second Priority Notes shall continue to accrue (without prejudice to the right to assert claims for default interest) - Payments in cash on a current basis of all reasonable and documented fees, costs and expenses of a single legal counsel to the Indenture Trustee, to be funded under the DIP Term Facility - Additional adequate protection replacement liens on all property of the Debtors’ estates (except for Chapter 5 causes of action, but subject to a final order, the additional adequate protection replacement liens will encumber proceeds of Chapter 5 causes of actions), in the same relative priority, and to the extent of the post-petition diminution in value, of its prepetition collateral and subject to the Carve-Out, subject to the terms and conditions of the Existing Intercreditor Agreement - Super-priority claim pursuant to section 507(b) of the Bankruptcy Code, to the extent of the post-petition diminution in value of its prepetition collateral and subject to the Carve-Out, subject to the terms and conditions of the Existing Intercreditor Agreement 	<p>IO ¶ 12</p>
<p>DIP Revolving Facility</p>	<p>Borrowers: Erickson Incorporated, a Delaware corporation f/k/a Erickson Air-Crane Incorporated ("<u>Erickson</u>"), and Erickson Helicopters, Inc., an Oregon corporation f/k/a Evergreen Helicopters, Inc. ("<u>EH</u>"; together with Erickson, each, a "<u>Borrower</u>", and collectively, jointly and severally, the "<u>Borrowers</u>")</p> <p>Guarantors: Each of the Borrower’s direct and indirect subsidiaries (collectively, "<u>Guarantors</u>")</p> <p>Administrative Agent to the DIP Revolving Facility: Existing First Lien Agent</p> <p>DIP Revolving Lenders: Existing First Lien Lenders</p> <p>Purposes for the use of DIP Revolving Facility: Proceeds of the DIP Revolving Facility will be used to (i) fund certain fees and expenses associated with the DIP Revolving Facility, and (ii) pay, when due, those expenses enumerated in the DIP Budget.</p> <p>Borrowing Limits: Lesser of:</p> <p>(i) the amount equal to (A) the Maximum Revolver Amount <i>less</i> (B) the aggregate principal amount of Prepetition First Lien Loans deemed to be outstanding at such time (after giving effect to all Deemed Prepetition First Lien Loan Repayments (as defined below) made prior to such time) <i>less</i> (C) the “Letter of Credit Usage” (as defined under the Existing First Lien Credit Agreement) at such time <i>less</i> (D) the “Letter of Credit Usage” (as defined under the DIP</p>	<p>TS p. 1</p> <p>TS pp. 1-2</p> <p>TS p. 4</p> <p>TS p. 4</p> <p>IO ¶ J</p> <p>TS p. 5</p>

List of Material Terms	Reference ⁴
<p>Revolving Facility) at such time <i>less</i> (E) the principal amount of Swing Loans (as defined under the DIP Revolving Facility) at such time; and</p> <p>(ii) the amount equal to (A) the “Borrowing Base” (as defined under the DIP Revolving Facility, which definition (and the component definition thereof) shall be substantially the same as the definition under the Existing First Lien Credit Agreement, subject to DIP Term Sheet) in effect at such time <i>less</i> (B) the aggregate principal amount of Prepetition First Lien Loans deemed to be outstanding at such time (after giving effect to all Deemed Prepetition First Lien Loan Repayments made prior to such time) <i>less</i> (C) the “Letter of Credit Usage” (as defined under the Existing First Lien Credit Agreement) at such time <i>less</i> (D) the “Letter of Credit Usage” (as defined under the DIP Revolving Facility) at such time <i>less</i> (E) the principal amount of Swing Loans (as defined under the DIP Revolving Facility) at such time.</p> <p>Interest Rate: LIBOR + 7.5%</p> <p>Maturity: Six (6) months, subject to earlier termination date conditions.</p> <p>Events of Default: Events of default customarily found in loan agreements for similar debtor-in-possession financings.</p> <p>Liens and Priority Claims: Pursuant to section 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, subject to the Carve-Out and DIP Intercreditor Agreement (as defined below), (a) all amounts owing by the Debtors under the DIP Revolving Facility and the obligations of the Guarantors in respect thereof will be secured, by a perfected, first priority security interest in and lien on substantially all of the assets of the Borrower and the Guarantors (the “<u>DIP Collateral</u>”) and (b) all amounts owing by the Debtors under the DIP Term Facility and the obligations of the Guarantors in respect thereof will be secured, by a perfected, second priority security interest in and lien on the DIP Collateral, in each case, with the priority set forth in the immediately succeeding paragraph. For the avoidance of doubt, the DIP Collateral securing the DIP Term Facility shall be identical to the DIP Collateral securing the DIP Revolving Facility.</p> <p>The liens and security interests granted under the DIP Term Facility (i) will prime and be senior to the liens and security interests in the DIP Collateral securing any prepetition indebtedness, other than the Prepetition First Lien Obligations, and (ii) will be junior to (x) the Carve-Out, (y) the liens on, and security interests in, the DIP Collateral securing the Prepetition First Lien Obligations under the Existing First Lien Credit Agreement (including, without limitation, any replacement liens constituting Existing First Lien Adequate Protection Liens) and (z) the liens on, and security interests in, the DIP Collateral securing the DIP Revolving Facility; <u>provided, however</u>, that the liens and security interests granted under the DIP Term Facility in the DIP Term Priority Account, and all amounts held therein or credited thereto, will prime and be senior to the liens and security interests securing (A) any prepetition indebtedness, including the indebtedness under the Existing First Lien Credit Agreement (including, without limitation, any replacement liens constituting Existing First Lien Adequate Protection Liens) and (B) the DIP Revolving Facility. In addition, the DIP Revolving Facility will be junior in priority of lien and in payment to the Prepetition First Lien Obligations until such Prepetition First Lien Obligations are indefeasibly paid in full in cash and other contingent obligations thereunder are cash collateralized (“<u>Paid in Full</u>”).</p> <p>In the Cases, (a) the DIP Revolving Agent and the DIP Revolving Lenders will be granted in each of the Interim Order and the Final Order a super-priority administrative claim under section 364(c)(1) of the Bankruptcy Code for the payment of the obligations under the DIP Revolving Facility with priority above all other administrative claims, subject to (x) the Existing First Lien</p>	<p>TS Annex II</p> <p>TS p. 8</p> <p>TS Annex VII</p> <p>TS p. 8-9</p>

List of Material Terms	Reference ⁴
<p>Adequate Protection Liens and Claims and (y) for the avoidance of doubt, any super-priority administrative claim for the payment of the obligations under the DIP Term Facility with funds held in or credited to the DIP Term Priority Account and (b) the DIP Term Agent and DIP Term Lenders will be granted in each of the Interim Order and the Final Order a super-priority administrative claim under section 364(c)(1) of the Bankruptcy Code for the payment of the obligations under the DIP Term Facility with priority above all other administrative claims, subject to the Carve-Out, the Existing First Lien Adequate Protection Liens and Claims and the super-priority administrative claim for the payment of the obligations under the DIP Revolving Facility (other than any super-priority administrative claim for the payment of the obligations under the DIP Revolving Facility with funds held in or credited to the DIP Term Priority Account).</p> <p>Borrowing Conditions: Such conditions as are usual and customary for DIP financings of this type.</p> <p>Waiver of Automatic Stay: The automatic stay is modified in the event of default for the DIP Agents to exercise their rights, including exercising rights and remedies with respect to the DIP Collateral, subject to five (5) business day notice period and an opportunity for the Debtors to contest in Court the existence of an event of default.</p> <p>Plan Milestones:</p> <ol style="list-style-type: none"> 1. Entry of Interim Order that is acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders: 2 days 2. Delivery of a business plan reviewed and approved by the Debtors' Financial Advisor in a form acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders; provided that the Debtors shall deliver a business plan to the DIP Revolving Agent on the same date as a business plan is delivered to the DIP Term Agent and the DIP Term Lenders: 24 days 3. Entry of Final Order that is acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders: 34 days 4. Filing of a plan of reorganization that provides that the obligations under the DIP Revolving Facility, the Prepetition First Lien Obligations (other than the Refinancing Accommodation Fee) and the obligations under the DIP Term Facility are Paid in Full in cash or is otherwise acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders and disclosure statement with respect to such plan of reorganization with the Bankruptcy Court: 60 days 5. Entry by Bankruptcy Court of an order approving a disclosure statement acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders: 105 days 6. Entry by Bankruptcy Court of an order confirming a plan of reorganization that provides that the obligations under the DIP Revolving Facility, the Prepetition First Lien Obligations (other than the Refinancing Accommodation Fee) and the obligations under the DIP Term Facility are Paid in Full in cash or is otherwise acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders: 150 days 7. Consummation of the confirmed plan of reorganization that provides that the obligations under the DIP Revolving Facility, the Prepetition First Lien Obligations (other than the Refinancing Accommodation Fee) and the obligations under the DIP Term Facility are Paid in Full in cash or is otherwise acceptable to the DIP Revolving Agent and Required 	<p>TS Annex II, pp. 4-6</p> <p>IO ¶ 26</p> <p>TS Annex V</p>

	List of Material Terms	Reference⁴
	<p style="text-align: center;">DIP Revolving Lenders: 160 days</p> <p>Indemnification: The Loan Parties will indemnify the DIP Revolving Agent, the DIP Revolving Lenders, their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each, an “<u>Revolving Loan Indemnified Person</u>”) and hold them harmless from and against all costs, expenses (including reasonable and documented fees, disbursements and other charges of outside counsel, including local Texas counsel) and liabilities of such Revolving Loan Indemnified Person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such Revolving Loan Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of its affiliates) that relates to the DIP Revolving Facility or the transactions contemplated thereby; <u>provided</u> that, no Revolving Loan Indemnified Person will be indemnified for any cost, expense or liability to the extent determined in the final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from its gross negligence or willful misconduct. In addition, (a) all reasonable and documented out-of-pocket expenses (including, without limitation, reasonable and documented fees, disbursements and other charges of outside counsel and financial advisors) of the DIP Revolving Agent and DIP Revolving Lenders in connection with the DIP Revolving Facility and the transactions contemplated thereby shall be paid by the Loan Parties from time to time, whether or not the Closing Date occurs and (b) all reasonable and documented out-of-pocket expenses (including, without limitation, documented fees, disbursements and other charges of outside counsel, local Texas counsel, independent appraisers, consultants and financial advisors) of the DIP Revolving Agent and the DIP Revolving Lenders, for enforcement costs and documentary taxes associated with the DIP Revolving Facility and the transactions contemplated thereby will be paid by the Loan Parties. All fees and expenses described above shall be payable by the Loan Parties, on a joint and several basis, whether accrued or incurred prior to, on, or after the Petition Date.</p> <p>Surcharge Waiver: Waiver of all 506(c) claims with respect to the DIP Collateral, the DIP Revolving Agent, DIP Revolving Lenders, Existing First Lien Agent, Existing First Lien Lenders, DIP Term Agent, DIP Term Lenders, Backstop Parties, Indenture Trustee and Second Priority Noteholders.</p>	<p>TS pp. 20-21</p> <p>IO ¶ 16</p>
<p>DIP Term Facility</p>	<p>Borrowers and Guarantors: Same Borrowers and Guarantors as DIP Revolving Facility.</p> <p>Administrative Agent to the DIP Term Facility: Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (in such capacity, the “<u>Administrative Agent</u>”).</p> <p>DIP Term Lenders: Funds and/or accounts affiliated with, or managed and/or advised by, Wayzata Investment Partners LLC, MHR Fund Management LLC, Foxhill Opportunity Fund L.P. and Corbin Opportunity Fund (together with their respective successors and permitted assignees, each a “<u>Backstop Party</u>” and collectively, the “<u>Backstop Parties</u>”) will, severally and not jointly, backstop the funded amount of the DIP Term Facility (the “<u>Backstop Commitments</u>”).</p> <p>Purposes for the use of DIP Term Facility: Partial upfront paydown of Existing First Lien Facility, and payment of expenses enumerated in the DIP Budget, subject to any permitted variances.</p> <p>Interest Rate: 12%</p> <p>Put Option Premium: A put option premium in an amount equal to 6.00% of the principal amount of the Backstop</p>	<p>TS p. 1-2</p> <p>TS p. 2</p> <p>TS P. 2</p> <p>TS 6-7</p> <p>TS Annex I</p> <p>TS Annex I</p>

List of Material Terms	Reference ⁴
<p>Commitments shall be paid in additional DIP Term Loans to the Backstop Parties on the Initial Draw Date, ratably based on their respective Backstop Commitments on the Initial Draw Date.</p> <p>Closing Fee: 4.00% of the principal amount of the DIP Term Facility shall be paid in additional DIP Term Loans to the Backstop Parties on the Initial Draw Date, ratably based on their respective Backstop Commitments on the Initial Draw Date, which Closing Fee shall be shared with the other Term Lenders pursuant to the Syndication Procedures.</p> <p>Exit Premium: All repayments of principal amounts of DIP Term Loans, whether through optional prepayments, mandatory prepayments, at maturity, upon acceleration or otherwise, shall be subject to a premium in an amount equal to 7.50% of the principal amount of DIP Term Loans to be repaid (the "<u>Exit Premium</u>"), which shall be payable in cash; <u>provided</u>, (i) if Backstop Parties holding 66.67% in the amount of the outstanding DIP Term Loans owned by the Backstop Parties participate in the placement or issuance of equity, debt or any other rights offering, instrument or security that results in the Debtors' consummation of a chapter 11 plan (an "<u>Exit Financing</u>"), the Exit Premium due to all Term Lenders shall be waived and (ii) the entire Exit Premium due to all Term Lenders may be waived by the Backstop Parties holding 66.67% in the amount of the outstanding DIP Term Loans owned by the Backstop Parties, in their sole discretion; <u>provided, further, however</u>, that the obligations under the Existing First Lien Credit Agreement (other than the Refinancing Accommodation Fee) and the obligations under the DIP Revolving Facility shall have been Paid in Full.</p> <p>Maturity: Six (6) months, subject to earlier termination date conditions.</p> <p>Events of Default: Events of default customarily found in loan agreements for similar debtor-in-possession financings.</p> <p>Liens and Priority Claims: Pursuant to section 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, subject to the Carve-Out and DIP Intercreditor Agreement (as defined below), (a) all amounts owing by the Debtors under the DIP Revolving Facility and the obligations of the Guarantors in respect thereof will be secured, by a perfected, first priority security interest in and lien on substantially all of the assets of the Borrower and the Guarantors (the "<u>DIP Collateral</u>") and (b) all amounts owing by the Debtors under the DIP Term Facility and the obligations of the Guarantors in respect thereof will be secured, by a perfected, second priority security interest in and lien on the DIP Collateral, in each case, with the priority set forth in the immediately succeeding paragraph. For the avoidance of doubt, the DIP Collateral securing the DIP Term Facility shall be identical to the DIP Collateral securing the DIP Revolving Facility.</p> <p>The liens and security interests granted under the DIP Term Facility (i) will prime and be senior to the liens and security interests in the DIP Collateral securing any prepetition indebtedness, other than the Prepetition First Lien Obligations, and (ii) will be junior to (x) the Carve-Out, (y) the liens on, and security interests in, the DIP Collateral securing the Prepetition First Lien Obligations under the Existing First Lien Credit Agreement (including, without limitation, any replacement liens constituting Existing First Lien Adequate Protection Liens) and (z) the liens on, and security interests in, the DIP Collateral securing the DIP Revolving Facility; <u>provided, however</u>, that the liens and security interests granted under the DIP Term Facility in the DIP Term Priority Account, and all amounts held therein or credited thereto, will prime and be senior to the liens and security interests securing (A) any prepetition indebtedness, including the indebtedness under the Existing First Lien Credit Agreement (including, without limitation, any replacement liens constituting Existing First Lien Adequate Protection Liens) and (B) the DIP Revolving</p>	<p>TX Annex I</p> <p>TS Annex I</p> <p>TS p.8</p> <p>TS Annex VI</p> <p>TS pp. 8-9</p>

List of Material Terms	Reference ⁴
<p>Facility. In addition, the DIP Revolving Facility will be junior in priority of lien and in payment to the Prepetition First Lien Obligations until such Prepetition First Lien Obligations are indefeasibly paid in full in cash and other contingent obligations thereunder are cash collateralized (“Paid in Full”).</p> <p>In the Cases, (a) the DIP Revolving Agent and the DIP Revolving Lenders will be granted in each of the Interim Order and the Final Order a super-priority administrative claim under section 364(c)(1) of the Bankruptcy Code for the payment of the obligations under the DIP Revolving Facility with priority above all other administrative claims, subject to (x) the Existing First Lien Adequate Protection Liens and Claims and (y) for the avoidance of doubt, any super-priority administrative claim for the payment of the obligations under the DIP Term Facility with funds held in or credited to the DIP Term Priority Account and (b) the DIP Term Agent and DIP Term Lenders will be granted in each of the Interim Order and the Final Order a super-priority administrative claim under section 364(c)(1) of the Bankruptcy Code for the payment of the obligations under the DIP Term Facility with priority above all other administrative claims, subject to the Carve-Out, the Existing First Lien Adequate Protection Liens and Claims and the super-priority administrative claim for the payment of the obligations under the DIP Revolving Facility (other than any super-priority administrative claim for the payment of the obligations under the DIP Revolving Facility with funds held in or credited to the DIP Term Priority Account).</p> <p>Borrowing Limits: \$66,670,000, of which \$49,000,000 will be available upon entry of the Interim Order.</p> <p>Borrowing Conditions: Such conditions as are usual and customary for DIP financings of this type.</p> <p>Waiver of Automatic Stay: The automatic stay is modified in the event of default for the DIP Agents to exercise their rights, including exercising rights and remedies with respect to the DIP Collateral, subject to five (5) business day notice period and an opportunity for the Debtors to contest in Court the existence of an event of default.</p> <p>Plan Milestones:</p> <ol style="list-style-type: none"> 1. Entry of Interim Order that is acceptable to the Requisite DIP Term Lenders: 2 days 2. Delivery of a business plan reviewed and approved by the Debtors’ Financial Advisor in a form acceptable to the Requisite DIP Term Lenders: 14 days 3. Entry of Final Order that is acceptable to the Requisite DIP Term Lenders: 34 days 4. Filing of a plan of reorganization that provides that the obligations under the DIP Term Facility are Paid in Full in cash or is otherwise acceptable to the Requisite DIP Term Lenders and disclosure statement with respect to such plan of reorganization (the “<u>Disclosure Statement</u>”) with the Bankruptcy Court: 50 days 5. Entry by Bankruptcy Court of an order approving a disclosure statement acceptable to the Requisite DIP Term Lenders: 95 days 6. Entry by Bankruptcy Court of an order confirming a plan of reorganization that provides that the obligations under the DIP Term Facility are Paid in Full in cash or is otherwise acceptable to the Requisite DIP Term Lenders: 140 days 7. Consummation of the confirmed plan of reorganization that provides that the obligations 	<p>IO ¶ 4</p> <p>TS Annex III, p.10</p> <p>IO ¶ 26</p> <p>TS Annex V</p>

List of Material Terms	Reference⁴
<p style="text-align: center;">under the DIP Term Facility are Paid in Full in cash or is otherwise acceptable to the Requisite DIP Term Lenders: 150 days</p> <p>Indemnification: The Loan Parties will indemnify the DIP Term Agent, the DIP Term Lenders, their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each, an “<u>Term Loan Indemnified Person</u>”) and hold them harmless from and against all costs, expenses (including reasonable and documented fees, disbursements and other charges of outside counsel, including local Texas counsel) and liabilities of such Term Loan Indemnified Person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such Term Loan Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of its affiliates) that relates to the DIP Term Facility or the transactions contemplated thereby; <u>provided</u> that, no Term Loan Indemnified Person will be indemnified for any cost, expense or liability to the extent determined in the final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from its gross negligence or willful misconduct. In addition, (a) all reasonable and documented out-of-pocket expenses (including, without limitation, reasonable and documented fees, disbursements and other charges of outside counsel and financial advisors) of the DIP Term Agent and DIP Term Lenders in connection with the DIP Term Facility and the transactions contemplated thereby shall be paid by the Loan Parties from time to time, whether or not the Closing Date occurs, (b) all reasonable and documented out-of-pocket expenses (including, without limitation, documented fees, disbursements and other charges of outside counsel, local Texas counsel, independent appraisers, consultants and financial advisors) of the DIP Term Agent and the DIP Term Lenders, for enforcement costs and documentary taxes associated with the DIP Term Facility and the transactions contemplated thereby will be paid by the Loan Parties and (c) all out-of-pocket expenses (including, without limitation, documented fees, disbursements and other charges of outside counsel and financial advisors) of an ad hoc committee of holders of the Second Priority Notes, whether incurred prior or subsequent to the commencement of the Cases will be paid by the Loan Parties. All fees and expenses described above shall be payable by the Loan Parties, on a joint and several basis, whether accrued or incurred prior to, on, or after the Petition Date.</p> <p>Surcharge Waiver: Waiver of all 506(c) claims with respect to the DIP Collateral, the DIP Revolving Agent, DIP Revolving Lenders, Existing First Lien Agent, Existing First Lien Lenders, DIP Term Agent, DIP Term Lenders, Backstop Parties, Indenture Trustee and Second Priority Noteholders.</p>	<p>TS pp. 20-21</p> <p>IO ¶ 16</p>

Basis for Relief

I. The Debtors’ Prepetition Secured Indebtedness and Urgent Need for DIP Financing

A. First Lien Indebtedness

14. On May 2, 2013, Erickson Incorporated (f/k/a Erickson Air-Crane Incorporated), and Erickson Helicopters, Inc. (f/k/a Evergreen Helicopters, Inc.), as borrowers, Wells Fargo Bank, N.A. as the administrative agent, lead arranger, book runner, syndication agent and documentation agent (the “**Existing First Lien Agent**”), and certain lenders thereto (the “**Existing First Lien Lenders,**” and together with the Existing First Lien Agent, the “**Existing**

First Lien Parties”) entered into that certain Credit Agreement (as amended, restated supplemented or otherwise modified from time to time, the “**Existing First Lien Credit Agreement**”), pursuant to which the First Lien Lenders made certain credit available to the Borrowers and the Guarantor-Debtors, as more fully described below (the “**Existing First Credit Lien Facility**”). As of the Petition Date, the principal amount of approximately \$128 million in borrowings and approximately \$3 million of letters of credit are currently outstanding under the Existing First Lien Credit Facility (together with all other obligations, liabilities, indebtedness of the Debtors to the Existing First Lien Agent and Existing First Lien Lenders, both absolute and contingent, existing prior to the commencement of the Chapter 11 Cases, together with all interest, fees, commissions, costs, expenses accrued and accruing with respect thereto, and other costs payable or reimbursable to the Existing First Lien Agent under the Existing First Lien Loan Documents,⁵ the “**Existing First Lien Obligations**”).

15. In connection with the Existing First Lien Credit Agreement, the Borrowers entered into that certain Guaranty and Security Agreement dated as of May 2, 2013 (as amended, restated supplemented or otherwise modified from time to time, the “**Existing First Lien Guarantee and Security Agreement**”) and the Line of Credit Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing (as amended, restated supplemented or otherwise modified from time to time, the “**Existing First Lien Deed of Trust**”). Pursuant to the Existing First Lien Loan Documents, the Debtors granted first priority liens and security interests (the “**Senior Liens**”) on all of the Debtors’ assets as described in the Existing First Lien Credit Facility Documents (collectively, the “**First Lien Collateral**”).

⁵ True and correct copies of all of the documents (the “**Existing First Lien Loan Documents**”) evidencing the Existing First Lien Credit Facility, together with all evidence of perfection of liens by the Existing First Lien Agent, are attached to the Addendum to this Motion, which is being filed contemporaneously with the filing of this Motion.

16. During 2016, Erickson entered into numerous amendments to the Existing First Lien Credit Facility.

B. Second Lien Indebtedness

17. Erickson Incorporated issued 8.25% Second Priority Senior Secured Notes due 2020 (the “**Second Priority Notes**”), under that certain Indenture, dated as of May 2, 2013 (as amended, restated supplemented or otherwise modified from time to time, the “**Existing Indenture**”), among the Erickson Incorporated, the guarantors from time to time party thereto, and Wilmington Trust, National Association, as trustee and notes collateral agent (in such capacities, the “**Indenture Trustee**”). Holders of the Second Priority Notes (the “**Second Priority Noteholders**,” and collectively with the Existing First Lien Lenders, the “**Prepetition Secured Parties**”) have second priority liens and security interests (the “**Junior Liens**,” and collectively with the Senior Liens, the “**Prepetition Liens**”) on all of the Debtors’ Assets (collectively, the “**Second Lien Collateral**,” and together with the First Lien Collateral, the “**Prepetition Collateral**”).

18. As of the Petition Date, approximately \$355,000,000 is outstanding in aggregate principal amount of Second Priority Notes. The Second Priority Notes have semi-annual interest payments due May 1 and November 1 each year. An interest payment of \$14.6 million was due November 1, 2016, which the Debtors have not paid.

C. Prepetition Intercreditor Agreement

19. On May 2, 2013, the Existing First Lien Agent and the Indenture Trustee entered into that certain Intercreditor Agreement with respect to the Existing First Lien Credit Agreement and the Existing Indenture (as amended, restated supplemented or otherwise modified from time to time, the “**Prepetition Intercreditor Agreement**”). Under the Prepetition Intercreditor Agreement, there is, among other things, a cap with respect to amounts that may be

outstanding senior to the Second Priority Notes of approximately \$150,000,000 (the “**First Lien Cap**”).

D. Basis for Urgent Need for DIP Financing

20. The Debtors will suffer immediate and irreparable harm if the interim relief sought in this Motion is not granted. If the interim relief requested is not granted, the Debtors risk, among other things, potential: loss of employees, loss of access to sole-source and critical vendors for parts and services needed to maintain the fleet and ensure safe and uninterrupted operations, loss of valuable contracts and business opportunities (including the VertRep Contract described below which requires significant capital immediately to preserve the value of the contract), and harm to national security, public safety, and employees if Erickson does not have sufficient funding on day one to deal with contingencies that arise in the Debtors’ businesses.

21. Despite cost cutting efforts implemented in 2015 and 2016, the Debtors’ revenues continue to decline, causing reduced liquidity and availability under the First Lien Credit Facility. As a result, consistent with the terms and conditions of the Existing First Lien Credit Facility, the Existing First Lien Agent imposed an availability block that reduced the Debtors’ borrowing availability under the Existing First Lien Credit Facility pursuant to numerous amendments to the First Lien Credit Facility.

22. Among other things, the Debtors’ urgency in negotiating the DIP Facilities (as defined below) was due to the need to acquire aircraft required by the VertRep Contract (as defined below). The Military Sealift Command relies upon the capabilities of commercial helicopter operators to vertically replenish vital supplies from supply ships to warships at sea, allowing the United States Navy to power into areas where other navies are incapable of operating. The helicopters “sling” cargo from the supply ship to the receiving ship. This enables the warships to continue their global presence for long periods of time, with extended lines of

supply. Therefore, the Military Sealift Command's Vertical Replenishment ("**VertRep**") program is vital to the interests of the United States. The Debtors are a party to that certain contract related to the VertRep program where they provide services to the United States (the "**VertRep Contract**").

23. After successfully performing the early phases of the VertRep Contract, Erickson was awarded an additional VertRep detachment. The successful award was a huge win for Erickson. The VertRep program will generate millions of dollars of revenue over the remaining life of the five (5) year contract.

24. Under the VertRep Contract, Erickson supplies a detachment of aircrew and maintenance personnel, along with two (2) helicopters and related equipment. The VertRep Contract includes stringent requirements regarding, among other things, the specifications of the aircraft and related equipment. All aircraft and equipment must be readily available to perform by early December.

25. Erickson must procure aircraft that comply with the specifications required by the Department of Defense in order to proceed with the VertRep. Erickson needs funding to purchase the aircraft and related equipment to perform under the VertRep Contract and earn substantial revenue for the estate (the "**VertRep Aircraft**").

26. The only source of funds available to the Debtors for the purchase of the VertRep Aircraft is the DIP Facilities. Accordingly, obtaining approval of the DIP Facilities and access to the funds available under the DIP Facilities is critical to purchasing the necessary aircraft to perform under the VertRep Contract.

27. The Debtors' estates will suffer immediate and irreparable harm if the DIP Facilities are not approved and and/or the Debtors do not have access to the funds to purchase

the VertRep Aircraft on an interim basis. Accordingly, the DIP Facilities are the only hope for the Debtors to make critical payments to preserve the value of their assets including the VertRep Contract.

II. The Proposed DIP Facilities

A. Debtors Prepetition Efforts to Obtain Financing

28. In the months leading up to the Petition Date, the Debtors and their advisors engaged in active dialogue with the Existing First Lien Agent. The Existing First Lien Lenders were not interested in becoming the primary DIP lenders. Instead, the Existing First Lien Lenders remained steadfast in their desire to be indefeasibly paid in full in cash on the Existing First Lien Obligations, and would not consent to having their debts and Senior Liens on the First Lien Collateral being primed by a third party DIP lender.

29. As further detailed in the *Declaration of Christopher Shepard, in Support of Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 Authorizing the Debtors to (A) Obtain Postpetition on a Super-Priority Secured and Priming Basis, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of the Existing First Lien Parties and Existing Second Lien Parties, (D) Grant Adequate Protection to the Existing First Lien Parties and Existing Second Lien Parties, and (E) Enter Into DIP Revolving Credit Facility and DIP Term Facility; (II) Modifying the Automatic Stay; (III) Scheduling A Final Hearing Pursuant to Bankruptcy Rules 4001(B) and 4001(C); and (IV) Granting Related Relief* (the "**Imperial Declaration**"), filed contemporaneously herewith, the Debtors engaged Imperial Capital, LLC ("**Imperial**") to provide investment banking services. Specifically, Imperial was engaged to provide services related to various strategic alternatives for the Debtors, including financing transactions and potential restructurings.

30. When it became evident that the Debtors required additional sources of financing, the Debtors instructed Imperial to identify, assess and explore options to address the Debtors' liquidity concerns. Specifically, Imperial was tasked with evaluating and pursuing options to refinance the Existing First Lien Facility. On June 13, 2016, Imperial launched a marketing process and contacted ninety-six (96) potential lenders. Forty-four (44) parties signed non-disclosure agreements and received an investor presentation and data room access. No acceptable terms were negotiated between any lender and the Debtors.

31. In late August 2016, the Debtors concluded that a \$150 million credit facility would not be sufficient for the Debtors' liquidity needs, in light of certain contractual delays and capital expenditure needs. The Debtors came under increasing financial distress as a result of certain restrictive terms under the Existing First Lien Facility, and interest payments obligations on the Second Priority Notes coming due in November 2016.

32. In October 2016, the Debtors and their advisors engaged in active dialogue with the Existing First Lien Agent and an ad hoc committee of the Second Priority Noteholders (the "**Ad-Hoc Noteholders**"). The Debtors also contacted fourteen (14) independent third-parties to solicit debtor-in-possession financing. Imperial discussed terms with potential debtor-in-possession lenders regarding financing that would allow the Debtors to obtain the necessary liquidity to successfully enter and exit bankruptcy. Specifically, a potential lender submitted a preliminary term sheet to provide \$170 million of a debtor-in-possession financing facility.

33. The Debtors, however, were unable to proceed further with the potential lender's term sheet, as the proposed financing would be in breach of the First Lien Cap. Further, the Existing First Lien Agent and Ad-Hoc Noteholders advised the Debtors that they would not consent to priming debtor-in-possession financing. Due to the capital structure and the financial

condition of the Debtors, third-party lenders did not express interest in providing financing junior to the Existing First Lien Facility and the Second Priority Notes. Another potential debtor-in-possession lender indicated a willingness to provide financing and serve as a stalking horse, but no formal proposal was received from the potential lender.

34. Ultimately, the Debtors were unable to negotiate acceptable terms on debtor-in-possession financing proposals from potential third-parties due to, among other things, the expedited need for liquidity and limited time to conduct adequate due diligence, unwillingness to engage in a priming dispute with the Existing First Lien Agent, unwillingness to provide junior financing, and lack of unencumbered assets sufficient to support financing. The complexity of the Debtors' prepetition capital structure and the First Lien Cap also contributed to an unwillingness of third parties to engage in substantive discussions regarding debtor-in-possession financing.

35. As the Debtors and their advisors reached the conclusion that third-party debtor-in-possession financing was unlikely to materialize, the Debtors and their advisors engaged in complex and difficult negotiations with the Existing First Lien Agent and the Ad Hoc Noteholders, which ultimately resulted in the DIP Facilities.

36. In early October 2016, the Debtors began discussing the possibility of junior debtor in possession financing, as well as the broad terms of a balance sheet restructuring, with Ad Hoc Noteholders. The Debtors determined that they needed \$50 million of additional liquidity, plus the use of the First Lien Lenders' cash collateral in order to stabilize the supply chain, make capital expenditures for government contracts, and fund normal operations in a bankruptcy case that would implement a balance sheet restructuring and rationalize the Debtors' aircraft fleet. The Existing First Lien Agent, the Ad Hoc Noteholders, and the Debtors took part

in vigorous negotiations during October and November 2016, prior to the Petition Date. These negotiations were complicated by the following conflicting factors, among others:

- The Ad Hoc Noteholders were only willing to provide \$50-60 million of new money in the form of DIP financing, junior in priority as to the debt and liens to the Existing First Lien Obligations;
- In addition to the new money from the Ad Hoc Noteholders, the Debtors also needed to use the Existing First Lien Lenders' cash collateral pursuant to the DIP Revolving Facility (defined below);
- The Debtors needed prepetition liquidity from the Existing First Lien Facility of \$6-7 million in order to file the Chapter 11 Cases;
- The Existing First Lien Lenders were not willing to provide prepetition liquidity nor use of cash collateral post petition in the form of the DIP Revolving Facility, unless the Ad Hoc Noteholders agreed to reimburse the Existing First Lien Lenders for funding the prepetition liquidity and provide a \$10 million pay down of the Existing First Lien Facility;
- Among the issues negotiated between the Existing First Lien Lenders and the Ad Hoc Noteholders in connection with the DIP Facility were: (i) responsibility for funding the prepetition liquidity needs, (ii) treatment of the Refinancing Accommodation Fee, and (iii) a pay down of the Existing First Lien Facility;
- After substantial negotiations, the parties reached a resolution, which is reflected in the DIP Term Sheet attached to the DIP Motion. Specifically, the DIP Term Facility provides for a \$10 million pay down of the Existing First Lien Facility and reimbursement of the Existing First Lien Lenders for certain of the prepetition liquidity needs, in exchange for, among other things, a stoppage of accrual of, and eventual waiver of the Refinancing Accommodation Fee (subject to certain conditions) and the consensual use of cash collateral;
- The Debtors determined that a consensual agreement between the Existing First Lien Lenders and the Ad Hoc Noteholders providing for both a DIP Revolving Facility and a DIP Term Facility was necessary to avoid a lengthy, contested cash collateral or priming fight, which would be detrimental to the fragile state of the Debtors' businesses and their relationships with important customers and vendors;
- Neither the Existing First Lien Lenders nor the Ad Hoc Noteholders were willing to provide financing outside of a Chapter 11 process or on terms other than those proposed in the DIP Motion;

The resolution of these conflicting factors took significant time and effort, and resulted in the heavily negotiated DIP Facilities described below.

B. Summary of Proposed DIP Facilities

i. DIP Revolving Facility

37. The Debtors are proposing two (2) debtor-in-possession financing facilities. The Existing First Lien Lenders (the “**DIP Revolving Lenders**”) and the Existing First Lien Agent (the “**DIP Revolving Agent**”) have committed to providing a first lien super-priority revolving credit facility (the “**DIP Revolving Facility**”) and the loans under the DIP Revolving Facility, the “**DIP Revolving Loans**”). The maximum revolving credit amount available under the DIP Revolving Facility shall be the principal amount outstanding under the Existing First Lien Credit Agreement (the “**Prepetition First Lien Loans**”), plus the Letter of Credit Usage (as defined in the Existing First Lien Credit Agreement) (the “**Maximum Revolver Amount**”). Subject to the First Lien Repayment (as defined below), and pursuant to the DIP Revolving Credit Agreement (the “**DIP Revolving Loan Agreement**”) the DIP Revolving Loans will be available under the DIP Revolving Facility up to a maximum principal amount outstanding at any one time (the “**DIP Revolving Availability**”) not to exceed the lesser of:

- a. the amount equal to (A) the Maximum Revolver Amount *less* (B) the aggregate principal amount of Prepetition First Lien Loans deemed to be outstanding at such time (after giving effect to all Deemed Prepetition First Lien Loan Repayments (as defined below) made prior to such time) *less* (C) the “Letter of Credit Usage” (as defined under the Existing First Lien Credit Agreement) at such time *less* (D) the “Letter of Credit Usage” (as defined under the DIP Revolving Facility) at such time *less* (E) the principal amount of Swing Loans (as defined under the DIP Revolving Facility) at such time; and
- b. the amount equal to (A) the “Borrowing Base” (as defined under the DIP Revolving Facility, which definition (and the component definition thereof) shall be substantially the same as the definition under the Existing First Lien Credit Agreement, subject to the immediately succeeding paragraph below) in effect at such time *less* (B) the aggregate principal amount of Prepetition First Lien Loans

deemed to be outstanding at such time (after giving effect to all Deemed Prepetition First Lien Loan Repayments made prior to such time) *less* (C) the “Letter of Credit Usage” (as defined under the Existing First Lien Credit Agreement) at such time *less* (D) the “Letter of Credit Usage” (as defined under the DIP Revolving Facility) at such time *less* (E) the principal amount of Swing Loans (as defined under the DIP Revolving Facility) at such time.

38. Under the agreement with the Existing First Lien Agent, as adequate protection of the interests of the Existing First Lien Lenders in their collateral, all cash collateral (the “**Cash Collateral**”) consisting of (i) proceeds of First Lien Collateral in existence as of the date on which the First Lien Repayment is made (the “**First Lien Repayment Date**”) or coming into the possession or control of the Debtors after the First Lien Repayment Date, (ii) any proceeds of the additional adequate protection replacement liens granted to the Existing First Lien Agent and the Existing First Lien Lenders (the “**Existing First Lien Adequate Protection Liens**”), and (iii) proceeds of any and all of the Debtors’ assets subject to liens granted to the DIP Revolving Agent under the DIP Orders, shall first be applied in reduction of the Prepetition First Lien Loans in accordance with the terms of the Existing First Lien Credit Agreement.

39. In addition, the Prepetition First Lien Loans will be periodically be paid down from proceeds of the First Lien Collateral and Cash Collateral as such funds are received by the Debtors, and the Debtors will be able to draw on the DIP Revolving Facility subject to the terms of the DIP Revolving Facility and the DIP Budget.

40. Beginning with amendment thirteen to the Existing First Lien Credit Agreement dated July 22, 2016, the Existing First Lien Lenders required a refinancing of the Existing First Lien Credit facility in its entirety, otherwise certain refinancing fees would be imposed, including a fee of \$5 million if the refinancing had not occurred by September 12, 2016, and if the refinancing had not occurred on or before September 26, 2016, then an additional \$500,000 would be due every two (2) weeks thereafter. As of November 7, 2016, the aggregate

outstanding refinancing fees totaled \$7 million (the “**Refinancing Accommodation Fee**”). The Refinancing Accommodation Fee is currently a significant portion of the Existing First Lien Obligations owed to the Existing First Lien Lenders. The Existing First Lien Lenders have agreed to waive the Refinancing Accommodation Fee, pursuant to certain conditions, in connection with the agreements related to the DIP Facilities. Further the \$500,000 bi-weekly accrual of the Refinancing Accommodation Fee will immediately cease upon approval of this Motion on an interim basis.

41. The DIP Revolving Agent and the DIP Revolving Lenders will be granted a super-priority administrative claim under section 364(c)(1) of the Bankruptcy Code for the payment of the obligations under the DIP Revolving Facility with priority above all other administrative claims, subject to (x) the Existing First Lien Adequate Protection Liens and Claims and (y) for the avoidance of doubt, any super-priority administrative claim for the payment of the obligations under the DIP Term Facility with funds held in or credited to the DIP Term Priority Account.

42. The DIP Term Agent and DIP Term Lenders will be granted a super-priority administrative claim under section 364(c)(1) of the Bankruptcy Code for the payment of the obligations under the DIP Term Facility with priority above all other administrative claims, subject to the Carve-Out, the Existing First Lien Adequate Protection Liens and Claims and the super-priority administrative claim for the payment of the obligations under the DIP Revolving Facility (other than any super-priority administrative claim for the payment of the obligations under the DIP Revolving Facility with funds held in or credited to the DIP Term Priority Account).

ii. DIP Term Facility

43. The Debtors have also negotiated a second lien super-priority term loan facility in an aggregate principal amount of \$66,670,000 (the “**DIP Term Facility**,” together with the DIP Revolving Facility, collectively, the “**DIP Facilities**”). Second Priority Noteholders shall be offered the right to participate in the DIP Term Facility (the “**DIP Term Lenders**,” together with the DIP Revolving Lenders, collectively, the “**DIP Lenders**”) on a ratable basis following the funding of the Subsequent DIP Term Loans (as defined below), pursuant to procedures satisfactory to funds affiliated with, managed by, or advised by Wayzata Investment Partners LLC, MHR Fund Management LLC, Foxhill Opportunity Fund L.P. and Corbin Opportunity Fund (together with their respective successors and permitted assignees, each a “**Backstop Party**,” and collectively, the “**Backstop Parties**”).

44. The Backstop Parties will, severally and not jointly, backstop the DIP Term Facility, meaning that the Backstop Parties will fund the DIP Term Loan Facility commitments and Second Priority Noteholders will have an opportunity to participate in the DIP Facilities ratably based on their existing claim amounts. Wilmington Savings Fund Society, FSB, shall serve as administrative agent and collateral agent (the “**Administrative Agent**,” together with the DIP Revolving Agent, collectively, the “**DIP Agents**”).

45. Pursuant to the DIP Term Loan Agreement (the “**DIP Term Loan Agreement**,” and collectively with the DIP Revolving Loan Agreement and other related documents, collectively, the “**DIP Loan Documents**”), proceeds of the DIP Term Facility shall be deposited into a segregated account (the “**DIP Priority Account**”). The DIP Priority Account proceeds shall be used pursuant to the DIP Budget (as defined below).

46. The liens and security interests granted under the DIP Term Facility (i) will prime and be senior to the liens and security interests in all of the assets of the Debtors, whether

prepetition or postpetition (the “**DIP Collateral**”) securing any prepetition indebtedness, other than the Existing First Lien Obligations, and (ii) will be junior to (x) the Carve-Out, (y) the liens on, and security interests in, the DIP Collateral securing the Existing First Lien Obligations under the Existing First Lien Credit Agreement (including, without limitation, any adequate protection replacement liens constituting Existing First Lien Adequate Protection Liens) and (z) the liens on, and security interests in, the DIP Collateral securing the DIP Revolving Facility; provided, however, that the liens and security interests granted under the DIP Term Facility in the DIP Term Priority Account, and all amounts held therein or credited thereto, will prime and be senior to the liens and security interests securing (A) any prepetition indebtedness, including the indebtedness under the Existing First Lien Credit Agreement (including, without limitation, any adequate protection replacement liens constituting Existing First Lien Adequate Protection Liens) and (B) the DIP Revolving Facility. In addition, the DIP Revolving Facility will be junior in priority of lien and in payment to the Existing First Lien Obligations until such Existing First Lien Obligations are indefeasibly paid in full in cash and other contingent obligations thereunder are cash collateralized (“**Paid in Full**”).

47. Under the circumstances, the financial terms and covenants of the DIP Facilities are necessary and reasonable for financing of this kind. Based on the extensive negotiations that took place in connection with the DIP Facilities, the Debtors believe that these are the only terms on which the DIP Term Lenders will provide the financing, especially in light of the necessity to obtain a the DIP Term Facility on a second lien priority basis. As the DIP Facilities’ proceeds are necessary and the only financing available at this time, the Debtors believe that sufficient justification exists for agreeing to these provisions. Moreover, the Debtors and their advisors

understand that the DIP Lenders would not have been amenable to providing financing without these heavily bargained-for protections.

C. DIP Intercreditor Agreement

48. In addition to the DIP Facilities, the DIP Agents and the DIP Lenders will enter into that certain postpetition Intercreditor Agreement (the “**DIP Intercreditor Agreement**”). The DIP Intercreditor Agreement shall govern the relative priority of liens and claims between the DIP Facilities. Further, pursuant to the DIP Intercreditor Agreement, the Indenture Trustee, on behalf of the holders of the Second Priority Note, and the DIP Revolving Agent, on behalf of the DIP Revolving Lenders, have agreed to modify the terms of the Prepetition Intercreditor Agreement to permit the financings under the DIP Facilities contemplated herein.

D. Use of Cash Collateral

49. In addition to the DIP Facilities, as described above, the Debtors have obtained consent of the Existing First Lien Agent and Existing First Lien Lenders for use of Cash Collateral subject to the terms of the Interim Order. In particular, the Existing First Lien Lenders and the Backstop Parties have agreed to the terms of the proposed use of Cash Collateral and such Cash Collateral will be applied in reduction of the Existing First Lien Obligations, as adequate protection of the interests of the Existing First Lien Lenders in the First Lien Collateral. Given the agreement of the Existing First Lien Lenders, the Debtors have the requisite consent to use Cash Collateral.

E. Adequate Protection Package

50. The Debtors, the Existing First Lien Agent and the Ad-Hoc Noteholders have agreed on the adequate protection package (the “**Adequate Protection Package**”) that will adequately protect the Existing First Lien Lenders’ and the Second Priority Noteholders’ interests in the Prepetition Collateral, as well as for any decline in, or diminution of, the value of

the liens or security interests. Specifically, the Adequate Protection Package provides the Existing First Lien Lenders from the proceeds of the DIP Revolving Facility (a) payments of cash interest on a current basis calculated at the non-default rate under the Existing First Lien Credit Agreement (without prejudice to their rights to obtain default interest), and (b) payments in cash on a current basis of all reasonable and documented fees, costs and expenses of their legal counsel and their respective professional advisors. With respect to the Second Priority Noteholders, the Adequate Protection Package provides (y) interest, calculated at the non-default rate, under the Second Priority Notes shall continue to accrue, and (z) the Second Priority Noteholders shall receive payment in cash on a current basis of all reasonable and documented fees, costs and expenses of their legal counsel, funded from the DIP Term Facility.

51. In addition to the Adequate Protection Package itself, and as noted in the Lancelot Declaration, the Debtors' preservation of estate assets through the use of the DIP Facilities serves as its own form of adequate protection. Indeed, the Debtors' secured creditors will inherently benefit from the Debtors' proposed use of the DIP Facilities, which will prevent diminution of the value of the Prepetition Collateral and enhance the likelihood of preserving and maximizing the Debtors' overall going concern value.

Supporting Authority

I. The Debtors Should be Authorized to Obtain Postpetition Financing

A. Entering into the DIP Loan Documents is an Exercise of the Debtors' Sound Business Judgment

52. The Court should authorize the Debtors to enter into the DIP Loan Documents and obtain access to the DIP Facilities and use Cash Collateral as an exercise of the Debtors' sound business judgment.

53. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances as described in greater detail below. Provided that an agreement to obtain secured credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts grant debtors considerable deference in acting in accordance with their sound business judgment in obtaining such credit. *See, e.g., In re ERG Intermediate Holdings, L.L.C.*, Case No. 15-31858 (HDH) (Bankr. N.D. Tex. June 15, 2015) (order approving postpetition financing as an exercise of the debtors' business judgment); *In re Barbara K. Enters., Inc.*, Case No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("Cases consistently reflect that the court's discretion under section 364 [of the Bankruptcy Code] is to be utilized on grounds that permit [a debtor's] reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.*, 294 B.R. 855, 881 (Bankr. W.D. Mo. 2003) ("the applicable factors can be synthesized as follows: (1) That the proposed financing is an exercise of sound and reasonable business judgment . . .").

54. Moreover, the Court may appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the Bankruptcy Court for the Southern District of New York held that:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the financing must be evaluated, including non-

economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and established allegiances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

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

55. The Debtors' execution of the DIP Loan Documents is an exercise of their sound business judgment that warrants approval by the Court. Prior to the Petition Date, the Debtors and their advisors undertook a detailed investigation as to the Debtors' projected financing needs during the pendency of any chapter 11 case, and determined that the Debtors would require substantial postpetition financing to support their operational and restructuring activities. Accordingly, after significant marketing efforts and negotiations by the Debtors and their advisors, the Debtors negotiated the DIP Facilities with the DIP Lenders in good faith, at arm's-length, and with the assistance of outside counsel, to obtain the required postpetition financing on terms favorable to the Debtors.

56. The Debtors believe that the Court's consideration of non-economic factors, as permitted by *ION Media*, is especially appropriate here. Absent the DIP Lenders' willingness and ability to fund the DIP Facilities, the Debtors would likely run out of cash and would be forced to shut down their operations. Moreover, as set forth in the Lancelot Declaration, it is unlikely any third party lenders would be in a position to provide as certain a financing arrangement as currently available under the DIP Facilities, especially as the DIP Term Facility is junior to the DIP Revolving Facility and the Existing First Lien Facility, due to the requirements in the Prepetition Intercreditor Agreement and the First Lien Cap. The Debtors submit that the certainty afforded by the DIP Facilities — with respect to both its consensual

nature as well as the likelihood of closing and the DIP Lenders' support of the Debtors' restructuring efforts — provides additional and ample reason to authorize it.

57. Accordingly, the Debtors determined in their sound business judgment, and with consultation of their advisors, that the DIP Facilities provide a greater amount of financing on more favorable terms than any other reasonably available alternative. As noted above, the DIP Facilities will provide the Debtors with access to the necessary liquidity, which the Debtors and their advisors have independently determined should be sufficient to support the Debtors' ongoing operations and reorganization activities through the pendency of the Chapter 11 Cases. Thus, the Debtors submit that entering into the DIP Loan Documents constitutes an exercise of the Debtors' sound business judgment that should be approved by the Court.

B. The Debtors Should be Authorized to Obtain Postpetition Financing on a Senior Secured, Priming and Superpriority Basis, and the Roll-Up Should be Approved

58. Section 364 of the Bankruptcy Code authorizes a debtor to obtain, in certain circumstances, postpetition financing on a secured or superpriority basis, or both. Specifically, section 364(c) of the Bankruptcy Code provides, in pertinent part, that the Court, after notice and a hearing, may authorize a debtor that is unable to obtain credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code to obtain credit or incur debt:

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of [the Bankruptcy Code];
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

59. 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. *Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). “The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Id.*; *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). 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.” *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 Ames Dep't Stores*, 115 B.R. at 40 (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four (4) lending institutions, was rejected by two (2), and selected the more favorable of the two (2) offers it received).

60. As described above, and in the Lancelot Declaration and the Imperial Declaration, Imperial identified and solicited offers from numerous potential postpetition lenders other than the DIP Lenders in the weeks prior to the Petition Date. In spite of their efforts, the Debtors did not receive any proposals for debtor-in-possession financing from third parties. Notwithstanding the Debtors efforts, the Debtors were simply unable to obtain sufficient, or any, Postpetition financing in the form of unsecured credit, solely as an administrative expense, or secured by a junior lien. The Debtors' significant secured debt precludes them from obtaining postpetition financing in the amount they require on terms other than on a secured and superpriority basis as provided under the DIP Facilities.

61. In addition to authorizing financing under section 364(c) of the Bankruptcy Code, courts also may authorize a debtor to obtain postpetition credit secured by a lien that is senior or equal in priority to existing liens on the encumbered property if the debtor cannot otherwise obtain such credit and the interests of existing lienholders are adequately protected. *See* 11 U.S.C. § 364(d)(1). When determining whether to authorize a debtor to obtain credit secured by a “priming” lien as authorized by section 364(d) of the Bankruptcy Code, courts focus on whether the transaction will enhance the value of the debtors’ assets. Courts consider a number of factors, including, without limitation:

- whether alternative financing is available on any other basis (*i.e.*, whether any better offers, bids or timely proposals are before the court);
- whether the proposed financing is necessary to preserve estate assets and is necessary, essential and appropriate for continued operation of the debtors’ business;
- whether the terms of the proposed financing are reasonable and adequate given the circumstances of both the debtors and proposed lender(s);
- whether the proposed financing agreement was negotiated in good faith and at arm’s length and entry therein is an exercise of sound and reasonable business judgment and in the best interest of the debtor’s estate and its creditors; and
- whether the proposed financing agreement adequately protects prepetition secured creditors.

See, e.g., Ames Dep’t Stores, 115 B.R. at 37–39; *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003); *see also* 3 Collier on Bankruptcy ¶ 364.04[1] (15th ed. rev. 2008).

62. Here, the Debtors seek authority to enter into the DIP Loan Documents, which will grant the DIP Revolving Lenders with liens that prime the Junior Liens, but are junior to the Senior Liens, and grant the DIP Term Lenders with liens that prime the Junior Liens, but are also junior to the Senior Liens. First, as described above and in the Lancelot Declaration, the Debtors and their advisors explored a variety of possible financing sources, and ultimately determined

that the Debtors require the DIP Facilities. The Debtors conducted arm's-length negotiations with the DIP Lenders regarding the terms of the DIP Facilities, and those agreements reflect the most favorable terms on which the DIP Lenders were willing to offer financing. No alternative financing at the favorable terms offered in the DIP Facilities was available to the Debtors, and the Debtors are not able to obtain financing from the DIP Lenders other than financing secured by priority priming liens (the "**DIP Liens**"). In light of the unavailability of other financing with which to fund their ongoing operations and preserve the value of their assets, the Debtors determined that accessing the DIP Facilities from the DIP Lenders would best maximize estate value.

63. Second, the Debtors need the funds to be provided under the DIP Facilities to preserve the value of their estates for the benefit of all creditors and other parties in interest. Absent the DIP Facilities, the Debtors will be unable to operate their business or prosecute the Chapter 11 Cases, which will threaten the Debtors' significant going concern value. Providing the Debtors with the liquidity necessary to preserve their going concern value through the pendency of the Chapter 11 Cases is in the best interest of all stakeholders.

64. Third, the terms of the DIP Loan Documents are reasonable and adequate to ensure the Debtors' ongoing ability to operate in Chapter 11 and ultimately emerge as a stronger enterprise. Indeed, the DIP Facilities will provide the Debtors with access to up to approximately \$175 million in postpetition financing, which the Debtors and their advisors have independently determined is sufficient and, as discussed in greater detail below, necessary to allow the Debtors to maintain their operations and their relationships with key constituents during the Chapter 11 Cases. Accordingly, the terms of the DIP Facilities are reasonable and the

funds available under the DIP Facilities are sufficient to support the Debtors' operations and restructuring activities through the pendency of the Chapter 11 Cases.

65. Fourth, the Debtors and the DIP Lenders negotiated the DIP Facilities in good faith and at arm's-length, and the Debtors' entry into the DIP Loan Documents is an exercise of their sound business judgment and is in the best interests of their estates, creditors and other parties in interest.

66. Finally, as described below, the Debtors will provide adequate protection for the Prepetition Liens on and security interests in the Prepetition Collateral as well as any decline in, or diminution of, the value of the Prepetition Liens or security interests. Additionally, as a condition of the DIP Revolving Facility and as adequate protection of the interests of the Existing First Lien Lenders and Existing First Lien Agent, the Debtors will apply the prepetition collateral proceeds in reduction of the Existing First Lien Obligations as a condition of availability under the DIP Revolving Facility pursuant to the formula described in the Term Sheet. Arguably, by applying the prepetition collateral proceeds in reduction of the Existing First Lien Obligations, the Existing First Lien Facility is effectively being rolled up during the pendency of the Chapter 11 Cases. The DIP Revolving Lenders' requirement of the effective roll-up should be approved, since as a practical matter in the context of the Chapter 11 Cases, the roll-up does not run afoul of the provisions of, or the policies underlying, the Bankruptcy Code. *See In re Barbara K. Enters., Inc.*, Case No. 08-11474, 2008 WL 2439649, at *14 (Bankr. S.D.N.Y. June 16, 2008) (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest."). Further, the Debtors will apply the proceeds of the prepetition collateral in reduction of the Existing First Lien Obligations largely from Cash

Collateral, which is subject to a senior lien of the Existing First Lien Agent for the benefit of the Existing First Lien Lenders.

67. Courts have approved the refinancing or repayment of prepetition obligations pursuant to debtor-in-possession loan facilities. *See, e.g., In re ATP Oil & Gas Corp.*, Case No. 12-36187 (Bankr. S.D. Tex. Sept. 21, 2012) (authorizing refinancing of \$367,600,000 plus accrued and unpaid interest under the post-petition facility); *In re United Retail*, Case No. 12-10405 (Bankr. S.D.N.Y. Feb. 1, 2012) (authorizing the refinancing of \$11,500,000 of existing letter of credit obligations); *In re Velo Holdings, Inc., et al.*, Case No. 12-11384 (Bankr. S.D.N.Y. April 2, 2012) (authorizing a dollar-for-dollar refinancing of prepetition obligations up to \$20,000,000); *In re Blockbuster, Inc.*, Case No. 10-14997 (Bankr. S.D.N.Y. Sept. 23, 2010) (authorizing the roll up of secured notes of up to \$125 million); *In re Chemtura Corp.*, Case No. 09-11233 (Bankr. S.D.N.Y. Mar. 18, 2009) (authorizing a \$86.5 million refinancing revolving credit facility under a \$400 million debtor-in-possession financing facility); *In re Lyondell Chemical Co.*, Case No. 09-10023 (Bankr. S.D.N.Y. Mar. 1, 2009) (approving a dollar-for-dollar roll up of \$3.25 billion of a prepetition secured debt facility); *In re Tronox Inc.*, Case No. 09-10156 (Bankr. S.D.N.Y. Feb. 6, 2009) (approving the payment of \$79.5 million of prepetition secured indebtedness); *In re Lenox Sales, Inc.*, No. 08-14679 (Bankr. S.D.N.Y. Dec. 16, 2008) (approving payment of \$72.1 million in prepetition secured indebtedness); *In re deCODE genetics, Inc.*, Case No. 09-14063 (JPW) (Bankr. D. Del. Nov. 16, 2009) (authorizing the refinancing of over \$3,000,000 outstanding under certain prepetition obligations)

68. The Court should therefore (a) authorize the Debtors to provide the DIP Revolving Agent, on behalf of itself and the other DIP Revolving Lenders, senior liens on the Prepetition Collateral as provided in section 364(d)(1) of the Bankruptcy Code; (b) authorize the

Debtors to provide the DIP Term Agent, on behalf of itself and the other DIP Term Lenders, liens on the Prepetition Collateral, as provided in section 364(c)(3) of the Bankruptcy Code, junior to the Existing First Lien, and as provided in section 364(d)(1) of the Bankruptcy Code senior to the Junior Liens, (c) grant the DIP Obligations superpriority administrative expense status as provided for in section 364(c)(1) of the Bankruptcy Code, and (d) authorize the Debtors to pay down the Existing First Lien Facility, including through Cash Collateral.

C. The Interests of the Prepetition Lenders Are Adequately Protected

69. A debtor may obtain postpetition credit “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. *See* 11 U.S.C. § 364(d)(1)(B). By requiring debtors to provide adequate protection to those creditors whose liens are being primed, the Bankruptcy Code seeks to protect a secured creditor from diminution in the value of its interest in the particular collateral. *See In re Cont’l Airlines, Inc.*, 146 B.R. 536, 539–40 (Bankr. D. Del. 1992) (secured creditor only entitled to adequate protection to the extent the collateral declined in value); *In re Pursuit Athletic Footwear, Inc.*, 193 B.R. 713, 716 (Bankr. D. Del. 1996) (if there is no diminution in the value of the secured creditor’s collateral and the debtor can operate profitably postpetition, the secured creditor is adequately protected against the use of cash collateral); *see also In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (“The goal of adequate protection is to safeguard the secured creditor from diminution in the value of its interest during the chapter 11 reorganization.”).

70. What constitutes sufficient adequate protection is decided on a case-by-case basis. *See In re Columbia Gas Sys., Inc.*, Nos. 91-803, 91-804, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re Monroe Park*, 17 B.R. 934 (D. Del. 1982) (concept of adequate protection requires a debtor to propose some form of relief that will preserve the secured creditor’s interest

in collateral pending the outcome of the bankruptcy proceedings); *see also Resolution Trust Corp. v. Swedeland Dev. Group, Inc. (In re Swedeland Dev. Group, Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994); *In re Martin*, 761 F.2d 472 (8th Cir. 1985); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996); *In re Realty Southwest Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992).

71. Here, the Prepetition Lenders are adequately protected. The adequate protection provided by the Adequate Protection Package is fair and reasonable, and is sufficient to satisfy the requirements of section 364(d)(1)(B) of the Bankruptcy Code. Further, the Existing First Lien Lenders have consented to the terms of the DIP Facilities, including the Adequate Protection Package. Accordingly, the Court should approve the Adequate Protection Package.

II. The Debtors Should be Authorized to Use the Cash Collateral

72. The requisite Prepetition Lenders have consented to the Debtors' use of Cash Collateral under the terms of the DIP Loan Documents. The Debtors submit that their request to use Cash Collateral complies with applicable Bankruptcy Code requirements.

73. The Debtors' use of property of their estates is governed by section 363 of the Bankruptcy Code, which provides in pertinent part, as follows:

If the business of the debtor is authorized to be operated under section... 1108... of this title and unless the court orders otherwise, the [debtor] may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

74. Section 363(c)(2)(A) of the Bankruptcy Code permits a debtor in possession to use cash collateral with the consent of the secured party. Alternatively, section 363(c)(2)(B) of the Bankruptcy Code permits the Bankruptcy Court, after notice and a hearing, to authorize a debtor in possession's use of cash collateral without the consent of the secured party so long as the use is consistent with the provisions of section 363 of the Bankruptcy Code.

75. The Debtors have the requisite Existing First Lien Lenders' consent to use Cash Collateral subject to the terms and conditions set forth in the Interim Order. The Existing First Lien Agent, on behalf of the Existing First Lien Lenders, has agreed to the terms of the DIP Term Credit Agreement and the Interim Order, subject to the terms and conditions of the DIP Intercreditor Agreement. Accordingly, because the Debtors have the requisite Existing First Lien Lenders' consent for the use of Cash Collateral under the DIP Loan Documents, the Debtors' use of Cash Collateral should be approved under section 363(c)(2)(A) of the Bankruptcy Code.

76. Second, the Debtors' proposed adequate protection is consistent with the requirements of section 363 of the Bankruptcy Code and, therefore, the Debtors' use of Cash Collateral — in addition to the requisite Existing First Lien Lenders' having consented to it — meets the standard for approval under section 363(c)(2)(B) of the Bankruptcy Code. As described above, the Debtors are providing the Prepetition Lenders with the Adequate Protection Package, which is fair and reasonable, and adequately protects the Prepetition Lenders' interests in the collateral securing the Debtors' prepetition obligations from diminution during the Chapter 11 Cases, including by the Debtors' use of the Cash Collateral pursuant to the terms hereof.

77. In addition to the Adequate Protection Package itself, the Debtors' preservation of estate assets through the use of Cash Collateral which will provide access to the DIP Revolving Facility serves as its own form of "adequate protection." Indeed, the Debtors' secured creditors will inherently benefit from the Debtors' proposed use of the Cash Collateral which, as set forth in the Lancelot Declaration, will prevent avoidable diminution of the value of the Collateral and enhance the likelihood of increasing or preserving the Debtors' overall going concern value. This in and of itself serves to provide such parties "adequate protection" for Bankruptcy Code purposes. *Cf. 495 Cent. Park*, 136 B.R. at 631 (noting that, in determining whether protection is

“adequate,” courts consider “whether the value of the debtor’s property will increase as a result of the” use of collateral or provision of financing); *Sky Valley*, 100 B.R. at 114 (“an increase in the value of the collateral . . . resulting from superpriority financing could result in adequate protection.” (citation omitted)), *aff’d*, 99 B.R. 117 (N.D. Ga. 1989); Accordingly, the Court should authorize the Debtors to use the Cash Collateral under section 363(c)(2) of the Bankruptcy Code.

III. The Debtors Should be Authorized to Pay the Fees Associated with the DIP Facilities

78. As described above, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Lenders in exchange for their providing the DIP Facilities. Specifically, the Debtors will pay to the DIP Term Lenders (a) a put option premium in an amount equal to 6% of the principal amount of the commitment by the Backstop Parties (the “**Backstop Commitment**”), (b) a closing fee in the amount of 4% of the DIP Term Facility, and (c) an exit fee in the amount of 7.5% of the DIP Term Facility.

79. As explained in the Lancelot Declaration, the fees, taken together with the other provisions of the DIP Loan Documents, represent the most favorable terms to the Debtors on which the DIP Lenders would agree to make the DIP Facilities available. The Debtors considered the fees described above when determining in their sound business judgment that the DIP Facilities constituted the best terms on which the Debtors could obtain the postpetition financing necessary to continue their operations and prosecute their Chapter 11 Cases. The Debtors believe that paying these fees to obtain the DIP Facilities is in the best interests of the Debtors’ estates, creditors and other parties in interest. Accordingly, the Court should authorize the Debtors to pay the fees provided under the DIP Credit Agreement in connection with entering into those agreements.

IV. The DIP Lenders Should be Deemed Good Faith Lenders under Section 364(e) of the Bankruptcy Code

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

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

11 U.S.C. § 364(e).

81. As explained herein and in the Lancelot Declaration, the DIP Facilities are the result of the Debtors' reasonable and informed determination that the DIP Lenders offered the most favorable terms on which to obtain needed postpetition financing, and of extended arm's-length, good faith negotiations between the Debtors and the DIP Lenders. The terms and conditions of the DIP Facilities are fair and reasonable, and the proceeds under the DIP Facilities will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Facilities other than as described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code, and are entitled to all of the protections afforded by that section.

V. The Debtors Require Immediate Access to the Cash Collateral and DIP Facilities

82. The Court may grant interim relief in respect of a motion filed pursuant to section 363(c) or 364 of the Bankruptcy Code where, as here, interim relief is "necessary to

avoid immediate and irreparable harm to the estate pending a final hearing.” FED. R. BANKR. P. 4001(b)(2) and (c)(2).

83. The Debtors and their estates will suffer immediate and irreparable harm, if the interim relief requested herein, including authorizing the Debtors to use the Cash Collateral and to borrow up to approximately \$175 million under the DIP Facilities, is not granted promptly. The Debtors believe that the commencement of the Chapter 11 Cases has already and will continue to significantly increase the demands on their cash as a result of, among other things, the costs of administering the Chapter 11 Cases and addressing key constituents’ concerns regarding the Debtors’ financial health and ability to continue operations in light of the Chapter 11 Cases. Indeed, as explained in the Lancelot Declaration, unless the Court approves the Debtors’ interim access to the DIP Facilities funds, it is likely that the Debtors will run out of cash in the near term. Accordingly, the Debtors have an immediate need for access to liquidity to, among other things, permit the orderly continuation of the operation of their business, to make payroll, and to satisfy other working capital and operation needs, all of which are required to preserve and maintain the Debtors’ going concern value for the benefit of all parties in interest.

84. Accordingly, for all of the reasons set forth above, prompt entry of the Interim Order is necessary to avert immediate and irreparable harm to the Debtors’ estates and is consistent with, and warranted under, Bankruptcy Rules 4001(b)(2) and (c)(2). In addition, to implement the terms of the DIP Facilities, the Debtors request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h), or otherwise.

Request for Final Hearing

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

Notice

86. No trustee, examiner or creditors' committee has been appointed in the Chapter 11 Cases. Notice of this Motion will be provided to: (i) the Office of the United States Trustee; (ii) the holders of the 20 largest unsecured claims against Erickson Incorporated and Erickson Helicopters, Inc.;⁶ (iii) Randall Klein, Goldberg Kohn, Ltd., 55 East Monroe Street, Suite 3300, Chicago, Illinois 60603-5792, lead counsel for Wells Fargo Bank, N.A., as DIP Revolving Agent and Existing First Lien Agent; (iv) David Weitman, K&L Gates LLP, 1717 Main Street, Suite 2800, Dallas, Texas 75201, local counsel for Wells Fargo Bank, N.A., as DIP Revolving Agent and Existing First Lien Agent; (v) Scott L. Alberino, Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Avenue, N.W., Washington, DC 20036-1564, counsel for an ad hoc group of holders of 8.25% Second Priority Senior Secured Promissory Notes due 2020; (vi) Edward M. Fox, Esq., Seyfarth Shaw LLP, 620 8th Avenue, New York, NY 10018, counsel to Wilmington Trust, National Association, as indenture trustee and notes collateral agent for the 8.25% Second Priority Senior Secured Promissory Notes due 2020; (vii) the Securities and Exchange Commission; and (viii) the Internal Revenue Service. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this Motion is required.

⁶ Erickson Incorporated and Erickson Helicopters, Inc. are the only Debtors with holders of unsecured claims.

WHEREFORE, for the reasons set forth herein, the Lancelot Declaration, and the Imperial Declaration, the Debtors respectfully request entry of the Interim Order granting the relief requested herein and such other relief as may be appropriate under the circumstances.

RESPECTFULLY SUBMITTED this 9th day of November, 2016.

HAYNES AND BOONE, LLP

By: /s/ Eli O. Columbus

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PROPOSED ATTORNEYS FOR DEBTORS

CERTIFICATE OF CONFERENCE

I hereby certify that on or before November 8, 2016, the undersigned counsel for the Debtors conferred with and received comments to the relief requested in this Motion from (i) Randall Klein, Goldberg Kohn, Ltd., lead counsel for Wells Fargo Bank, N.A., as DIP Revolving Agent and Existing First Lien Agent, (ii) Scott L. Alberino and Brad M. Kahn, Akin Gump Strauss Hauer & Feld LLP, counsel for an ad hoc group of holders of 8.25% Second Priority Senior Secured Promissory Notes due 2020, and (iii) Edward M. Fox, Esq., Seyfarth Shaw LLP, counsel to Wilmington Trust, National Association, as indenture trustee and notes collateral agent for the 8.25% Second Priority Senior Secured Promissory Notes due 2020.

I hereby also certify that on November 8, 2016, the undersigned counsel for the Debtors conferred regarding this Motion with the Office of the United States Trustee for the Northern District of Texas, which has not indicated whether it consents or objects to this Motion.

/s/ Ian T. Peck

Ian T. Peck

Exhibit A

Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re: § **Chapter 11**
§
ERICKSON INCORPORATED, et al.,¹ § **Case No. 16-34393-hdh**
§
Debtors. § **(Joint Administration Requested)**

**ORDER: (I) PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363 AND 364
AUTHORIZING THE DEBTORS TO (A) OBTAIN POSTPETITION FINANCING
ON A SUPER-PRIORITY SECURED AND PRIMING BASIS, (B) GRANT LIENS
AND SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (C) USE CASH
COLLATERAL OF THE EXISTING FIRST LIEN PARTIES AND EXISTING
SECOND LIEN PARTIES, (D) GRANT ADEQUATE PROTECTION TO THE
EXISTING FIRST LIEN PARTIES AND EXISTING SECOND LIEN PARTIES, AND
(E) ENTER INTO DIP REVOLVING CREDIT FACILITY AND DIP TERM**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Erickson Incorporated (7561); EAC Acquisition Corporation (3733); Erickson Helicopters, Inc. (5052); Erickson Transport, Inc. (9162); Evergreen Helicopters International, Inc. (1311); Evergreen Equity, Inc. (9209); and Evergreen Unmanned Systems, Inc. (3961). The location of the Debtors' service address is 5550 SW Macadam Avenue, Suite 200, Portland, OR 97239.

**FACILITY; (II) MODIFYING THE AUTOMATIC STAY; (III) SCHEDULING A
FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(b) AND 4001(c);
AND (IV) GRANTING RELATED RELIEF**

This matter is before the Bankruptcy Court for a preliminary hearing on the motion dated November [], 2016 (the “**Motion**”)² of Erickson Incorporated, a Delaware corporation, as a debtor and debtor in possession (“**Erickson**”) and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (collectively, the “**Chapter 11 Cases**”), for entry of an order at a preliminary hearing on the Motion (this “**Preliminary Hearing Order**”) and an order at a final hearing on the Motion (the “**Final Hearing Order**”), under sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1) and 364(e) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), and Rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Northern District of Texas (the “**Local Rules**”), seeking, among other things:

(1) authorization for the Debtors to (A) obtain a postpetition senior secured debtor in possession revolving credit facility in an aggregate principal amount of up to \$[116,000,000]³ (the “**DIP Revolving Facility**”) pursuant to the terms and conditions of this Preliminary Hearing Order and that certain First Lien Super-Priority Debtor-In-Possession Facility Credit Agreement, and as hereafter amended, restated, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “**DIP Revolving Facility Credit**

² All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion or the applicable DIP Documents (as defined herein).

³ To be updated to reflect First Lien Repayment.

Agreement”), dated as of November [], 2016 (the **“DIP Closing Date”**), by and among Erickson and Erickson Helicopters, Inc., as co-borrowers, the other Debtors as guarantors, Wells Fargo Bank, National Association, as administrative agent and collateral agent (in such capacities, collectively, the **“DIP Revolving Facility Agent”**), and the lenders named therein (the **“DIP Revolving Facility Lenders”** and, together with the DIP Revolving Facility Agent and any other party to which DIP Revolving Facility Obligations (as defined below) are owed, the **“DIP Revolving Facility Parties”**) and (B) incur the **“Obligations”** under the DIP Revolving Facility Documents (such Obligations, as provided for, and defined in, the DIP Revolving Facility Documents, shall be referred to herein as the **“DIP Revolving Facility Obligations”**) (the DIP Revolving Facility Credit Agreement together with this Preliminary Hearing Order, the Final Hearing Order and any and all related agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, including the Debtor-in-Possession Credit Facility Term Sheet attached hereto as Exhibit A (the **“DIP Term Sheet”**) collectively, the **“DIP Revolving Facility Documents”**);

(2) authorization for the Debtors to (A) obtain postpetition junior secured debtor in possession financing in an aggregate principal amount of up to \$66,670,000 (the **“DIP Term Facility”**; the DIP Term Facility and the DIP Revolving Facility, each a **“DIP Facility”** and together, the **“DIP Facilities”**) pursuant to the terms and conditions of this Preliminary Hearing Order and that certain Second Lien Super-Priority Debtor-in-Possession Credit Agreement, and as hereafter amended, restated, amended and restated,

supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “**DIP Term Facility Credit Agreement**” and, together with the DIP Revolving Facility Credit Agreement, the “**DIP Credit Agreements**”), dated as of the DIP Closing Date, by and among Erickson, as borrower, the other Debtors as guarantors, Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (in such capacities, collectively, the “**DIP Term Facility Agent**” and, together with the DIP Revolving Facility Agent, the “**DIP Agents**”), and the lenders named therein (the “**DIP Term Facility Lenders**”⁴ and, together with the DIP Term Facility Agent and any other party to which DIP Term Facility Obligations (as defined below) are owed, the “**DIP Term Facility Parties**”; the DIP Term Facility Parties and the DIP Revolving Facility Parties shall be collectively referred to herein as the “**DIP Parties**”) and (B) incur the “Obligations” under the DIP Term Facility Credit Agreement (such Obligations, as provided for, and defined in, the DIP Term Facility Credit Agreement, shall be referred to herein as the “**DIP Term Facility Obligations**” and, together with the DIP Revolving Facility Obligations, the “**DIP Obligations**”) (the DIP Term Facility Credit Agreement together with this Preliminary Hearing Order, the Final Hearing Order, and any and all related agreements, documents, certificates and instruments delivered or executed from time to time in connection therewith, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof and hereof, including the DIP Term Sheet, collectively, the “**DIP Term Facility Documents**” and, together with the DIP Revolving Facility Documents, the “**DIP Documents**”);

⁴ For the purposes of this Preliminary Hearing Order, the DIP Lenders shall be the parties listed on Exhibit C hereto.

(3) authorization for the Debtors to execute and enter into the DIP Documents and to perform their respective obligations thereunder and such other and further acts as may be required in connection with the DIP Documents, including, without limitation, the payment of all principal, interest, fees, expenses and other amounts payable under the DIP Documents as such amounts become due and payable;

(4) authorization for the Debtors to provide adequate protection of the interests of the Existing First Lien Lenders in the Existing First Lien Collateral through the application of: (i) use all cash collateral consisting of (a) proceeds of “First Lien Collateral” (as defined in the Existing Intercreditor Agreement (as defined below)) in or coming into the possession or control of the Debtors, (b) any proceeds of Existing First Lien Adequate Protection Liens (as defined below) and (c) proceeds of any and all of the Debtors’ assets (other than the proceeds of the DIP Term Facility or the DIP Term Facility Priority Account as defined below) subject to liens granted to the DIP Revolving Facility Agent under this Preliminary Hearing Order, in each case, in reduction of the Existing First Lien Obligations (as defined below) (collectively, the “**First Lien Repaid Obligations**”) until such amounts are Paid In Full (as defined in the DIP Revolving Facility Credit Agreement or, prior to the Final Hearing Order, the DIP Term Sheet);

(5) authorization for the Debtors to grant security interests, liens and superpriority claims, including superpriority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code and liens pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code, to the DIP Agents, for the benefit of the DIP Parties, in the DIP Collateral (as defined herein), including, without limitation, all property constituting “Cash Collateral,” as defined in section 363(a) of the Bankruptcy Code, to

secure all DIP Obligations, as more fully set forth in this Preliminary Hearing Order; provided that all liens, security interests, superpriority claims and administrative claims in favor of the (x) the DIP Term Facility (i) will prime and be senior to the liens and security interests in the DIP Collateral securing any prepetition indebtedness, other than the Existing First Lien Obligations, and (ii) will be junior to (A) the Carve-Out, (B) the liens on, and security interests in, the DIP Collateral securing the Existing First Lien Obligations under the Existing First Lien Credit Agreement (including, without limitation, any replacement liens constituting Existing First Lien Adequate Protection Liens) and (C) the liens on, and security interests in, the DIP Collateral securing the DIP Revolving Facility; provided, however, that the liens and security interests granted under the DIP Term Facility in the DIP Term Facility Priority Account, and all amounts held therein or credited thereto, will prime and be senior to the liens and security interests securing (1) any prepetition indebtedness, including the indebtedness under the Existing First Lien Credit Agreement (including, without limitation, any replacement liens constituting Existing First Lien Adequate Protection Liens) and (2) the DIP Revolving Facility; and (y) the DIP Revolving Facility will be junior in priority of lien and in payment to the Existing First Lien Obligations (including, without limitation, any replacement liens constituting Existing First Lien Adequate Protection Liens) until such Existing First Lien Obligations are Paid in Full;

(6) authorization for the Debtors to grant adequate protection to the Prepetition Secured Parties whose liens and security interests are being primed by the DIP Revolving Facility and DIP Term Facility, as set forth in Paragraphs 11 and 12

below, subject to the terms and conditions of the Existing Intercreditor Agreement (as defined below);

(7) authorization for the Debtors' provision of adequate protection to (x) the Existing First Lien Parties and (y) the Existing Second Lien Parties, including for any Diminution in Value (as defined herein) of their interests in the Prepetition Collateral (as defined herein), including Cash Collateral, as set forth in Paragraphs 11 and 12 below, subject to the terms of the Existing Intercreditor Agreement;

(8) authorization for the Debtors to borrow under the DIP Term Facility up to an aggregate principal or face amount of \$66,670,000 (subject to increase for fees and interest paid in kind), to be incurred as follows: (x) subject to the limitations set forth Paragraph 4 of this Preliminary Hearing Order, an Initial DIP Term Draw (as defined below) on the DIP Closing Date in an aggregate amount equal to 49,000,000 and (y) subject to the entry of the Final Hearing Order, the remaining amount of the DIP Term Facility (such loans, the "**Additional DIP Term Loans**") in accordance with the DIP Term Facility Documents to (i) fund the First Lien Repayment (as defined below), (ii) fund expenses for working capital purposes of the Debtors and to otherwise fund the operations and administration of the Debtors during the Chapter 11 Cases, (iii) make adequate protection payments and (iv) pay costs and expenses in connection with the DIP Documents and the Chapter 11 Cases, including, but not limited to, professional expenses, subject to the terms of the DIP Intercreditor Agreement;

(9) authorization for the Debtors to borrow under the DIP Revolving Facility up to the maximum available amount from time to time pursuant to the terms and conditions of the DIP Revolving Facility Documents;

(10) authorization for the Debtors to waive and be prohibited from asserting any surcharge claim, under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Parties or the Prepetition Secured Parties upon the DIP Collateral or the Prepetition Collateral (as applicable);

(11) authorization to not subject the DIP Parties or the Prepetition Secured Parties to the equitable doctrine of “marshaling” or any other similar doctrine with respect to the DIP Collateral or the Prepetition Collateral (as applicable); and authorization for the Prepetition Secured Parties to be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and for the “equities of the case” exception under section 552(b) to not apply to the Prepetition Secured Parties with respect to proceeds, products, offspring, or profits of any of the Prepetition Collateral;

(12) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Documents and this Preliminary Hearing Order; and

(13) the scheduling of a final hearing (the “**Final Hearing**”) on the Motion for a date that is before the thirty-fourth (34th) day after the Petition Date (as defined herein) to consider entry of a Final Hearing Order authorizing the borrowings under the DIP Facilities on a final basis and approval of notice procedures with respect thereto.

This Court having found that, under the circumstances, due and sufficient notice of the Motion and Interim Hearing was provided by the Debtors as set forth in Paragraph N below, and having held the Interim Hearing on November [], 2016, after considering all the

pleadings, motions and other papers filed with this Court and as further stated on the record at the Interim Hearing; and this Court having overruled all unresolved objections to the interim relief requested in the Motion; and upon the record made by the Debtors at the Interim Hearing, the First Day Declaration, and the *Declaration of Christopher Shepard, in Support of Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363 and 364 Authorizing the Debtors to (A) Obtain Postpetition on a Super-Priority Secured and Priming Basis, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of the Existing First Lien Parties and Existing Second Lien Parties, (D) Grant Adequate Protection to the Existing First Lien Parties and Existing Second Lien Parties, and (E) Enter Into DIP Revolving Credit Facility and DIP Term Facility; (II) Modifying the Automatic Stay; (III) Scheduling A Final Hearing Pursuant to Bankruptcy Rules 4001(B) and 4001(C); and (IV) Granting Related Relief* (the "**Shepard Declaration**"), and after due deliberation and consideration and good and sufficient cause appearing therefor:

THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:

A. *Petition Date.* On November 8, 2016 (the "**Petition Date**"), each Debtor filed a voluntary petition with this Court commencing a case under chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate their businesses and manage their respective properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. *Jurisdiction and Venue.* This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Order of Reference of Bankruptcy Cases and Proceedings Nunc Pro Tunc* entered by the United States District Court for the Northern District of Texas, dated August 3, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b), and the Debtors confirmed their consent to the entry of a final order by the Court in connection with the 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 with the Motion consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105, 361, 362, 363 and 364 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001 and 9014 and the Local Rules.

C. Debtors' Stipulations (Existing First Lien Credit Facility). Without prejudice to the rights of any other non-Debtor party-in-interest with standing (but subject to the limitations thereon described in Paragraph 15 below) (hereafter, the "**Objection Provisions**"), the Debtors hereby admit, acknowledge, agree and stipulate that:

(i) Pursuant to that certain Credit Agreement, dated as of May 2, 2013 (as the same has been and may be amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date in accordance with the terms thereof, the "**Existing First Lien Credit Agreement**" and, together with all loan and security documents related thereto, the "**Existing First Lien Credit Documents**"), among Erickson and Erickson Helicopters, Inc., an Oregon corporation f/k/a Evergreen Helicopters, Inc. ("**EH**"), as co-borrowers, and each of their respective direct and indirect subsidiaries, as guarantors, the lenders party thereto (the "**Existing First Lien Lenders**"), and Wells Fargo Bank, National Association, as agent (the "**Existing First Lien Agent**" and, together with the Existing First Lien Lenders the "**Existing First Lien Parties**"), the Existing First Lien Lenders provided a revolving credit facility to or for the benefit of the Debtors (the "**Existing First Lien Credit Facility**"). As of the Petition Date, the Debtors were indebted to the Existing First Lien Parties in respect of loans made and letters of credit issued under the Existing First Lien Credit Facility in accordance with the Existing First Lien Credit Documents in the aggregate outstanding principal amount of \$130,763,848.10, plus accrued and unpaid interest, fees, costs, expenses and other charges with respect thereto (collectively, the "**Existing First Lien Obligations**");

(ii) To secure the Existing First Lien Obligations, the Debtors granted to the Existing First Lien Parties a first priority security interest in and lien (the "**Existing First Lien Liens**") upon all "Collateral" under and as defined in the Existing First Lien Credit Documents (collectively, the "**Existing First Lien Collateral**"); the "Collateral" consists of, among other things, all of the (A) Debtors' prepetition accounts; books; chattel paper; deposit accounts; goods, equipment, inventory, aircraft and engines, general intangibles, including, without limitation, intellectual property and intellectual property licenses; inventory; investment related property;

negotiable collateral; supporting obligations; commercial tort claims; (B) money, Cash Equivalents, or other assets of the Debtor that now or hereafter come into the possession, custody or control of the Existing First Lien Agent (or its agent or designee); and (C) all of the proceeds (as such term is defined in the Uniform Commercial 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 proceeds 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 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; and (D) all profits, income, and proceeds derived therefrom, and all accessions, substitutions, renewals, and improvements, replacements, and additions thereof, now owned or hereafter acquired by the Debtors, and all rights and property of any kind forming the subject matter of any of the foregoing existing as of the Petition Date, together with all post-petition proceeds and products thereof under Bankruptcy Code § 552(b). True and correct copies of all of the loan documents evidencing the Existing First Lien Obligations and the Existing First Lien Collateral have been attached to the Addendum to the Financing Motion [Docket No. _] (the “**Addendum**”) which was filed on the Petition Date and such loan documents are incorporated herein for all purposes;

(iii) The first-priority security interests in and liens on the Existing First Lien Collateral were properly perfected by (A) the filing of UCC financing statements, with the Debtors, as debtors, and the Existing First Lien Agent, as secured party; (B) the filings⁵ of aircraft mortgages and security agreements with the Federal Aviation Administration (the “**FAA**”), the International Registry (the “**IR**”) or, as applicable, the corresponding aviation agency of the nation in which the Debtors’ aircraft are located; and (C) the Debtors’ maintenance of the deposit account arrangements with the Existing First Lien Agent, pursuant to which the First Lien Agent maintains “control” for the purposes of the Uniform Commercial Code pursuant to Section 9.04(a)(1), as the bank with which the deposit accounts are maintained. True and correct copies of all of the financing statements, deposit control account agreements, and aircraft and engine mortgages and security agreements filed with the FAA, the IR, or, as applicable, the corresponding aviation agency of the nation in which the Debtors’ aircraft are located, are attached to the Addendum and are Incorporated herein for all purposes;

(iv) (a) the Existing First Lien Obligations constitute legal, valid, enforceable non-avoidable and binding obligations of Erickson and each of the guarantor Debtors party thereto; (b) as of the Petition Date, the Debtors are liable to the

⁵ These stipulations do not apply to the following aircraft: S-76C+760497 PR-EAE.

Existing First Lien Parties for all obligations, liabilities, and indebtedness of the Debtors to the Existing First Lien Parties, both absolute and contingent, existing prior to the Petition Date, together with all interest, fees, costs, commissions, and expenses accrued and accruing with respect thereto, and other costs payable or reimbursable to the First Lien Agent and the Existing First Lien Parties in the approximate unpaid principal amount of \$130,763,848.10 (including extant letters of credit in the face amount of \$2,978,969.06); (c) no offsets, defenses or counterclaims to the Existing First Lien Obligations exist; (d) no portion of the Existing First Lien Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Existing First Lien Credit Documents are valid, binding, enforceable and unavoidable by the Existing First Lien Parties against each of the Debtors; (f) the Existing First Lien Liens were properly perfected as of the Petition Date and constitute legal, valid, binding, enforceable, unavoidable and perfected liens in and to the Existing First Lien Collateral and are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and such liens have priority over any and all other liens on the Existing First Lien Collateral, subject only certain liens otherwise expressly permitted by the Existing First Lien Credit Documents (to the extent any such permitted liens were legal, valid, properly perfected, non-avoidable and senior in priority to the Existing First Lien Credit Documents as of the Petition Date or thereafter pursuant to section 546(b) of the Bankruptcy Code, the “**First Lien Permitted Liens**”); (g) the Existing First Lien Obligations constitute allowed secured claims against the Debtors’ estates and all interest, fees, costs and other charges accruing or otherwise arising after the Petition Date are allowable under section 506(b) of the Bankruptcy Code; and (h) the Debtors and their estates have no claim, counterclaim, objection, defenses, set-off rights, challenge or cause of action against the Existing First Lien Parties or any of their respective affiliates, parents, subsidiaries, partners, controlling persons, agents, attorneys, advisors, professionals, officers, directors and employees, whether arising under applicable state or federal law (including, without limitation, any recharacterization, or other equitable relief that might otherwise impair the Existing First Lien Parties or their interest in the Collateral, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), in connection with the Existing First Lien Credit Agreement or the transactions contemplated thereunder or the Existing First Lien Obligations, including without limitation, any right to assert any disgorgement or recovery; and subject to the limitations thereon described in Paragraph 15 below, the Debtors and their estates hereby release and discharge any and all such claims, counterclaims, objections, defenses, set-off rights, challenges and causes of action;

(v) All of the Debtors’ cash, including any cash in deposit accounts of the Debtors, wherever located, constitutes Cash Collateral of the Existing First Lien Parties and the Second Lien Parties (as defined below), as applicable;

(vi) As a result of the commencement of the Chapter 11 Cases, the Debtors are in default of their debts and obligations under the Existing First Lien Documents;

(vii) Any order entered by the Court in relation to the establishment of a bar date for any claims (including administrative expense claims) in any of the Chapter 11 Cases shall not apply to the Existing First Lien Parties with respect to the Existing First Lien Obligations;

(viii) The Debtors agree, on a joint and several basis, to indemnify and hold harmless the DIP Parties and each Indemnified Party (defined below) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, attorney's fees) or disbursements of any nature whatsoever which may be imposed on, incurred by or asserted against an Indemnified Party in any way relating to or arising out of any of the DIP Documents or any other document contemplated hereby or thereby or the transactions contemplated thereby or by this Preliminary Hearing Order (including, without limitation, the exercise by the DIP Parties of discretionary rights granted under the DIP Documents) or any action taken or omitted by the DIP Agents or the DIP Lenders under any of the DIP Documents or any document contemplated hereby or thereby; provided, that the Debtors do not have any obligation to indemnify and hold harmless any Indemnified Party under this Paragraph with respect to any matter solely resulting from the gross negligence or willful misconduct of such Indemnified Party, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. The Debtors further agree that all indemnities of the Indemnified Parties shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Preliminary Hearing Order and the DIP Documents; and

(ix) In administering or determining to make any loan under the DIP Facilities, the DIP Documents, the Prepetition Debt Documents, the Existing First Lien Obligations, this Preliminary Hearing Order or the Final Hearing Order, or in exercising any rights or remedies as and when permitted thereunder, none of the DIP Revolving Facility Parties, DIP Term Facility Parties, Existing First Lien Parties or Existing Second Lien Parties are in control of the operations of the Debtors or acting as a "responsible person" or "owner or operation" with respect to such parties' role if any, as mortgagee in possession, or on account of the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive and Liability Act, 29 U.S.C. § 9601 et seq., as amended, or any similar federal or state statute).

D. Debtors' Stipulations (Second Lien Notes). Without prejudice to the rights of any other non-Debtor party-in-interest with standing (but subject to the limitations thereon described in Paragraph 15 below), the Debtors hereby admit, acknowledge, agree and stipulate that:

(i) Pursuant to that certain Indenture dated as of May 2, 2013 (as the same has been and may be amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “**Existing Second Lien Indenture**” and, together with all other agreements, instruments, notes, guaranties and other documents executed in connection therewith, the “**Existing Second Lien Notes Documents**” and, together with the Existing First Lien Documents, the “**Prepetition Debt Documents**”), among Erickson, as issuer, the guarantors party therein, and Wilmington Trust, National Association, as trustee and notes collateral agent (in such capacity, the “**Indenture Trustee**” and, together with the Existing First Lien Agent, the “**Prepetition Agents**”), Erickson issued the 8.25% Second Lien Senior Secured Notes due 2020 (the “**Existing Second Lien Notes**” and, the holders of such Existing Second Lien Notes, the “**Existing Second Lien Noteholders**” and, together with the Indenture Trustee, the “**Existing Second Lien Parties**” and, together with the Existing First Lien Parties, the “**Prepetition Secured Parties**”). As of the Petition Date, approximately USD \$355,000,000 in aggregate principal amount of Existing Second Lien Notes, together with any amounts incurred or accrued but unpaid prior to the Petition Date in accordance with the Existing Second Lien Notes Documents, including but not limited to, accrued and unpaid interest, any fees, costs, expenses and disbursements as provided under the Existing Second Lien Notes Documents (collectively, the “**Existing Second Lien Obligations**” and, together with the Existing First Lien Obligations, the “**Prepetition Secured Parties Obligations**”) was outstanding;

(ii) To secure the Existing Second Lien Obligations, the Debtors granted to the Existing Second Lien Parties a second priority security interest in and lien (the “**Existing Second Priority Liens**” and, together with the Existing First Lien Liens, the “**Prepetition Secured Parties Liens**”) upon all “Collateral” under and as defined in the Existing Second Lien Notes Documents (which “Collateral” is the same as the Existing First Lien Collateral) (collectively, the “**Existing Second Lien Collateral**” and, together with the Existing First Lien Collateral, the “**Prepetition Collateral**”);

(iii) (a) the Existing Second Lien Obligations constitute legal, valid, enforceable non-avoidable and binding obligations of Erickson, as issuer, and each of the guarantors party thereto; (b) as of the Petition Date, the Debtors are liable to the Existing Second Lien Parties for all obligations, liabilities, and indebtedness of the Debtors to the Existing Second Lien Parties, both absolute and contingent, existing prior to the Petition Date, together with all interest, fees, costs, commissions, and expenses accrued and accruing with respect thereto, and other costs payable or reimbursable to the Indenture Trustee and the Existing Second Lien Parties in the approximate unpaid principal amount of \$355,000,000; (c) no offsets, defenses or counterclaims to the Existing Second Lien Obligations exist; (d) no portion of the Existing Second Lien Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Existing Second Lien Notes

Documents are valid, binding, enforceable and unavoidable by the Existing Second Lien Parties against each of the Debtors; (f) the Existing Second Priority Liens were properly perfected as of the Petition Date and constitute legal, valid, binding, enforceable, unavoidable and perfected liens in and to the Existing Second Lien Collateral and are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and such liens have priority over any and all other liens on the Existing Second Lien Collateral, subject only to the Existing First Lien Liens (subject to the Existing Intercreditor Agreement (as defined below) and certain liens otherwise expressly permitted by the Existing Second Lien Notes Documents (to the extent any such permitted liens were legal, valid, properly perfected, non-avoidable and senior in priority to the Existing Second Priority Liens as of the Petition Date or thereafter pursuant to section 546(b) of the Bankruptcy Code, the “**Indenture Permitted Liens**” and, together with the First Lien Permitted Liens, the “**Prepetition Permitted Liens**”); (g) the Existing Second Lien Obligations constitute allowed secured claims against the Debtors’ estates to the extent of the value of the Existing Second Lien Parties’ interest in the Existing Second Lien Collateral; and (h) the Debtors and their estates have no claim, counterclaim, objection, defenses, set-off rights, challenge or cause of action against the Existing Second Lien Parties or any of their respective affiliates, parents, subsidiaries, partners, controlling persons, agents, attorneys, advisors, professionals, officers, directors and employees, whether arising under applicable state or federal law (including, without limitation, any recharacterization, or other equitable relief that might otherwise impair the Existing Second Lien Parties or their interest in the Collateral, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553 of the Bankruptcy Code), in connection with the Existing Second Lien Indenture or the transactions contemplated thereunder or the Existing Second Lien Obligations, including without limitation, any right to assert any disgorgement or recovery; and subject to the limitations thereon described in Paragraph 15 below, the Debtors and their estates hereby release and discharge any and all such claims, counterclaims, objections, defenses, set-off rights, challenges and causes of action;

(iv) The respective priorities of (a) the Existing First Lien Liens and (b) the Existing Second Priority Liens are governed by terms and conditions set forth in that certain Intercreditor Agreement, dated as of May 2, 2013 (the “**Existing Intercreditor Agreement**”) by and between the Existing First Lien Agent and the Indenture Trustee;

(v) All of the Debtors’ cash, including any cash in deposit accounts of the Debtors, wherever located, constitutes Cash Collateral of the Existing First Lien Parties and the Existing Second Lien Parties, as applicable;

(vi) As a result of the commencement of the Chapter 11 Cases, the Debtors are in default of their debts and obligations under the Existing Second Lien Notes Documents;

(vii) Any order entered by the Court in relation to the establishment of a bar date for any claims (including administrative expense claims) in any of the Chapter 11 Cases shall not apply to the Existing Second Lien Note Parties with respect to the Existing Second Lien Notes Obligations;

(viii) The Debtors agree, on a joint and several basis, to indemnify and hold harmless the DIP Parties and each Indemnified Party (defined below) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, attorney's fees) or disbursements of any nature whatsoever which may be imposed on, incurred by or asserted against an Indemnified Party in any way relating to or arising out of any of the DIP Documents or any other document contemplated hereby or thereby or the transactions contemplated thereby or by this Preliminary Hearing Order (including, without limitation, the exercise by the DIP Parties of discretionary rights granted under the DIP Documents) or any action taken or omitted by the DIP Agents or the DIP Lenders under any of the DIP Documents or any document contemplated hereby or thereby; provided, that the Debtors do not have any obligation to indemnify and hold harmless any Indemnified Party under this Paragraph with respect to any matter solely resulting from the gross negligence or willful misconduct of such Indemnified Party, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. The Debtors further agree that all indemnities of the Indemnified Parties shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Preliminary Hearing Order and the DIP Documents; and

(ix) In administering or determining to make any loan under the DIP Facilities, the DIP Documents, the Prepetition Debt Documents, the Existing First Lien Obligations, this Preliminary Hearing Order or the Final Hearing Order, or in exercising any rights or remedies as and when permitted thereunder, none of the DIP Revolving Facility Parties, DIP Term Facility Parties, Existing First Lien Parties or Existing Second Lien Parties are in control of the operations of the Debtors or acting as a "responsible person" or "owner or operation" with respect to such parties' role if any, as mortgagee in possession, or on account of the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive and Liability Act, 29 U.S.C. § 9601 et seq., as amended, or any similar federal or state statute).

E. Need for Post-Petition Financing. Based upon the pleadings, the Shepard Declaration, and proceedings of record in the Chapter 11 Cases, the Debtors do not have

sufficient available sources of working capital and financing to carry on the operation of their businesses without the DIP Facilities. The Debtors' ability to maintain business relationships with their vendors, suppliers, and employees, to make payroll, to make capital expenditures and to satisfy other working capital and operational needs and otherwise finance their operations is essential to the Debtors' continued viability. In addition, based on the record presented at the Interim Hearing: (i) the Debtors' critical need for financing is immediate and the entry of this Preliminary Hearing Order is necessary to avoid immediate and irreparable harm to the Debtors' estates; (ii) in the absence of the DIP Facilities, the continued operation of the Debtors' businesses would not be possible and serious and irreparable harm to the Debtors and their estates would occur; and (iii) the preservation, maintenance and enhancement of the going concern value of the Debtors are of the utmost significance and importance to a successful reorganization of the Debtors.

F. *No Credit on More Favorable Terms.* Given their current financial condition, financing arrangements and capital structure, the Debtors are unable to obtain the consensual use of Cash Collateral, are unable to obtain sufficient interim and long-term financing from sources other than the DIP Lenders on terms more favorable than under the DIP Facilities and the DIP Documents, and are unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code. New credit is unavailable to the Debtors without providing the DIP Agents for the benefit of the DIP Parties the (i) DIP Superpriority Claims (as defined herein) and (ii) DIP Liens (as defined herein) in the DIP Collateral, as provided herein and in the DIP Documents. Further, the Existing First Lien Lenders and the Existing Second Lien Parties have demanded adequate protection of their interests in the

Existing First Lien Collateral and Existing Second Lien Collateral, as applicable, which the Debtors have provided for under the terms of the Preliminary Hearing Order.

G. Findings Regarding the DIP Facilities. Based upon the pleadings and proceedings of record in the Chapter 11 Cases, (i) the terms and conditions of each DIP Facility are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and are supported by reasonably equivalent value and fair consideration, (ii) each DIP Facility has been negotiated in good faith and at arm's length among the Debtors and the DIP Parties and (iii) all credit extended, loans made and other financial accommodations extended to the Debtors by the DIP Parties have been extended, issued or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by Bankruptcy Code section 364(e), and each of the DIP Facilities, the DIP Liens and the DIP Superpriority Claims shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Preliminary Hearing Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

H. Need for Use of Cash Collateral. An immediate and critical need exists for the Debtors to use the Cash Collateral (in addition to the DIP Facilities) for the purposes of providing adequate protection to the Existing First Lien Lenders of their interests in the Existing First Lien Collateral as provided herein and permitting the advancement of funds under the DIP Revolving Facility to continue to operate their businesses in the ordinary course, pay wages, maintain business relationships with vendors and suppliers, make payroll, make capital expenditures and generally conduct their business affairs so as to avoid immediate and irreparable harm to their estates and the value of their assets (subject to and within the limits imposed by the terms of this Preliminary Hearing Order).

I. Use of Proceeds of the DIP Term Facility. As a condition to entry into the DIP Documents, the extension of credit under the DIP Term Facility, the DIP Term Parties require, and the Debtors have agreed, that proceeds of the DIP Term Facility shall be used, in each case only in a manner consistent with the terms and conditions of the DIP Documents, and in accordance with the DIP Budget (as defined herein) and this Preliminary Hearing Order, (i) following entry of the Preliminary Hearing Order and subject to the limitations set forth in Paragraph 4 thereof, to repay the outstanding loans under the Existing First Lien Credit Facility in a principal amount equal to \$14,890,364 (such repayment, the “**First Lien Repayment**”), plus the aggregate amount of all costs and expenses set forth in the DIP Budget for the period from the Petition Date to the date that is 34 days following the Petition Date, (ii)(A) to pay transaction costs, fees and expenses that are incurred in connection with each of the DIP Facilities, (B) for working capital and general corporate purposes of the Borrower and the Guarantors, and (C) to make payments providing for adequate protection in favor of the Existing Second Lien Parties as set forth in Paragraph 12 below.

J. Use of Proceeds of the DIP Revolving Facility. As a condition to entry into the DIP Documents, the extension of credit under the DIP Revolving Facility, the DIP Revolving Parties require, and the Debtors have agreed, that proceeds of the DIP Revolving Facility shall be used, in each case only in a manner consistent with the terms and conditions of the DIP Documents, and in accordance with the DIP Budget and this Preliminary Hearing Order, to (i) pay transaction costs, fees and expenses that are incurred in connection with the DIP Revolving Facility, (ii) pay, when due, those expenses enumerated in the DIP Budget, subject to any permitted variance under the DIP Revolving Facility, and (iii) make payments providing for adequate protection for the benefit of the Existing First Lien Lenders as set forth in the section in

Paragraph 11 below. Each of the Debtors, acting through its Chief Restructuring Officer or such other individuals as may be so authorized to act on behalf of such Debtor, is hereby authorized to execute and deliver each of the DIP Documents, such execution and delivery to be conclusive of its authority to act in the name of and on behalf of such Debtor.

K. DIP Term Facility Backstop Parties and Syndication Procedures. Funds and/or accounts affiliated with, or managed and/or advised by, Wayzata Investment Partners LLC, MHR Fund Management LLC, Foxhill Opportunity Fund L.P. and Corbin Opportunity Fund (together with their respective successors and permitted assignees, each a “**Backstop Party**” and collectively, the “**Backstop Parties**”) will, severally and not jointly, backstop the DIP Term Facility in the amounts set forth in the DIP Term Facility Documents. Subject to entry of the Final Hearing Order, eligible Existing Second Lien Noteholders shall be offered the right to participate in the DIP Term Facility on a ratable basis following the funding of the Additional DIP Term Loans pursuant to procedures satisfactory to the DIP Term Facility Agent and the Backstop Parties, which shall include, among other things, a provision that any Existing Second Lien Noteholders participating in such offer shall agree to be bound by that certain Creditor Support Agreement, dated as of November 8, 2016.

L. Adequate Protection. The Existing First Lien Parties and the Existing Second Lien Parties have each demanded adequate protection of their interests and are each entitled to receive adequate protection as set forth in this Preliminary Hearing Order pursuant to sections 361, 363 and 364 of the Bankruptcy Code, as set forth in Paragraphs 11 and 12 below, for any diminution in the value of their respective interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date resulting from, among other things, (i) the Debtors’ use, sale or lease of such collateral, (ii) market value decline of such collateral, (iii) the

imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, and (iv) the subordination to the Carve-Out (as defined herein) (collectively, and solely to the extent of any such diminution in value, the “**Diminution in Value**”).

M. Existing First Lien Bank Accounts. The Debtors are authorized and directed, and shall coordinate the same with the United States Trustee’s office: (i) to continue the existing operating and collection account agreements and concentration account agreements as set forth in the Existing First Lien Credit Documents with such banks mutually acceptable to the Existing First Lien Agent and the Debtors and reflected in the Debtors’ first day pleadings (the “**Banks**”); (ii) to exercise their reasonable best efforts to collect all proceeds of the DIP Collateral; (iii) to immediately deposit all proceeds of the DIP Collateral received by the Debtors into the operating and collection accounts established for the benefit of the Existing First Lien Agent for subsequent transfer to the Existing First Lien Agent’s Accounts (as defined in the Existing First Lien Credit Agreement) and further application in accordance with the terms of the Existing First Lien Credit Documents and this Preliminary Hearing Order; and (iv) to instruct all account debtors and other parties, now or hereafter obligated to pay the Debtors, to remit such payments to the Cash Management Accounts (as defined in the Existing First Lien Credit Agreement), or, at the Existing First Lien Agent’s election, directly to the Lender’s Account; and (v) enter into such agreements as may be necessary to effectuate such arrangements. By this Preliminary Hearing Order, this Court confirms that the Existing First Lien Agent and Existing First Lien Lenders are granted, and shall continue to have, a first-priority, perfected security interest in and lien on the Debtors’ bank accounts and all deposits therein, together with all funds in the Debtors’ lockbox, collection accounts, and disbursement accounts (except for the Debtors’ payroll account and payroll trust account). Notwithstanding anything to the contrary contained

herein, the requirements of this Paragraph M shall not apply to the DIP Term Facility Priority Account and all amounts held therein or credited thereto (including, without limitation, the proceeds of DIP Loans under the DIP Term Facility).

N. Notice. Telephonic, facsimile notice or overnight mail notice of this Interim Hearing and the proposed entry of this Preliminary Hearing Order has been provided to: (i) the twenty-five (25) largest unsecured creditors on a consolidated basis; (ii) the Office of the United States Trustee for the Northern District of Texas (the “**U.S. Trustee**”); (iii) counsel to the proposed DIP Term Facility Agent; (iv) counsel to the proposed DIP Revolving Facility Agent; (v) counsel to the Existing First Lien Agent; (vi) counsel to the Backstop Parties; (vii) counsel to the Indenture Trustee; (viii) all known parties asserting a lien against the DIP Collateral; and (ix) any other party that has filed a request for notice pursuant to Bankruptcy Rule 2002 or are required to receive notice under the Bankruptcy Rules and the Local Rules. Requisite notice of the Motion and the relief requested thereby and this Preliminary Hearing Order has been provided in accordance with Bankruptcy Rule 4001, and no other notice need be provided for entry of this Preliminary Hearing Order.

O. Immediate Entry. The Debtors have requested immediate entry of this Preliminary Hearing Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). Absent entry of this Preliminary Hearing Order, the Debtors’ businesses, properties and estates will be immediately and irreparably harmed. This Court concludes that entry of this Preliminary Hearing Order is in the best interests of the Debtors’ respective estates and creditors as its implementation will, among other things, allow for the continued operation of the Debtors’ existing businesses and enhance the Debtors’ prospects for successful reorganization.

Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Approval of Preliminary Hearing Order. The Motion is approved on the terms and conditions set forth in this Preliminary Hearing Order. Any objections to the interim relief requested in the Motion that have not previously been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled. This Preliminary Hearing Order shall become effective immediately upon its entry.

2. Approval of DIP Documents; Authority Thereunder. The Debtors are hereby authorized to enter into, and execute and deliver, the DIP Documents, including the DIP Credit Agreements, and such additional documents, instruments, certificates and agreements as may be required or requested by the DIP Parties to implement the terms or effectuate the purposes of this Preliminary Hearing Order and the DIP Documents. To the extent not entered into as of the date hereof, the Debtors shall negotiate the DIP Documents in good faith and in all respects such DIP Documents shall be consistent with the terms of the DIP Term Sheet and otherwise acceptable to the Debtors and each DIP Agent (and in the case of the DIP Term Facility Agent, the Requisite DIP Term Lenders (as defined herein)). Upon entry of this Preliminary Hearing Order and until execution and delivery of the DIP Credit Agreements and other DIP Documents, the Debtors shall be bound by (x) the terms and conditions and other provisions set forth in DIP Term Sheet, with the same force and effect as if duly executed and delivered to the DIP Agents by the Debtors, and (y) this Preliminary Hearing Order, and this Preliminary Hearing Order and the DIP Term Sheet shall govern and control the DIP Facilities. Upon execution and delivery of the DIP Credit Agreements and other DIP

Documents, the DIP Term Sheet shall be superseded by the DIP Credit Agreements and other DIP Documents, and this Preliminary Hearing Order, the DIP Credit Agreements and other DIP Documents shall govern and control DIP Facilities. Upon execution and delivery thereof, the DIP Documents shall constitute valid and binding obligations of the Debtors enforceable in accordance with their terms. To the extent there exists any conflict among the terms and conditions of the Motion, the DIP Documents, and this Preliminary Hearing Order, the terms and conditions of this Preliminary Hearing Order shall govern and control. To the extent there is a conflict between the terms and conditions of the Motion and the DIP Documents, the terms and conditions of the DIP Documents shall govern.

3. Validity of DIP Documents. Upon execution and delivery of the DIP Documents, each of the DIP Documents shall constitute, and is hereby deemed to be, the legal, valid and binding obligation of the Debtors party thereto, enforceable against each such Debtor in accordance with its terms. Loans advanced under the DIP Documents (the “**DIP Loans**”) until the Final Hearing will be made to fund the Debtors’ working capital and general corporate needs, in each case, in the ordinary course of business to the extent permitted under the DIP Documents and the DIP Budget, and to pay such other amounts as are required or permitted to be paid pursuant to the DIP Documents, this Preliminary Hearing Order and any other orders of this Court. No obligation, payment, transfer or grant of security under the DIP Documents or this Preliminary Hearing Order with respect to either or both of the DIP Facilities shall be stayed, restrained, voided, voidable or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

4. Authorization to Borrow. Upon entry of this Preliminary Hearing Order, the Debtors are immediately authorized to borrow (i) from the DIP Term Facility Lenders under

the DIP Term Facility in an aggregate principal amount equal to \$49,000,000 (the “**Initial DIP Term Draw**”), subject to the terms and conditions set forth in the DIP Term Facility Documents and this Preliminary Hearing Order, and (ii) from the DIP Revolving Facility Lenders under the DIP Revolving Facility and subject to the terms and conditions set forth in the DIP Revolving Facility Documents, in an aggregate principal amount up to \$[_____]⁶, which, to the extent authorized pursuant to this Preliminary Hearing Order, shall include the First Lien Repaid Obligations (plus interest, fees and other expenses and amounts provided for in the DIP Revolving Facility Documents); provided, that prior to the execution and delivery of the DIP Credit Agreements and the other DIP Documents, the aggregate amount of funds withdrawn from the DIP Term Facility Priority Account, other than amounts required for the First Lien Repayment, shall not exceed \$22,964,000 (or such other amount as may be agreed by the Requisite DIP Term Lenders in writing); provided further, that if access to the remaining portion of the DIP Term Facility is restricted pursuant to the foregoing proviso, DIP Revolving Agent will have the discretion to cease making DIP Revolving Loans until full access to the DIP Term Facility is reinstated. Subject to the terms and conditions of this Interim Order, the DIP Documents and in accordance with the DIP Budget, the Debtors are authorized to use Cash Collateral until the date upon which the Debtors’ right to use Cash Collateral is terminated pursuant to the DIP Documents.

5. Authorization of Payment of First Lien Repaid Obligations. The Debtors are authorized to provide adequate protection of the interests of the Existing First Lien Lenders in the Existing First Lien Collateral by applying all cash collateral consisting of (a) proceeds of “First Lien Collateral” (as defined in the Existing Intercreditor Agreement) coming into the

⁶ NTD: To be updated to reflect outstanding amount post-First Lien Repayment.

possession or control of the Debtors, (b) any proceeds of Existing First Lien Adequate Protection Liens (as defined below) and (c) proceeds of any and all of the Debtors' assets (other than the proceeds of the DIP Term Facility, except for the First Lien Repayment defined below, and the amounts on deposit in the DIP Term Facility Priority Account) subject to liens granted to the DIP Revolving Facility Agent under this Preliminary Hearing Order, solely in order to reduce the First Lien Repaid Obligations arising under or in connection with the Existing First Lien Credit Agreement.

6. Use of Proceeds.

(a) From and after the entry of this Preliminary Hearing Order, the Debtors shall use advances of credit under the DIP Facilities only for the express purposes specifically set forth in this Preliminary Hearing Order, the DIP Documents and in compliance with the DIP Budget, subject to the variances set forth in the applicable DIP Documents and Paragraphs 6(c) and 6(d) hereof.

(b) In accordance with the DIP Budget and the DIP Orders, the proceeds of the Initial DIP Term Draw will be used to fund (i) the First Lien Repayment, and (ii) the aggregate amount of all costs, fees and expenses set forth in the DIP Budget for the period from the Petition Date to the date that is 34 days following the Petition Date.

(c) In accordance with the DIP Budget and the DIP Orders, the proceeds of the Additional DIP Term Loans will be used (i) to pay transaction costs, fees and expenses that are incurred in connection with the DIP Term Facility, (ii) for working capital and general corporate purposes of the Debtors, and (iii) to make payments providing for adequate protection in favor of the Prepetition Secured Parties as set forth in Paragraphs 11 and 12 below.

(d) Other than the First Lien Repayment, which shall be paid to the Existing First Lien Agent for the ratable benefit of the Existing First Lien Lenders, all proceeds of the DIP Term Loans under the DIP Term Facility shall be deposited into a separate segregated account of the Borrower (the “**DIP Term Facility Priority Account**”) and invested at all times in cash and Cash Equivalents (as defined in the DIP Term Facility Documents). The DIP Term Facility Priority Account shall be at, and under the sole dominion and control of, the DIP Term Agent, and withdrawals from such account shall be pursuant to withdrawal procedures satisfactory to the Backstop Parties and shall only be used for the permitted purposes under this Preliminary Hearing Order, the DIP Term Sheet, the DIP Term Facility Documents, and in accordance with the DIP Budget (as defined below) or to make payments on the DIP Term Facility. Under no circumstances may any cash, funds, securities, financial assets or other property held in or credited to the DIP Term Facility Priority Account or the proceeds thereof held therein or credited thereto be used to pay for any purpose not permitted under this Preliminary Hearing Order or the DIP Term Facility Documents. The Debtors shall not deposit any amounts in the DIP Term Facility Priority Account other than the proceeds of the DIP Term Loans as described herein and in the DIP Term Facility Documents. Notwithstanding anything to the contrary contained herein or in any DIP Document, every provision set forth in this Paragraph 6(d) is subject in all respects to the Carve-Out (as defined below). The Borrower may request a disbursement of funds from the DIP Term Facility Priority Account, and the DIP Term Facility Agent may honor such request, subject to the terms described herein and in the DIP Term Facility Documents, including without limitation, that each such disbursement shall be in accordance with the DIP Budget; provided, however, with respect to any disbursement of funds from the DIP Term Facility Priority Account, the DIP Term Facility Agent shall be entitled to all

protections set forth in the DIP Term Facility Documents, including, without limitation, that the DIP Term Facility Agent may rely upon, and shall be fully protected in relying upon, any notice, certificate, or request from the Borrower delivered in connection with such disbursement. The DIP Term Facility Agent shall have the right to deduct from and pay interest, fees and expenses of the DIP Term Facility Obligations from the proceeds in the DIP Term Facility Priority Account (including the fees and expenses of the DIP Term Facility Agent), subject to and in accordance with Paragraph 8 below.

(e) In accordance with the DIP Budget (as defined herein, and subject to any permitted variances) and this Preliminary Hearing Order, to (i) pay transaction costs, fees and expenses that are incurred in connection with the DIP Revolving Facility, (ii) pay, when due, those expenses enumerated in the DIP Budget, subject to any permitted variance under the DIP Revolving Facility, and (iii) make payments providing for adequate protection for the benefit of the Existing First Lien Lenders as set forth in the section in Paragraph 11 below.

7. DIP Budget.

(a) General. Except as otherwise provided herein or approved by the DIP Parties in accordance with the DIP Documents, the proceeds of the DIP Facilities shall be used only in compliance with the DIP Budget (subject to any permitted variances). Attached as Exhibit B hereto and incorporated by reference herein is a summary 13-week cash flow forecast setting forth “Operating Disbursements,” “Receipts” and “Cash Flow After Debt Service” on a weekly basis for the period beginning as of the week of the DIP Closing Date through the 13-week period following the DIP Closing Date (a more detailed version of such cash-flow forecast delivered to the DIP Agents and DIP Lenders, and the U.S. Trustee on or prior to the date hereof, hereinafter, the “**Initial Budget**”). Upon entry of this Preliminary Hearing Order, the Debtors

shall deliver the Initial Budget, with detailed line-items, to the DIP Agents and the DIP Lenders, which Initial Budget shall be deemed a DIP Budget (defined below).

(b) Budget Covenants. On the Wednesday of every fourth week after the DIP Closing Date (commencing with the last Wednesday of the four full weeks after the DIP Closing Date; with the first delivery, for the avoidance of doubt, to be made on Wednesday, December 7, 2016), the Debtors shall deliver to the DIP Agents (for further delivery to the DIP Lenders) an update to the Initial Budget or the DIP Budget then in effect, as the case may be, in form and substance reasonably satisfactory to the DIP Revolving Facility Agent and Requisite DIP Term Lenders, for the period commencing (and including) the week immediately following such date through (and including) the 13th week thereafter (each, a “**DIP Budget**”). To the extent reasonably satisfactory to the DIP Revolving Facility Agent and Requisite DIP Term Lenders in accordance with the immediately preceding sentence, and the DIP Revolving Facility Agent, at the direction of the Required Lenders under the DIP Revolving Facility Credit Agreement (the “**Required Revolving Lenders**”), each such update to the Initial Budget or DIP Budget then in effect, as the case may be, that is delivered in accordance with this Paragraph 7(b) of this Preliminary Hearing Order and the applicable DIP Documents shall be deemed the new DIP Budget then in effect and shall replace any previously delivered or approved DIP Budget. Until replaced by an updated DIP Budget, the prior DIP Budget shall remain in effect for all purposes hereof and the DIP Documents. Any amendments made to the Initial Budget or DIP Budget shall be consistent with the terms of this Preliminary Hearing Order.

(c) Not later than 1:00 p.m. (Pacific time) on the Wednesday of each week after the DIP Closing Date, the Debtors shall deliver to the DIP Agents (for further delivery to the DIP Lenders) a report (a “**Variance Report**”) comparing the actual “Operating

Disbursements,” “Receipts” and “Cash Flow After Debt Service” of the Obligors for the immediately preceding test period that is required to be tested under the DIP Documents, in each case, to the corresponding values set forth in the DIP Budget then in effect for such period.

8. Payment of DIP Fees and Expenses.

(a) The Debtors are hereby authorized and directed to pay, solely from the proceeds of the DIP Term Facility, upon demand all fees, costs, expenses and other amounts payable under the terms of the DIP Term Facility Documents (including without limitation the agency fees of the DIP Term Facility Agent, the Closing Fee and the Put Option Premium, each as defined in the DIP Term Sheet) and all other reasonable fees and out-of-pocket costs and expenses of the DIP Term Facility Parties in accordance with the terms of this Preliminary Hearing Order, the DIP Term Sheet or the DIP Term Facility Documents as applicable (including, without limitation, the reasonable prepetition and postpetition fees and out-of-pocket costs and expenses of one lead counsel and one financial advisor for the ad hoc group of Existing Second Lien Noteholders (the “**Ad Hoc Group**”) (which shall initially be Akin Gump Strauss Hauer & Feld LLP and Houlihan Lokey Capital, Inc.) and any other necessary local or regulatory counsel for the Ad Hoc Group, and one lead counsel for the DIP Term Facility Agent (which shall initially be Ropes & Gray LLP) and any other necessary local or regulatory counsel for the DIP Term Facility Agent (collectively, the “**DIP Term Facility Fees**”) in accordance with Paragraph 8(c) below. For the avoidance of doubt, and notwithstanding anything in this Preliminary Hearing Order to the contrary, the DIP Term Facility Fees that are payable in cash shall only be payable from the proceeds of the DIP Term Facility.

(b) The Debtors are hereby authorized and directed to pay, solely from the proceeds of the DIP Revolving Facility, upon demand all other fees, costs, expenses and other

amounts payable under the terms of the DIP Revolving Facility Documents and all other reasonable fees and out-of-pocket costs and expenses of the DIP Revolving Facility Parties in accordance with the terms of the DIP Revolving Facility Documents subject to receiving a written invoice therefor (collectively, the “**DIP Revolving Facility Fees**” and, together with the DIP Term Facility Fees, the “**DIP Facility Fees**”). For the avoidance of doubt, and notwithstanding anything in this Preliminary Hearing Order to the contrary, the DIP Revolving Facility Fees shall only be payable from the proceeds of the DIP Revolving Facility.

(c) None of such DIP Facility Fees shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court. The Debtors shall pay the DIP Facility Fees in accordance with the terms and conditions of this Preliminary Hearing Order within five (5) days after receipt of the applicable summary invoice (which may be redacted for privileged information). All such unpaid fees, costs, expenses and other amounts owed or payable to the DIP Parties shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Preliminary Hearing Order and the DIP Documents, subject to this Preliminary Hearing Order and the DIP Intercreditor Agreement.

(d) All repayments of principal amounts of the DIP Term Facility, whether through optional prepayments, mandatory prepayments, at maturity, upon acceleration or otherwise, shall be subject to a premium in an amount equal to 7.5% of the principal amount of DIP Term Facility to be repaid (the “**Exit Premium**”), which shall be payable in cash; provided, (i) if Backstop Parties holding 66.67% in the amount of the outstanding DIP Term Loans owned by the Backstop Parties participate in the placement or issuance of equity, debt or any other rights offering, instrument or security that results in the Debtors’ consummation of a chapter 11

plan (an “**Exit Financing**”), the Exit Premium due to all DIP Term Lenders shall be waived and (ii) the entire Exit Premium due to all DIP Term Lenders may be waived by the Backstop Parties holding 66.67% in the amount of the outstanding DIP Term Loans owned by the Backstop Parties, in their sole discretion; provided, further, however, that the obligations under the Existing First Lien Credit Agreement (other than the Refinancing Accommodation Fee) and the obligations under the DIP Revolving Facility shall have been Paid in Full.

9. DIP Superpriority Claims. In accordance with Bankruptcy Code section 364(c)(1), the DIP Revolving Facility Obligations shall constitute senior administrative expense claims (the “**DIP Revolving Facility Superpriority Claims**”) and the DIP Term Facility Obligations shall constitute senior administrative expense claims (the “**DIP Term Facility Superpriority Claims**”) and, together with the DIP Revolving Facility Superpriority Claims, the “**DIP Superpriority Claims**”) against each Debtor with priority in payment over any and all administrative expenses at any time existing or arising, of any kind or nature whatsoever, including, without limitation, the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114 or otherwise, including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment; provided, however, that (x) the DIP Revolving Facility Superpriority Claims shall be subject (1) to the payment in full in cash of any amounts due in respect of the Existing First Lien Obligations and the Existing First Lien Superpriority Claims (as defined herein) and (2) for the avoidance of doubt, any superpriority administrative claims for the payment of DIP Term Facility Obligations or the Carve-Out (as defined below) with

funds held in or credited to the DIP Term Facility Priority Account, and (y) the DIP Term Facility Superpriority Claims shall be subject to and junior in right of payment to (1) the Existing First Lien Superpriority Claims, (2) the DIP Revolving Superpriority Claims (other than any superpriority administrative claims for the payment of DIP Term Facility Obligations with funds held in or credited to the DIP Term Facility Priority Account) and (3) the Carve-Out (as defined herein); provided, further that the DIP Superpriority Claims shall have recourse to and be payable from all pre-petition and post-petition property of the Debtors and their estates and all proceeds thereof, including, subject to the entry of the Final Hearing Order, proceeds of avoidance actions under chapter 5 of the Bankruptcy Code, subject in all instances to the terms of the Existing Intercreditor Agreement and DIP Intercreditor Agreement, as applicable.

10. DIP Liens. As security (a) for the DIP Obligations under the DIP Revolving Facility Documents, the DIP Revolving Facility Agent for the benefit of the DIP Revolving Facility Parties and (b) for the DIP Obligations under the DIP Term Facility Documents, DIP Term Facility Agent for the benefit of the DIP Term Facility Parties, are hereby granted (effective upon the date of this Preliminary Hearing Order, without the necessity of the execution by the Debtors or the filing or recordation of mortgages, security agreements, lockbox or control agreements, financing statements, or any other instrument or otherwise or the possession or control by the DIP Parties), as contemplated under the DIP Documents, valid, perfected, and unavoidable security interests in and liens upon (such security interests and liens, collectively, the “**DIP Liens**”) any and all present and after-acquired tangible and intangible property and assets of the Debtors and their estates, whether real or personal, of any nature whatsoever and wherever located, including, without limitation: (a) all Prepetition Collateral; (b) all accounts, chattel paper, deposit accounts, securities accounts, documents (as defined in the

UCC), equipment, general intangibles, instruments, inventory, and investment property and support obligations; (c) all books and records pertaining to the other property described in this Paragraph 10; (d) all other goods (including but not limited to fixtures) and personal property of such Debtor, whether tangible or intangible and wherever located; (e) subject to the entry of the Final Hearing Order, the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code; and (f) to the extent not covered by the foregoing, all other assets or property of the Debtors, whether prepetition or post-petition, 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 (all of which being hereinafter collectively referred to as the "**DIP Collateral**")⁷; provided, however, that (i) the DIP Collateral shall not include any avoidance action under chapter 5 of the Bankruptcy Code (but, subject to the entry of the Final Hearing Order, the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code shall be included in the DIP Collateral), (ii) the respective priorities of (x) the liens on the DIP Collateral securing the DIP Term Facility (the "**DIP Term Facility Liens**") and (y) the liens on the DIP Collateral securing the obligations under the DIP Revolving Facility (the "**DIP Revolving Facility Liens**") shall be governed by the terms and conditions set forth in an intercreditor agreement (the "**DIP Intercreditor Agreement**") reasonably satisfactory to the DIP Agents and the DIP Lenders, except as otherwise set forth in the DIP Orders, and (iii) except with respect to the DIP Term

⁷ Notwithstanding anything contained herein to the contrary, the Debtors shall not be required to pledge to the DIP Agents in excess of 65% of the voting capital stock of its first tier foreign subsidiaries (if, in the reasonable judgment of the Debtors, a pledge of a greater percentage could result in material adverse tax consequences to the Debtors).

Facility Liens in the DIP Term Facility Priority Account, the DIP Liens shall be subject to the payment in full in cash of any amounts due in respect of the Existing First Lien Obligations, the Existing First Lien Liens, the Existing First Lien Superpriority Claims (as defined herein) and the Existing First Lien Replacement Liens, and, in the case of the DIP Liens securing the DIP Term Facility, the Carve-Out, and otherwise have priority as follows:

(a) subject to the terms of the DIP Intercreditor Agreement, pursuant to section 364(c)(2) of the Bankruptcy Code, valid, binding, continuing, enforceable, fully perfected liens upon and security interests in all of the Debtors' right, title and interest in, to and under all DIP Collateral that is not otherwise encumbered by a validly perfected unavoidable security interest or lien on the Petition Date (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code). Subject only to and effective upon entry of the Final Hearing Order, the DIP Liens shall also extend to the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code;

(b) subject to the DIP Intercreditor Agreement, pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, junior, fully perfected lien upon and security interest in (other than as set forth in clause (c) below) all of the Debtors' right, title and interest in, to and under all DIP Collateral which is subject to any validly perfected unavoidable security interest or lien in existence as of the Petition Date or that is perfected subsequent thereto as permitted by section 546(b) of the Bankruptcy Code, in each case securing the Existing First Lien Obligations;

(c) pursuant to section 364(d)(1) of the Bankruptcy Code, valid, binding, continuing, enforceable, senior, priming, fully perfected liens upon and security interests in all of the Debtors' right, title and interest in, to and under the DIP Collateral that is presently securing

the Debtors' obligations under all prepetition indebtedness other than the liens and security interests securing the Existing First Lien Credit Obligations;

(d) the DIP Revolving Facility Liens will be junior in priority of lien and in payment to the Existing First Lien Obligations and Existing First Lien Adequate Protection Liens until the Existing First Lien Obligations are Paid in Full, as well as to the Carve-Out. The DIP Term Facility Liens will be junior in priority and in payment to (i) the Carve-Out, (ii) the liens and security interests in the Collateral securing the Existing First Lien Obligations, (iii) the Existing First Lien Adequate Protection Liens and (iv) the DIP Revolving Facility Liens; provided, that the DIP Term Facility Liens in the DIP Term Facility Priority Account will prime and be senior to (A) the liens and security interests securing any prepetition indebtedness, including the Existing First Lien Obligations, (B) any Existing First Lien Adequate Protection Liens and (C) the DIP Revolving Facility;

(e) (i) as part of the DIP Revolving Facility, the Debtors are authorized to continue to use the commercial card program under the WellsOne Commercial Card Agreement, dated on or around May 10, 2011 (as amended, restated, supplemented or otherwise modified from time to time, the "**Card Agreement**"), between Debtor Erickson Incorporated (formerly known as Erickson Air-Crane Incorporated) and Wells Fargo Bank, N.A. ("**Wells Fargo**") subject to the terms and conditions thereof; (ii) Wells Fargo is authorized to make advances from time to time to Debtors with a maximum exposure under the Card Agreement at any time up to \$1,250,000; (iii) all prepetition charges and fees are authorized and required to be paid in accordance with the terms of the Existing First Lien Credit Documents and this Preliminary Hearing Order; and (iv) Wells Fargo may rely on the representations of Erickson Incorporated with respect to its use of the commercial card program pursuant to the Card Agreement, and

Wells Fargo shall not have any liability to any party for relying on such representations by Erickson Incorporated as provided for herein; and

(f) The DIP Liens shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (ii) except as expressly set forth herein or in the DIP Documents, any lien or security interest heretofore or hereinafter granted in the Chapter 11 Cases, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors to the extent permitted by applicable non-bankruptcy law or (iii) any intercompany or affiliate liens of the Debtor. The DIP Liens shall not be subject to sections 506(c), 510, 549, 550 or 551 of the Bankruptcy Code.

11. Adequate Protection of the Existing First Lien Parties. As adequate protection against any, and solely to the extent of, Diminution in Value until the date upon which the Existing First Lien Obligations are Paid in Full, the Existing First Lien Parties are hereby granted, subject to the terms and conditions of the Existing Intercreditor Agreement:

(a) payment of regularly scheduled cash interest, calculated at the non-default rate under the Existing First Lien Credit Agreement in each case during the pendency of the chapter 11 cases (without prejudice to the rights of the Existing First Lien Parties' to later assert claims for interest at the default rate) and regularly scheduled letter of credit fees;

(b) payments in cash, promptly, but in no event later than fifteen (15) days following receipt by the Debtors of any invoice therefor, of reasonable and documented out-of-pocket fees, costs and expenses whether due on or prior to, or from and after, the Petition Date to the Existing First Lien Parties, as applicable, as they become due and owing (without regard to

the commencement of the Chapter 11 Cases) as set forth in the Existing First Lien Credit Documents; provided, however, none of such fees, costs, expenses or other amounts shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court; provided further, however, that copies of any such invoices shall be provided contemporaneously to the U.S. Trustee and counsel to any Committee; provided further, however, that such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute a waiver of the attorney-client privilege or any benefits of the attorney work product doctrine; provided, further, that unresolved disputes as to the reasonableness of any professional fees and expenses or the propriety of redactions will be determined by the Bankruptcy Court; provided, however, that the Debtors shall only be required to timely pay the undisputed amount of the disputed invoice pending such determination;

(c) continuing valid, binding, enforceable, unavoidable and fully perfected post-petition replacement liens on and security interests in the DIP Collateral, which liens shall be senior to the DIP Revolving Facility Liens, the DIP Revolving Facility Superpriority Claims, the DIP Term Facility Liens (except with respect to the DIP Term Facility Priority Account), DIP Term Facility Superpriority Claims and the Carve-Out as defined below (collectively, the **“Existing First Lien Adequate Protection Liens”**);

(d) superpriority administrative expense claims (the **“Existing First Lien Superpriority Claims”**) under and to the extent set forth in sections 503 and 507(b) of the Bankruptcy Code against the Debtors’ estates, which Existing First Lien Superpriority Claims, if

any, shall be payable from and have recourse to all assets and property of the Debtors (excluding avoidance actions under chapter 5 of the Bankruptcy Code, but, subject to the entry of the Final Hearing Order, including the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code) with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment;

(e) access to the Debtors' books and records and such financial reports as are provided to the DIP Agents, in each case to the extent set forth in the DIP Documents; and

(f) To the extent Section 1110 of the Bankruptcy Code applies to the Existing First Lien Obligations, the adequate protection afforded to the Existing First Lien Parties, as applicable, described in this Paragraph 11 shall be deemed to constitute an agreement under Section 1110(b) of the Bankruptcy Code; provided, however, that any such deemed agreement shall automatically terminate and be of no further force or effect with respect to the Existing First Lien Obligations upon the occurrence of the DIP Revolving Facility Termination Date.

12. Adequate Protection of the Existing Second Lien Parties. As adequate protection against any, and solely to the extent of, Diminution in Value until the date upon which the Existing Second Lien Obligations are Paid in Full, the Existing Second Lien Parties are hereby granted:

(a) The accrual (but not payment) of interest, calculated at the non-default rate, under the Existing Second Lien Notes (without prejudice to the Second Lien Parties' right to later assert claims for interest at the default rate);

(b) payments in cash (solely from proceeds of the DIP Term Facility), promptly, but in no event later than fifteen (15) days following receipt by the Debtors of any invoice therefor, of reasonable and documented out-of-pocket fees, costs and expenses whether due on or prior to, or from and after, the Petition Date to the Indenture Trustee (without regard to the commencement of the Chapter 11 Cases) as set forth in the Existing Second Lien Notes Documents (including all reasonable prepetition and postpetition fees, costs, disbursements and expenses of Seyfarth Shaw LLP as counsel to the Indenture Trustee), and to the Ad Hoc Group (including all reasonable prepetition and postpetition fees, costs, disbursements and expenses of Akin Gump Strauss Hauer & Feld LLP and Houlihan Lokey Capital Inc. as advisors to the Ad Hoc Group, not otherwise paid pursuant to Paragraph 8 of this Preliminary Hearing Order); provided, however, none of such fees, costs, expenses or other amounts shall be subject to Court approval or U.S. Trustee guidelines, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with this Court; provided further, however, that copies of any such invoices shall be provided contemporaneously to the U.S. Trustee and counsel to any Committee; provided further, however, that such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute a waiver of the attorney-client privilege or any benefits of the attorney work product doctrine; provided, further, that unresolved disputes as to the reasonableness of any professional fees and expenses or the propriety of redactions will be

determined by the Bankruptcy Court; provided, however, that the Debtors shall only be required to timely pay the undisputed amount of the disputed invoice pending such determination;

(c) continuing valid, binding, enforceable, unavoidable and fully perfected post-petition replacement liens on and security interests in the DIP Collateral, which liens shall be junior to (i) the DIP Liens, (ii) the DIP Superpriority Claims, (iii) the Existing First Lien Adequate Protection Liens, (iv) the Existing First Lien Superpriority Claims, and (v) the Carve-Out (collectively, the “**Existing Second Lien Adequate Protection Liens**” and, together with the Existing First Lien Replacement Liens, the “**Prepetition Secured Parties Adequate Protection Liens**”);

(d) superpriority administrative expense claims (the “**Existing Second Lien Superpriority Claims**” and, together with the Existing First Lien Superpriority Claims, the “**Prepetition Secured Parties Superpriority Claims**”) under and to the extent set forth in sections 503 and 507(b) of the Bankruptcy Code against the Debtors’ estates, which Existing Second Lien Superpriority Claims, if any, shall be payable from and have recourse to all assets and property of the Debtors (excluding avoidance actions under chapter 5 of the Bankruptcy Code, but, subject to the entry of the Final Hearing Order, including the proceeds of avoidance actions under chapter 5 of the Bankruptcy Code) with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including, but not limited to, Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113 and 1114, or otherwise and including those resulting from the conversion of any of the Chapter 11 Cases pursuant to section 1112 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment; provided that the Existing Second Lien

Superpriority Claims shall be junior to (i) the DIP Liens, (ii) the DIP Superpriority Claims, (iii) the Existing First Lien Adequate Protection Liens, (iv) the Existing First Lien Superpriority Claims, and (v) the Carve-Out;

(e) access to the Debtors' books and records and such financial reports as are provided to the DIP Term Facility Agent, in each case to the extent set forth in the DIP Term Facility Documents; and

(f) To the extent Section 1110 of the Bankruptcy Code applies to the obligations in respect of the Existing Second Lien Notes, the adequate protection afforded to the Existing Second Lien Parties, as applicable, described in this Paragraph 12 shall be deemed to constitute an agreement under Section 1110(b) of the Bankruptcy Code; provided, however, that any such deemed agreement shall automatically terminate and be of no further force or effect with respect to the obligations in respect of the Existing Second Lien Notes upon the occurrence of the DIP Term Facility Termination Date.

13. Carve-Out.

(a) As used in this Preliminary Hearing Order, the term "**Carve-Out**" shall mean, to the extent unencumbered funds are not immediately available on the date of delivery of a Carve-Out Trigger Notice (as defined below) to pay administrative expenses in full, solely from proceeds of the DIP Term Facility funded into the DIP Term Facility Priority Account (or, solely in the case of clause (i) below, proceeds of DIP Collateral), to pay the following expenses:

- (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717;
- (ii) in an aggregate amount not to exceed the amount set forth in the DIP Budget, to the extent allowed at any time, whether by interim order, procedural order or otherwise, all unpaid reasonable and documented fees, costs and expenses (as described herein, "**Professional Fees**") incurred by persons or firms retained by the Debtors pursuant to section 327, 328 or 363 of the Bankruptcy Code or

retained by no more than one Committee appointed in the Cases appointed pursuant to section 1103 of the Bankruptcy Code (“**Professionals**”), in each case, before or on the date of delivery by the DIP Agents of a Carve-Out Trigger Notice (as defined below) to the Debtors and any statutory committee, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice (such amounts in this provision (ii), the “**Pre-Trigger Notice Professional Fees**”); and

- (iii) after the date of delivery of the Carve-Out Trigger Notice (the “**Trigger Date**”), to the extent incurred after the Trigger Date and allowed at any time thereafter, whether by interim order, procedural order or otherwise, the payment of Professional Fees in an aggregate amount not to exceed \$250,000 (the amount set forth in this clause (iii) being the “**Post-Carve-Out Trigger Notice Cap**”).

(b) As used herein, the term “**Carve-Out Trigger Notice**” means a written notice provided by the DIP Revolving Facility Agent or the DIP Term Facility Agent (at the written direction of Requisite DIP Term Lenders) to the Debtors, the U.S. Trustee and any Committee that the Carve-Out is invoked, which notice can be delivered only when the applicable DIP Agent is entitled to exercise remedies under the applicable DIP Documents due to the occurrence of an Event of Default (as defined in the applicable DIP Credit Agreement or, prior to the Final Hearing Order, the DIP Term Sheet) and the Termination Date (as defined in the applicable DIP Credit Agreement or, prior to the Final Hearing Order, the DIP Term Sheet) has occurred.

(c) After receipt of the Carve-Out Trigger Notice, the Debtors shall provide notice by email and facsimile to all Professionals, at the email addresses and facsimile numbers set forth in each Professional’s notice of appearance filed with the Bankruptcy Court (or, if there is no such notice of appearance, at such Professional’s last known email address and facsimile number) and by filing a notice thereof on the docket of the Bankruptcy Court within two (2) Business Days after the Debtors’ receipt of a Carve-Out Trigger Notice informing them that such Carve-Out Trigger Notice has been received and further advising them that the Debtors’ ability to pay such Professionals is subject to and limited by the Carve-Out.

(d) Notwithstanding the foregoing, and subject to the DIP Budget, so long as a Carve-Out Trigger Notice has not been delivered in accordance with this Preliminary Hearing Order: (i) the Debtors shall be permitted to pay administrative expenses of Professionals allowed and payable under sections 330 and 331 of the Bankruptcy Code, as the same may become due and payable, including on an interim basis pursuant to applicable Bankruptcy Court orders; and (ii) such payments shall not reduce, or be deemed to reduce, the Carve-Out.

(e) Following the delivery of the Carve-Out Trigger Notice, (i) the DIP Term Facility Agent shall be entitled to sweep all funds held in or credited to the DIP Term Facility Priority Account for the repayment of all Obligations (as defined in the DIP Term Facility Documents) in accordance with the DIP Term Facility Documents in excess of the amounts necessary to fund: (A) the Carve-Out (after giving effect to the Post-Carve-Out Trigger Notice Cap, including for the avoidance of doubt, the Pre-Trigger Notice Professional Fees) plus (B) to the extent any funds are remaining in excess of the Carve-Out, all employee payroll, employee benefits, employee taxes, claims for health care services pursuant to any of the Debtors' self-funded insurance, and employee expenses that have been accrued since the last post-petition funded payroll period immediately prior to the Trigger Date through and including the Trigger Date which remain unpaid and have not been separately segregated in any account designated for such payments in an aggregate amount not to exceed \$1.3 million (the amounts described in clauses (A) and (B) above, collectively, the "**Post-Trigger Carve-Out and Accrued Employee Benefit Amounts**") and (ii) following such sweep, all funds held in or credited to the DIP Term Facility Priority Account shall not be used for any purpose other than to satisfy the Post-Trigger Carve-Out and Accrued Employee Benefit Amounts, as applicable, and any remaining balance

shall be applied to the repayment of all Obligations (as defined in the DIP Term Facility Documents) in accordance with the DIP Term Facility Documents.

(f) Nothing contained herein is intended to constitute, nor should be construed as consent to, the allowance of any Professional's fees, costs or expenses by any party and shall not affect the right of the Debtors, DIP Parties, Committee (if any), U.S. Trustee, or any other party-in-interest to object to the allowance and payment or any amounts incurred or requested.

(g) Notwithstanding anything herein to the contrary, the Carve-Out shall be satisfied exclusively from (i) the proceeds in the DIP Term Facility Priority Account and (ii) the proceeds from any assets of the Debtors that do not constitute Prepetition Collateral securing the Existing First Lien Obligations and the DIP Collateral securing the obligations under the DIP Revolving Facility and that are not subject to the Existing First Lien Adequate Protection Liens. For the avoidance of doubt, the liens and claims of (a) the DIP Revolving Lenders, (b) DIP Revolving Agent, (c) Existing First Lien Agent and (d) the Existing First Lien Lenders, in each case, in or to the DIP Term Facility Priority Account shall be subject to the Carve-Out.

14. Limitation on Use of Cash Collateral and DIP Facility Proceeds.

Notwithstanding anything herein to the contrary, no portion of the Carve-Out, the DIP Facilities, DIP Collateral, Prepetition Collateral or Cash Collateral or proceeds thereof shall include, apply to, or be available for any fees, costs or expenses incurred by any party, including the Debtors or any Committee, in connection with any of the following: (i) the investigation (including by way of examinations or discovery proceedings), initiation, assertion, joining, commencement, support or prosecution of any claims, causes of action, adversary proceedings, or other litigation against any of the DIP Parties or the Prepetition Secured Parties, and each of their respective officers,

directors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action or other matter (including formal discovery proceedings in anticipation thereof) (each, a “**Loan Party Claim**”), including, without limitation, (a) investigating or challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the DIP Obligations, DIP Superpriority Claims or security interests and liens of the DIP Parties in respect thereof; (b) investigating or challenging the amount, validity, extent, perfection, priority, or enforceability of, or asserting any defense, counterclaim, or offset to the Existing First Lien Obligations, Existing First Lien Liens, Existing Second Lien Obligations or Existing Second Priority Liens; (c) investigating or asserting any claims or causes of action arising under chapter 5 of the Bankruptcy Code against the DIP Parties or the Prepetition Secured Parties; (d) investigating or asserting any so-called “lender liability” claims and causes of action against the DIP Parties or the Prepetition Secured Parties; and (e) any action seeking to invalidate, set aside, avoid or subordinate, in whole or in part, the Prepetition Debt Documents or the DIP Loans; (ii) asserting any claims or causes of action against the DIP Parties or the Prepetition Secured Parties, including, without limitation, claims or actions to hinder or delay the assertions, enforcement or realization on the DIP Collateral or the Prepetition Collateral, as applicable, of the liens securing the DIP Loans and Prepetition Secured Parties Obligations in accordance with this Preliminary Hearing Order (including attempting to stay the exercise of any right or remedy described in Paragraph 26 of this Preliminary Hearing Order); (iii) seeking to modify any of the rights, remedies, priorities, privileges, protections and benefits granted to the DIP Agents, the DIP Lenders or the Prepetition Secured Parties hereunder or under the DIP Documents, in each of the foregoing cases without such applicable parties’ prior written consent;

(iv) to pay any amount on account of any claims arising prior to the Petition Date unless such payments are (x) approved by an order of the Bankruptcy Court and (y) in accordance with the DIP Documents and the DIP Budget; or (v) any purpose that is prohibited under the Bankruptcy Code; provided, however, that no more than \$25,000 of the proceeds of the DIP Facilities, in the aggregate, or any proceeds of the DIP Collateral or the Cash Collateral may be used by the Committee (if any) to investigate any Loan Party Claim.

15. Reservation of Certain Third Party Rights. The Committee (if any) shall until the later of (i) seventy-five (75) from the Petition Date and (ii) sixty (60) days from the date of its appointment (the “**Investigation Termination Date**”), to obtain standing to commence, and so commence, an appropriate contested matter or adversary proceeding (a “**Challenge**”) asserting any Loan Party Claim. If a Challenge is not filed on or before the Investigation Termination Date (or such other later date as extended by the written consent of the Prepetition Agents at the direction of the Prepetition Secured Parties or the DIP Agents at the written direction of the Required Lenders under the applicable DIP Credit Agreements or, prior to the Final Hearing Order, the DIP Term Sheet), then: (a) the agreements, acknowledgements and stipulations contained in Paragraphs C and D of this Preliminary Hearing Order shall be irrevocably binding on the Debtors, any Committee and all parties-in-interest and any and all successors-in-interest as to any of the foregoing, without further action by any party or this Court, and any Committee and any other party-in-interest and any and all successors-in-interest as to any of the foregoing, shall thereafter be forever barred from bringing any Challenge with respect thereto; (b) the Prepetition Secured Parties Liens shall be deemed to constitute valid, binding, enforceable and perfected liens and security interests not subject to avoidance or disallowance pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (c) the

Prepetition Secured Parties Obligations shall be deemed to be finally allowed claims for all purposes against each of the Debtors, including in any subsequent chapter 7 cases, and shall not be subject to challenge by any party-in-interest as to validity, priority or otherwise; and (d) the Debtors shall be deemed to have released, waived and discharged the Prepetition Secured Parties (in each case, whether in their prepetition or postpetition capacity) and the DIP Parties, together with each of their respective affiliates, parents, subsidiaries, partners, controlling persons, agents, representatives, attorneys, advisors, professionals, officers, directors and employees from any and all claims and causes of action arising out of, based upon or related to, in whole or in part, the Prepetition Secured Parties Obligations or the DIP Loans, as applicable. Notwithstanding anything to the contrary herein: (x) if any such Challenge is timely commenced, the stipulations contained in Paragraphs C and D of this Preliminary Hearing Order shall nonetheless remain binding and preclusive on all parties-in-interest (other than the party that has brought such Challenge in connection therewith) except to the extent that such stipulations are successfully challenged in such Challenge; (y) the DIP Parties and the Prepetition Secured Parties reserve all of their rights to contest on any grounds any Challenge; and (z) the DIP Parties and the Prepetition Secured Parties shall comply with any and all orders of the Bankruptcy Court in connection with a successful Challenge; provided, however, that the DIP Parties and the Prepetition Secured Parties preserve any and all of their rights to appeal and stay any orders of the Bankruptcy Court issued in connection with such successful Challenge. For the avoidance of doubt, nothing in this Preliminary Hearing Order vests or confers on any person (as defined in the Bankruptcy Code) standing or authority to pursue any cause of action belonging to the Debtors or their estates. If, prior to expiration of the Investigation Termination Date established above, the Chapter 11 Cases are converted to cases under chapter 7 of the Bankruptcy Code or a

chapter 11 trustee is appointed in the Chapter 11 Cases, the Investigation Termination Date shall be extended for a period of 60 days for the chapter 7 trustee after the entry of a conversion order or chapter 11 trustee after the date of its appointment.

16. Bankruptcy Code Section 506(c) Waiver. Without limiting the Carve-Out, subject to the entry of the Final Hearing Order, the Debtors shall irrevocably waive and shall be prohibited from asserting any surcharge claim, under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Parties or the Prepetition Secured Parties upon the DIP Collateral or the Prepetition Collateral (as applicable) and no costs or expenses of administration that have been or may be incurred in any of the Chapter 11 Cases at any time shall be charged against the DIP Agents, any of the DIP Lenders, the Prepetition Secured Parties or any of their respective claims or liens (including any claims or liens granted pursuant to this Preliminary Hearing Order). The Prepetition Secured Parties and the DIP Parties acknowledge and agree that they do not consent to any costs or expenses of administration which have been or may be incurred in the Chapter 11 Cases, whether in connection with or on account of the preservation and/or disposition of any Prepetition Collateral or DIP Collateral, as applicable, or otherwise, or which otherwise could be chargeable to the Prepetition Secured Parties, the DIP Lenders, the DIP Agents, the DIP Collateral, or the Prepetition Collateral, pursuant to Bankruptcy Code §§ 105, 506(c), 552 or otherwise, may be chargeable, without the prior written consent of such parties, and no such consent shall be implied from any action, inaction, or acquiescence by such parties.

17. No Marshaling/Application of Proceeds. In no event shall the DIP Parties or the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any

other similar doctrine with respect to the DIP Collateral or the Prepetition Collateral (as applicable), and all proceeds thereof shall be received and used in accordance with this Preliminary Hearing Order.

18. Section 552(b). Upon entry of the Final Hearing Order, the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) shall not apply to the Prepetition Secured Parties with respect to proceeds, products, offspring, or profits of any of the Prepetition Collateral.

19. Right to Credit Bid.

(a) Subject to the DIP Intercreditor Agreement and the applicable DIP Documents, the DIP Revolving Facility Parties shall have the right to “credit bid” the full allowed amount of their respective claims in connection with any sale of all or any portion of the DIP Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code or a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code; provided, that such relief will be binding on the Debtors’ chapter 11 estates and all parties in interest upon entry of the Final Hearing Order.

(b) The Debtors shall agree the Existing First Lien Parties shall have the right to credit bid as part of any asset sale process or plan sponsorship process and shall have the right to credit bid the full amount of their respective claims during any sale of Debtors’ assets (in whole or in part) with respect to any asset subject to a duly perfected Existing First Lien Lien as of the Petition Date, including without limitation, sales occurring pursuant to section 363 of the

Bankruptcy Code or included as part of any restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code or a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code; provided, that such relief will be binding on the Debtors' chapter 11 estates and all parties in interest upon entry of the Final Hearing Order.

(c) Subject to the DIP Intercreditor Agreement and the applicable DIP Documents, the DIP Term Facility Parties shall have the right to "credit bid" the full allowed amount of their respective claims in connection with any sale of all or any portion of the DIP Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code or a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code; provided, that such relief will be binding on the Debtors' chapter 11 estates and all parties in interest upon entry of the Final Hearing Order; provided, further, that in connection with the consummation of such credit bid, the obligations under the Existing First Lien Credit Facility (other than the Refinancing Accommodation Fee, as defined and set forth in the Amendment Fee Letter, dated as of July 22, 2016, among Erickson Incorporated, Erickson Helicopters, Inc. and the Existing First Lien Agent (the "**Refinancing Accommodation Fee**"), to the extent such fee is not payable) shall be Paid in Full.

(d) The Debtors shall agree the Existing Second Lien Parties shall have the right to credit bid as part of any asset sale process or plan sponsorship process and shall have the right to credit bid the full amount of their respective claims during any sale of Debtors' assets (in whole or in part) with respect to any asset subject to a duly perfected Existing Second Priority

Liens as of the Petition Date, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code or a sale or disposition by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code; provided, that such relief will be binding on the Debtors' chapter 11 estates and all parties in interest upon entry of the Final Hearing Order; provided, further, that in connection with the initial closing of such credit bid, the obligations under the Existing First Lien Credit Facility (other than the Refinancing Accommodation Fee to the extent such fee is not payable) and each of the DIP Facilities shall be Paid in Full.

20. Disposition of Collateral and Application of Proceeds. Except as expressly provided for in the DIP Documents, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral, other than in the ordinary course of business, without the prior written consent of the DIP Lenders (or Required Revolving Lenders or Requisite DIP Term Lenders, as the applicable DIP Documents may provide). Notwithstanding anything otherwise provided herein, upon the sale of any, all or substantially all of the Prepetition Collateral or any other assets of the Debtors (other than sales in the ordinary course of business), the Debtors shall use cash in an amount equal to 100% of any net cash proceeds of such sale to (w) immediately satisfy any outstanding Existing First Lien Obligations until Paid in Full, (x) then, following the payment in full of the Existing First Lien Obligations, to immediately satisfy any outstanding DIP Obligations under the DIP Revolving Facility Documents until Paid in Full, (y) then, following such DIP Obligations in clause (x) having been Paid in Full, to immediately satisfy any outstanding DIP Obligations under the DIP Term Facility Documents to the extent required by the applicable DIP Documents until Paid in Full

and (z) following such DIP Obligations having been Paid in Full, to immediately satisfy any outstanding Second Lien Obligations.

21. Discharge; Waiver. The DIP Obligations shall not 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 such obligations have been indefeasibly Paid in Full on or before the effective date of a confirmed plan of reorganization. The Debtors shall not propose or support any plan of reorganization, sale of all or substantially all of the Debtors' assets, or entry of any confirmation order or sale order that is not conditioned upon the indefeasible payment in full in cash, on or prior to the earlier of the effective date of such plan of reorganization or sale or the Termination Date (as defined in the applicable DIP Documents), of all DIP Obligations unless the DIP Agents, with consent of the Requisite Lenders (as contemplated under the applicable DIP Documents), shall have otherwise consented in writing to such plan or sale.

22. Restrictions on Granting Postpetition Liens; Restrictions on Use of Cash Collateral. Other than the Carve-Out as expressly set forth herein, the Existing First Lien Liens, the Prepetition Permitted Liens, as otherwise provided in this Preliminary Hearing Order or the DIP Documents, or as permitted under the DIP Intercreditor Agreement, no claim or lien having a priority superior or *pari passu* with those granted by this Preliminary Hearing Order or the DIP Documents to the DIP Parties or the Prepetition Secured Parties shall be granted or permitted by any order of this Court heretofore or hereafter entered in the Chapter 11 Cases, and the Debtors will not grant any such mortgages, security interests or liens in the DIP Collateral (or any portion thereof) to any other parties pursuant to sections 364(c) and 364(d) of the Bankruptcy Code or otherwise, while (i) any portion of the DIP Facilities, any DIP Loans, any other DIP Obligations

are outstanding, or (ii) the DIP Lenders have any Commitment (as defined in the DIP Documents) under the DIP Documents, unless in each case the Debtors obtain the prior written consent of the DIP Revolving Facility Agent and the DIP Term Facility Agent (with the written consent of the Requisite DIP Term Lenders). Until the Existing First Lien Obligations have been Paid in Full, no claim or lien having a priority superior or *pari passu* with those granted in favor of the Existing First Lien Agent to secure the Existing First Lien Obligations shall be permitted by any order of this Court heretofore or hereafter entered in the Chapter 11 Cases. Until the DIP Revolving Obligations have been Paid in Full and all commitments under the DIP Revolving Facility Documents have been terminated, no Cash Collateral (other than the proceeds of the DIP Term Facility and the amounts in the DIP Term Facility Priority Account) may be used for any purpose other than repayment of such Existing First Lien Obligations and DIP Revolving Obligations or otherwise used or permitted by any order of this Court hereafter entered in the Chapter 11 Cases or pursuant to the DIP Budget (as permitted hereunder), unless in each case the Debtors obtain the prior written consent of the DIP Revolving Facility Agent (with the consent of the Required Revolving Lenders) and the DIP Term Facility Agent (with the written consent of the Requisite DIP Term Lenders).

23. Automatic Effectiveness of Liens. The DIP Liens, Existing First Lien Adequate Protection Liens and Existing Second Lien Adequate Protection Liens shall not be subject to a Challenge and shall automatically attach and become valid, perfected, binding, enforceable, non-avoidable and effective by operation of law as of the Petition Date without any further action by the Debtors, the DIP Parties or the Prepetition Secured Parties, respectively, and without the necessity of execution by the Debtors, or the filing or recordation, of any financing statements, control agreements, security agreements, vehicle lien applications,

mortgages, filings with a governmental unit (including, without limitation, the U.S. Patent and Trademark Office or the Library of Congress), or other documents or the taking of any other actions. All DIP Collateral, Existing First Lien Adequate Protection Liens and Existing Second Lien Adequate Protection Liens shall be free and clear of other liens, claims and encumbrances, except as provided in the DIP Documents and this Preliminary Hearing Order. If the DIP Term Facility Agent, the DIP Revolving Facility Agent, the Existing First Lien Agent or the Indenture Trustee hereafter requests that the Debtors execute and deliver to the DIP Term Facility Agent, the DIP Revolving Facility Agent, the Existing First Lien Agent or the Indenture Trustee, as applicable, financing statements, security agreements, pledge agreements, control agreements, collateral assignments, mortgages, or other instruments and documents considered by the DIP Term Facility Agent, the DIP Revolving Facility Agent, Existing First Lien Agent or Indenture Trustee, as applicable, to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens, Existing First Lien Adequate Protection Liens or Existing Second Lien Adequate Protection Liens, as applicable, the Debtors are hereby authorized and directed to execute and deliver such financing statements, security agreements, pledge agreements, control agreements, mortgages, collateral assignments, instruments, and documents, and the DIP Term Facility Agent, the DIP Revolving Facility Agent, Existing First Lien Agent or Indenture Trustee, as applicable, is hereby authorized to file or record such documents in its discretion without seeking modification of the automatic stay under section 362 of the Bankruptcy Code, in which event all such documents shall be deemed to have been filed or recorded at the time and on the Petition Date; provided, however, no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens, Existing First Lien Adequate Protection Liens or Existing Second Lien Adequate Protection Liens. The DIP Term Facility Agent, the

DIP Revolving Facility Agent, the Existing First Lien Agent or the Indenture Trustee, as applicable, each in its sole discretion, may file a photocopy of this Preliminary Hearing Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, in addition to, or in lieu of, such financing statements, notices of liens or similar statements.

24. Intercreditor Provisions. The Debtors are authorized to enter into the DIP Intercreditor Agreement. Notwithstanding anything to the contrary set forth in this Preliminary Hearing Order or the DIP Documents, the Existing Intercreditor Agreement remains in full force and effect. Prior to execution of the DIP Documents, including without limitation, the DIP Intercreditor Agreement, all of the DIP Revolving Facility Obligations are and shall be deemed to be "First Lien Priority Debt" under the Existing Intercreditor Agreement.

25. Modification of Automatic Stay. The automatic stay imposed by section 362(a) of the Bankruptcy Code is hereby modified to permit (a) the Debtors to grant the DIP Liens, the DIP Superpriority Claims, the Prepetition Secured Parties Superpriority Claims and the Prepetition Secured Parties Replacement Liens, and to perform such acts as are necessary or desirable to assure the perfection and priority of such liens and claims in accordance with the terms of the DIP Documents and this Preliminary Hearing Order, (b) the Debtors to incur all liabilities and obligations to the DIP Agents and DIP Lenders as contemplated under the DIP Documents, (c) the Debtors to pay all amounts referred to, required under, in accordance with, and subject to the DIP Documents and this Preliminary Hearing Order, (d) the Debtors to otherwise effect the transactions and actions permitted by the DIP Documents and this Preliminary Hearing Order, including, without limitation, the DIP Agents' and the DIP Lenders'

rights to enforce their remedies in accordance with the terms of this Order and (e) the implementation of the terms of this Preliminary Hearing Order.

26. Rights and Remedies Upon Event of Default.

(a) Subject to subsection (b) of this Paragraph 26, and subject to the DIP Intercreditor Agreement, upon the occurrence of an Event of Default (as defined in the respective DIP Documents), and provided that such Event of Default is still continuing, and unless and until the DIP Obligations have been indefeasibly and irrevocably Paid in Full and the Commitments (as defined in the DIP Documents) have been indefeasibly and irrevocably terminated, and subject to the terms of the DIP Intercreditor Agreement:

(i) the applicable DIP Agent (on behalf the DIP Lenders, at the written direction of the Required Lenders under the applicable DIP Documents) may take all or any of the following actions without further order of or application to the Court, and notwithstanding the automatic stay: (1) declare all applicable DIP Obligations to be immediately due and payable; (2) terminate any further commitment to lend to the Debtors; (3) with respect to the DIP Term Facility Agent, freeze and recover any amounts in the DIP Term Facility Priority Account; and (3) take any other action or exercise any other right or remedy (including, without limitation, with respect to the DIP Liens (on behalf of itself and the DIP Lenders) under this Order and the DIP Collateral) permitted under the applicable DIP Facility or under applicable law, including, without limitation, exercising any and all rights and remedies with respect to the DIP Collateral or any portion thereof, subject only to satisfaction of the Notice Requirements (as defined below) after occurrence of the Event of Default;

(ii) the Debtors shall deliver and/or cause the delivery of the proceeds of DIP Loans to the applicable DIP Agent and/or the DIP Lenders as provided in the DIP Documents and this Preliminary Hearing Order, subject to the Carve-Out and Accrued Employee Benefit Amounts pursuant to Paragraph 13 of this Preliminary Hearing Order;

(iii) the applicable DIP Lenders shall continue to apply such proceeds in accordance with the provisions of the DIP Documents, the DIP Intercreditor Agreement and this Preliminary Hearing Order, subject to the Carve-Out and Accrued Employee Benefit Amounts pursuant to Paragraph 13 of this Preliminary Hearing Order;

(iv) the Debtors shall have no right to use any of such proceeds other than towards the satisfaction of the DIP Obligations, the Carve-Out and Accrued Employee Benefit Amounts, as applicable, pursuant to Paragraph 13 of this Preliminary Hearing Order; and

(v) any obligation otherwise imposed on the DIP Agents and the DIP Lenders to provide any loan or advance to the Debtors pursuant to the applicable DIP Facility shall be suspended (whether for expenses previously incurred or to be incurred after the Event of Default).

(b) Prior to exercising any remedy under the DIP Documents following the occurrence of an Event of Default, in accordance with the terms of the DIP Intercreditor Agreement, the applicable DIP Agent (and in the case of the DIP Term Facility Agent, at the written direction of the Requisite DIP Term Lenders) shall provide not less than five (5) business days' written notice of the occurrence of such Event of Default to: (i) the Debtors and their counsel, (ii) counsel for any Committee, (iii) counsel to the Backstop Parties, (iv) counsel to the Existing First Lien Agent, (v) counsel to the Indenture Trustee and (vi) the U.S. Trustee (the "**Notice Requirement**"). Following the giving of written notice by either of the DIP Agents of the occurrence of an Event of Default, the Debtors, solely for the purposes of determining if an Event of Default has occurred, shall be entitled to an emergency hearing before this Court. If either (a) the Debtors do not contest the occurrence of an Event of Default and, therefore, the right of the DIP Agents and DIP Lenders to exercise their remedies, or (b) the Debtors timely contest the occurrence of an Event of Default and the Bankruptcy Court, after notice and hearing, declines to stay the enforcement thereof, the automatic stay as to the DIP Agents and DIP Lenders shall automatically terminate at the end of the five (5) business day notice period provided for in this Paragraph 26 or the order of the Bankruptcy Court declining to stay such enforcement of the DIP Agents' and the DIP Lenders' remedies.

(c) Subject to the provisions of this Paragraph 26 and the DIP Intercreditor Agreement, upon the occurrence of an Event of Default, the DIP Agents and the DIP Lenders are

authorized to exercise their remedies and proceed under or pursuant to the DIP Documents and the DIP Intercreditor Agreement, including the retention of one or more agents and consultants to sell, lease or otherwise dispose of the Collateral. All proceeds realized from any of the foregoing shall be turned over to the DIP Agents for application to the DIP Obligations under, and in accordance with the provisions of the DIP Documents, the DIP Intercreditor Agreement and this Order. The DIP Revolving Facility Agent and the DIP Revolving Facility Lenders are not entitled to exercise any remedies against the DIP Term Loan Priority Account.

(d) Subject to the provisions of this Paragraph 26 and the DIP Intercreditor Agreement, upon the occurrence of an Event of Default and subject to the terms of the DIP Documents and the DIP Intercreditor Agreement, the DIP Agents and the DIP Lenders shall be authorized to deliver a copy of this Preliminary Hearing Order to any party in possession of DIP Collateral or proceeds thereof, in which event (a) such party shall, and shall be entitled to, rely upon the DIP Agents' and the DIP Lenders' representation that such delivery is permitted hereby and (b) this Preliminary Hearing Order shall constitute the Court's order to such party to deliver such DIP Collateral or proceeds to the DIP Agents for the benefit of the DIP Lenders.

(e) Subject to the provisions of this Paragraph 26 and the DIP Intercreditor Agreement, each DIP Agent may by written notice to any Debtor require such Debtor to promptly file a motion seeking to retain one or more agents to sell, lease, or otherwise dispose of the Collateral on terms acceptable to the applicable DIP Agent (and in the case of the DIP Term Facility Agent, acceptable to the Requisite DIP Term Lenders) and consistent with an approved budget for administrative costs incurred implementing any such transactions as may be agreed upon in writing by such DIP Agent (and in the case of the DIP Term Facility Agent, acceptable to the Requisite DIP Term Lenders) and the Debtor.

(f) In connection with any DIP Agent's exercise of its rights and remedies hereunder after the automatic stay is lifted, such DIP Agent shall be entitled to the appointment of a receiver in state court, without bond, to dispose of the Collateral, and such DIP Agent (and, to the extent applicable, its receiver) may enter upon, occupy, and use any premises owned or occupied by the applicable Debtor, and may exclude such Debtor from such business premises or a portion thereof, as may have been so entered upon, occupied, or used by such DIP Agent. In no event shall such DIP Agent be liable to the Debtor for the use or occupancy of any business premises (including the use of equipment, fixtures, point-of-sale systems and equipment (including, without limitation, computers used with respect thereto) and alarms), nor for any charges incurred, in connection with such DIP Agent's exercise of such rights and remedies, except for reasonable rental charges, on a per diem basis (which shall be payable solely from the proceeds of such Collateral), from and after the date that such DIP Agent enters upon, occupies, and uses such business premises to assist in the sale of the applicable Debtor's assets. In addition, each Debtor hereby grants to each DIP Agent a royalty-free, non-exclusive irrevocable license to use, apply, and affix any trademark, tradename, logo, or the like, in which such Debtor now or hereafter has rights, such license being with respect to each DIP Agent's exercise of its rights hereunder.

(g) Nothing included herein shall prejudice, impair, or otherwise affect each DIP Agent's rights to seek any other or supplemental relief in respect of such DIP Agent's and Existing First Lien Agent's rights, as provided under the applicable DIP Documents, Prepetition Debt Documents, DIP Intercreditor Agreement and Existing Intercreditor Agreement.

27. No Waiver of Remedies. The delay in or the failure of the DIP Agents or the DIP Lenders to seek relief or otherwise exercise their rights and remedies shall not constitute

a waiver of any of the DIP Agents' or the DIP Lenders' rights and remedies. Notwithstanding anything herein, the entry of this Preliminary Hearing Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the rights and remedies of the DIP Agents or the DIP Lenders under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the rights of the DIP Agents and/or the DIP Lenders to (i) request conversion of the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases; (ii) propose, subject to the provisions of Bankruptcy Code section 1121, a chapter 11 plan of reorganization or liquidation; or (iii) exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) the DIP Agents or the DIP Lenders may have, including, but not limited to, credit bidding the DIP Obligations in connection with any sale of the Debtors' assets

28. Indemnification. The Debtors are hereby authorized to and hereby agree, on a joint and several basis, to indemnify and hold harmless the DIP Parties and each of their respective affiliates, directors, officers, shareholders, partners, employees, agents, representatives, attorneys, consultants, advisors, professionals and controlling persons, and each of their successors and permitted assigns (each, an "**Indemnified Party**") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including, without limitation, attorney's fees) or disbursements of any nature whatsoever which may be imposed on, incurred by or asserted against an Indemnified Party in any way relating to or arising out of any of the DIP Documents or any other document contemplated hereby or thereby or the transactions contemplated thereby or by this Preliminary Hearing Order (including, without limitation, the exercise by the DIP Parties of discretionary rights granted under the DIP Documents) or any action taken or omitted by the DIP Agents or

the DIP Lenders under any of the DIP Documents or any document contemplated hereby or thereby; provided, that the Debtors shall not have any obligation to indemnify and hold harmless any Indemnified Party under this Paragraph with respect to any matter solely resulting from the gross negligence or willful misconduct of such Indemnified Party, as determined by a court of competent jurisdiction in a final non-appealable judgment or order. No Indemnified Party shall have any liability (whether direct or indirect, in contract, tort or otherwise) to any Debtor or any of its subsidiaries or any shareholders or creditors of the foregoing for or in connection with the transactions contemplated hereby, except to the extent such liability is determined by a court of competent jurisdiction in a final non-appealable judgment or order to have resulted solely from such Indemnified Party's gross negligence or willful misconduct. In no event, however, shall any Indemnified Party be liable on any theory of liability for any special, indirect, consequential or punitive damages. All indemnities of the Indemnified Parties shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Preliminary Hearing Order and the DIP Documents. Further, in administering or determining to make any loan under the DIP Facilities, the DIP Documents, the Prepetition Debt Documents, the Existing First Lien Obligations, this Preliminary Hearing Order or the Final Hearing Order, or in exercising any rights or remedies as and when permitted thereunder, none of the DIP Revolving Facility Parties, DIP Term Facility Parties, Existing First Lien Parties or Existing Second Lien Parties are in control of the operations of the Debtors or acting as a "responsible person" or "owner or operation" with respect to such parties' role if any, as mortgagee in possession, or on account of the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive and Liability Act, 29 U.S.C. § 9601 et seq., as amended, or any similar federal or state statute).

29. Exculpation. Nothing in this Preliminary Hearing Order, the DIP Documents, or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agents or any DIP Lender any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. In addition, except for the safe custody of any DIP Collateral actually in the possession of the DIP Agents and the accounting for moneys actually received by the DIP Agents under any DIP Documents, (a) the DIP Agents and the DIP Lenders shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP 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, servicer, bailee, custodian, forwarding agency, or other person, and (b) all risk of loss, damage, or destruction of the DIP Collateral shall be borne by the Debtors. For the avoidance of doubt, the DIP Agents shall be deemed to have exercised reasonable care in the custody and preservation of any DIP Collateral in their possession if such DIP Collateral is accorded treatment substantially equal to that which it accords its own property.

30. Released Parties. Each of the Debtors agrees that, notwithstanding any other provision of this Preliminary Hearing Order and the DIP Documents, no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Debtors and their non-Debtor affiliates arising out of, related to or in connection with any aspect of the DIP Facilities, the DIP Documents and any ancillary documents and security arrangements in connection therewith, except to the extent that it is found by a final, non-appealable judgment of a court of competent jurisdiction that such liability resulted from the willful misconduct or gross negligence of such Indemnified Person or such Indemnified Person's affiliates or any of its

or their respective officers, directors, employees, advisors, agents, representatives or controlling persons.

31. Binding Effect. The provisions of this Preliminary Hearing Order shall be binding upon and inure to the benefit of the Debtors, the DIP Parties, the Prepetition Secured Parties and their respective successors and assigns. To the extent permitted by applicable law, this Preliminary Hearing Order shall bind any successor to the Debtors, including, without limitation, any trustee hereafter appointed for the estate of any of the Debtors, whether in these Chapter 11 Cases or in the event of the conversion of any of the Chapter 11 Cases to a liquidation under chapter 7 of the Bankruptcy Code. Such binding effect is an integral part of this Preliminary Hearing Order. Each DIP Lender and the DIP Agents may assign all of their rights and obligations under the DIP Documents and this Order subject to the terms and conditions of the DIP Documents without further order of the Court, and any permitted assignee of a DIP Lender or the DIP Agents shall succeed to all of the protections afforded to its predecessor under this Preliminary Hearing Order. All persons and entities shall be required to accept this Preliminary Hearing Order as sole and sufficient evidence of the validity and enforceability of the DIP Superpriority Claims, the DIP Liens and all of the DIP Agents' and the DIP Lenders' related rights and remedies, and may rely on this Preliminary Hearing Order in recognizing, facilitating, and or complying with the enforcement of the DIP Liens and all of the DIP Agents' and the DIP Lenders' related rights and remedies in accordance with the terms of this Preliminary Hearing Order and the DIP Documents.

32. Non-Avoidable Obligations. Upon execution and delivery of the DIP Documents, such DIP Documents shall constitute valid, binding and non-avoidable obligations of the Debtors enforceable against each Debtor party thereto in accordance with their respective

terms and the terms of this Preliminary Hearing Order for all purposes during the Chapter 11 Cases, any subsequently converted case of any Debtor under chapter 7 of the Bankruptcy Code or after the dismissal of any Case. No obligation, payment, transfer or grant of security under the DIP Documents, the other DIP Documents or this Preliminary Hearing Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under Bankruptcy Code sections 502(d), 548 or 549 or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim; *provided, however*, that in the event of a final, non-appealable order sustaining a timely challenge under Paragraph 15 of this Preliminary Hearing Order that the repayment as provided herein or deemed satisfaction of the First Lien Repaid Obligations pursuant to the DIP Revolving Facility resulted in the repayment or satisfaction of unsecured claims against the Debtors, then the repayment or other satisfaction shall be reversed, the First Lien Repaid Obligations shall be reinstated, any disgorged payments will be remitted to the DIP Revolving Agent and the accompanying obligations under the DIP Revolving Facility shall be reduced or otherwise rescinded, on a dollar-for-dollar basis (including the reduction of revolving commitments thereunder).

33. Modifications of DIP Documents. Notwithstanding anything to the contrary herein, the DIP Documents may, from time to time, be amended, amended and restated, modified, or supplemented by the parties thereto without notice or a hearing if the amendment, amendment and restatement, modification, or supplement (a) is in accordance with the relevant DIP Document or (b) is not prejudicial in any material respect to the rights of third parties; provided, however, that notwithstanding the foregoing, except for actions expressly permitted to

be taken by the DIP Agents or the DIP Lenders, no amendment, modification, supplement, termination, or waiver of any provision of the DIP Documents, or any consent to any departure by any of the Debtors therefrom, shall in any event be effective without the express written consent of the Debtors and the required number of DIP Lenders in accordance with the relevant DIP Documents. Notice of any material modification or amendment to the respective DIP Documents shall be given to (i) the U.S. Trustee, and (ii) any Committee. The U.S. Trustee and the Committee shall have three (3) days from the date of such filing within which to object in writing to such material modification or amendment, and if any such party timely objects to any material modification or amendment to the DIP Documents, such modification or amendment shall only be permitted pursuant to an order of this Court. Further, the DIP Agents' failure to seek relief or otherwise exercise their rights and remedies under the DIP Facilities or this Preliminary Hearing Order shall not constitute a waiver of any of the DIP Lenders' rights hereunder, thereunder, or otherwise.

34. Protection Under Section 364(e) of the Bankruptcy Code. The DIP Parties have acted in good faith in connection with this Preliminary Hearing Order and their reliance on this Preliminary Hearing Order is in good faith. Based on the record before the Bankruptcy Court, and in accordance with section 364(e) of the Bankruptcy Code, if any or all of the provisions of this Preliminary Hearing Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect the (i) validity of any DIP Obligations owing to the DIP Parties, or adequate protection obligations owing to the Prepetition Secured Parties incurred prior to the actual receipt by the DIP Agents or Prepetition Agents, as applicable, of written notice of the effective date of such reversal, modification, vacation or stay, or (ii) validity or enforceability of any DIP Loans or other advances previously made or any

claim, lien, security interest or priority authorized or created hereby or pursuant to the DIP Documents with respect to any DIP Obligations, or adequate protection obligations owing to the Prepetition Secured Parties. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash Collateral or the incurrence of DIP Obligations, or adequate protection obligations owing to the Prepetition Secured Parties by the Debtors prior to the actual receipt by the DIP Agents or Prepetition Agents, as applicable, of written notice of the effective date of such reversal, modification, vacation or stay, shall be governed in all respects by the provisions of this Preliminary Hearing Order, and the DIP Parties and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, protections and benefits granted under section 364(e) of the Bankruptcy Code, this Preliminary Hearing Order, and the DIP Documents with respect to all uses of Cash Collateral and the incurrence of DIP Obligations, and adequate protection obligations owing to the Prepetition Secured Parties.

35. Effect of Dismissal or Conversion of Chapter 11 Cases. If the Chapter 11 Cases are dismissed or converted, then such dismissal or conversion of the Chapter 11 Cases shall not affect the rights of the DIP Parties and the Prepetition Secured Parties under their respective DIP Documents, Prepetition Debt Documents, the DIP Intercreditor Agreement or this Preliminary Hearing Order, and all of the respective rights and remedies thereunder of the DIP Parties and the Prepetition Secured Parties shall remain in full force and effect as if the Chapter 11 Cases had not been dismissed or converted. If an order dismissing any of the Chapter 11 Cases is at any time entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that: (i) the DIP Liens and DIP Superpriority Claims granted to and conferred upon the DIP Parties and the protections afforded to the DIP Parties pursuant to this Preliminary Hearing Order and the DIP Documents shall continue in full force and effect and

shall maintain their priorities as provided in this Preliminary Hearing Order until all DIP Obligations shall have been paid and satisfied in full in cash (and that such DIP Liens, DIP Superpriority Claims and other protections shall, notwithstanding such dismissal, remain binding on all interested parties); (ii) those Prepetition Secured Parties Liens, Prepetition Secured Parties Adequate Protection Liens and Prepetition Secured Parties Superpriority Claims granted to and conferred upon the Prepetition Secured Parties shall continue in full force and effect and shall maintain their priorities as provided in this Preliminary Hearing Order until the respective Prepetition Secured Parties Obligations shall have been paid and satisfied in full in cash (and that such Prepetition Secured Parties Adequate Protection Liens and Prepetition Secured Parties Superpriority Claims shall, notwithstanding such dismissal, remain binding on all interested parties); and (iii) to the greatest extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purpose of enforcing the DIP Liens, Prepetition Secured Parties Adequate Protection Liens, DIP Superpriority Claims, and Prepetition Secured Parties Superpriority Claims referred to herein.

36. Proofs of Claim. Notwithstanding any order entered by the Bankruptcy Court in relation to the establishment of a bar date in the Chapter 11 Cases to the contrary, or otherwise, any order entered by the Bankruptcy Court in relation to the establishment of a bar date for any claims (including without limitation administrative claims) in any of the Chapter 11 Cases or any successor cases shall not apply to the DIP Agents in their capacity as agents or DIP Lenders in their capacity as DIP Lenders. None of the DIP Lenders, in their capacity as DIP Lenders, or the DIP Agents, in their capacity as the DIP Agents, will be required to file proofs of claim or requests for approval of administrative expenses in any of the Chapter 11 Cases or successor cases, and the provisions of this Order relating to the amount of the DIP Obligations

and the DIP Superpriority Claims shall constitute timely filed proofs of claim and/or administrative expense requests.

37. Refinancing Accommodation Fee. The Refinancing Accommodation Fee shall cease to accrue upon the date of entry of this Preliminary Hearing Order, without prejudice to the rights of the Existing First Lien Parties to the remainder of the Refinancing Accommodation Fee to the extent otherwise payable.

38. Rights of Access and Information. The representatives, advisors, consultants, agents and/or employees of the DIP Agents and the Prepetition Secured Parties shall be afforded reasonable access to the Debtors' premises, during normal business hours and without unreasonable interference with the proper operation of the Debtors' businesses, and their books and records in accordance with this Preliminary Hearing Order or the DIP Documents or the Prepetition Credit Documents and the Debtors shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested with respect to the businesses, results of operations, and financial condition of any of the Debtors.

39. Survival. The provisions of this Preliminary Hearing Order and any actions taken pursuant hereto shall survive the entry of any order: (i) confirming any plan of reorganization in any of the Chapter 11 Cases; (ii) converting any of the Chapter 11 Cases to a chapter 7 case; or (iii) dismissing any of the Chapter 11 Cases, and the terms and provisions of this Preliminary Hearing Order.

40. Not a Responsible Person. In administering or determining to make any loan under the DIP Facilities, the DIP Documents, the Prepetition Debt Documents, the Existing First Lien Obligations, this Preliminary Hearing Order or the Final Hearing Order, or in exercising any rights or remedies as and when permitted thereunder, none of the DIP Revolving

Facility Parties, DIP Term Facility Parties, Existing First Lien Parties or Existing Second Lien Parties shall be deemed to be in control of the operations of the Debtors or to be acting as a “responsible person” or “owner or operation” with respect to such parties’ role if any, as mortgagee in possession, or on account of the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive and Liability Act, 29 U.S.C. § 9601 et seq., as amended, or any similar federal or state statute).

41. No Third Party Rights. Except as explicitly provided for herein, this Preliminary Hearing Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary other than the DIP Agents, the DIP Lenders, the Prepetition Secured Parties and the Indemnified Parties.

42. Headings. The headings in this Preliminary Hearing Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Preliminary Hearing Order.

43. Findings of Fact and Conclusions of Law. This Preliminary Hearing Order constitutes, where applicable, findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024, any other Bankruptcy Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Preliminary Hearing Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Preliminary Hearing Order.

44. Choice of Law; Jurisdiction. Each of the DIP Facilities and DIP Documents (and the rights and obligations of the parties thereto) shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York, including,

without limitation, Sections 5-1401 and 5-1402 of the New York General Obligations Law, and, to the extent applicable, the Bankruptcy Code. The Bankruptcy Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, either DIP Facility or DIP Documents.

45. Controlling Effect of Preliminary Hearing Order. To the extent any provision of this Preliminary Hearing Order conflicts with any provision of the Motion or any DIP Document, the provisions of this Preliminary Hearing Order shall control.

46. Waiver of Right to Return/Consent to Setoff; Reclamation. Debtors hereby waive their rights to (a) return any Collateral pursuant to section 546(h) of the Bankruptcy Code; (b) consent to any order permitting any claims pursuant to section 503(b)(9) of the Bankruptcy Code except to the extent permitted in the DIP Budget, the DIP Documents or orders of this Court; and (c) consent to setoff pursuant to section 553 of the Bankruptcy Code. Any and all seller rights of reclamation that are junior to the Existing First Lien Obligations under applicable nonbankruptcy law shall be and remain junior to the Existing First Lien Obligations and the DIP Obligations notwithstanding any repayment of the Existing First Lien Obligations and resulting advances made pursuant to the DIP Revolving Facility.

47. Release Upon Paid in Full. As a condition of any termination or release of Liens securing the DIP Revolving Facility Obligations upon such obligations being Paid in Full, the Debtors shall provide a general release in favor of the DIP Revolving Facility Parties and their respective affiliates, parents, subsidiaries, partners, controlling persons, agents, attorneys, advisors, professionals, officers, directors and employees, whether arising under applicable state or federal law. As a condition of any termination or release of Liens securing the DIP Term Facility Obligations upon such obligations being Paid in Full, the Debtors shall provide a general

release in favor of the DIP Term Facility Parties and their respective affiliates, parents, subsidiaries, partners, controlling persons, agents, attorneys, advisors, professionals, officers, directors and employees, whether arising under applicable state or federal law

48. Objections. Objections to the entry of the Final Hearing Order shall be in writing and shall be filed with the Clerk of this Court, on or before 4:00 p.m. (prevailing Central time) on November [], 2016, with a copy served upon: (i) counsel to the Debtors, Haynes & Boone LLP, 1221 McKinney Street, Suite 2100, Houston, Texas 77010 (Attn: Kenric Kattner, Esq.); (ii) counsel to the DIP Term Facility Agent, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036, (Attn: Mark R. Somerstein and Patricia I. Chen); (iii) counsel to the DIP Term Facility Lenders and the Ad Hoc Group, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036 (Attn: Scott Alberino, Esq. and Brad M. Kahn, Esq.); (iv) counsel to the DIP Revolving Facility Agent and Existing First Lien Agent, Goldberg Kohn, Ltd., 55 East Monroe, Suite 3300, Chicago, Illinois 60603 (Attn: Randall Klein, Esq.) and K&L Gates, LLP, 1717 Main Street, Suite 2800, Dallas, Texas 75201 (Attn: David Weitman); (v) counsel to the Indenture Trustee, Seyfarth Shaw LLP, 620 Eighth Avenue, New York, New York 10018 (Attn: Edward M. Fox, Esq.); (vi) counsel to be selected by the Committee (if any) upon its formation if selected by such date; and (vii) the Office of the United States Trustee, 1100 Commerce Street, Room 976, Dallas, TX 75242 (Attn: Lisa L. Lambert, Assistant U.S. Trustee).

49. Final Hearing and Final Hearing Order. A final hearing on the Motion shall be heard before this Court on November [], 2016 at [] a.m. in Courtroom [] at the United States Bankruptcy Court, Earle Cabell Federal Building, 1100 Commerce St., 14th Floor, Dallas, TX 75242. Forms of the DIP Revolving Facility Credit Agreement and DIP Term

Facility Credit Agreement shall be filed with the Bankruptcy Court within seven (7) business days following entry of this Preliminary Hearing Order, or such later date as agreed by the Debtors, the DIP Revolving Agent and the Requisite DIP Term Lenders.

END OF ORDER

Submitted by:

HAYNES AND BOONE, LLP

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PROPOSED ATTORNEYS FOR DEBTORS

EXHIBIT A

DIP TERM SHEET

ERICKSON INCORPORATED
FIRST LIEN SUPER-PRIORITY REVOLVING DEBTOR-IN-POSSESSION CREDIT FACILITY
AND
\$66.67 MILLION SECOND LIEN SUPER-PRIORITY TERM LOAN DEBTOR-IN-POSSESSION CREDIT FACILITY
TERM SHEET

*The terms set forth in this Summary of Principal Terms and Conditions (the “**Term Sheet**”) are being provided on a confidential basis as part of a comprehensive proposal, each element of which is consideration for the other elements and an integral aspect of the proposed DIP Revolving Facility and DIP Term Facility (in each case, as defined below).*

This Term Sheet provides an outline of (x) a proposed first lien super-priority revolving debtor-in-possession financing and (y) a proposed second lien super-priority term loan debtor-in-possession financing, and, does not purport to summarize all the terms, conditions, representations, warranties and other provisions with respect to the transactions referred to herein. This Term Sheet is for discussion purposes only, and is non-binding, and is neither an expressed nor implied offer with regard to any financing, to arrange, provide or purchase any loans in connection with the transactions contemplated hereby or to arrange, provide or assist in arranging or providing the potential financing described herein. Without limiting the generality of the foregoing, proposals contained herein shall be subject to, among other things, completion of due diligence and obtaining any necessary final credit authorizations and approvals by the DIP Revolving Lenders and the DIP Term Lenders, respectively. Any agreement to provide the DIP Revolving Facility, DIP Term Facility or any other financing arrangement will be subject to the execution and delivery of (i) definitive documentation satisfactory to the DIP Revolving Agent, the DIP Term Agent and the Backstop Parties (in each case, as defined below), each acting in its sole discretion and (ii) the Creditor Support Agreement (as defined below).

This Term Sheet is strictly confidential and may not be shared with anyone other than its intended recipients. It is proffered in the nature of a settlement proposal in furtherance of settlement discussions and is intended to be entitled to the protections of Rule 408 of the Federal Rules of Evidence and all other applicable statutes or doctrines protecting the use or disclosure of confidential information and information exchanged in the context of settlement discussions.

SUMMARY OF PRINCIPAL TERMS AND CONDITIONS

Borrower under DIP Revolving Facility and DIP Term Facility:

Erickson Incorporated, a Delaware corporation f/k/a Erickson Air-Crane Incorporated (“**Erickson**”) and, solely with respect to the DIP Revolving Facility, Erickson Helicopters, Inc., an Oregon corporation f/k/a Evergreen Helicopters, Inc. (“**EH**”), as debtors and debtors-in-possession under chapter 11 of the United States Bankruptcy Code (the “**Bankruptcy Code**”), in jointly administered cases (collectively, the “**Borrower’s Cases**”) in the United States Bankruptcy Court for the Northern District of Texas (the “**Bankruptcy Court**”) to be filed on November 8, 2016 (the “**Petition Date**”).

As used herein, “**Borrower**” (a) shall be a collective reference to Erickson and EH when used in reference to the DIP Revolving Facility, DIP Revolving Loan Documents, and Existing First Lien Credit Agreement, and (b) shall mean Erickson when used in reference to the DIP Term Facility, DIP Term Loan Documents, Second Priority Notes, and the Existing Indenture (in each case, as defined below).

Guarantors:

Each of the Borrower’s direct and indirect subsidiaries, which are debtors and debtors-in-possession in a jointly administered case (collectively, the “**Debtor Guarantors’ Cases**” and, together with the Borrower’s Case, the “**Cases**”) under chapter 11 of the Bankruptcy Code to be filed contemporaneously and jointly administered with the Borrower’s Case (collectively, the “**Guarantors**”); provided, for the avoidance of doubt, EH is a Borrower under the DIP Revolving Facility and is a Guarantor under the DIP Term Facility and, solely with respect to the DIP Revolving Facility, the term “Guarantor” shall not include EH. The Borrower and the Guarantors are referred to herein as “**Loan Parties**” and each, a “**Loan Party**” or as “**Debtors**” and each, a “**Debtor**”. All obligations of the Borrower under the DIP Revolving Facility and the DIP Term Facility will be unconditionally guaranteed on a joint and several basis by the Guarantors. For the avoidance of doubt, the Guarantors under the DIP Term Facility shall be identical to the Guarantors under the DIP Revolving Facility, other than as set forth above.

Backstop Commitment under DIP Term Facility:

Funds and/or accounts affiliated with, or managed and/or advised by, Wayzata Investment Partners LLC, MHR Fund Management LLC, Foxhill Opportunity Fund L.P. and Corbin Opportunity Fund (together with their respective successors and permitted assignees, each a “**Backstop Party**” and collectively, the “**Backstop Parties**”) will, severally and not jointly, backstop the funded amount of the DIP Term Facility in the amounts set forth in the table below (the “**Backstop Commitments**”):

<u>Backstop Party</u>	<u>Backstop Commitment</u>
Wayzata Investment Partners LLC	\$29,743,917.00
MHR Fund Management LLC	\$28,176,268.00
Foxhill Opportunity Fund L.P.	\$1,094,121.00
Corbin Opportunity Fund	\$985,694.00

The financial advisor to the Backstop Parties shall deliver a schedule of commitments of each DIP Term Lender on the Closing Date under the DIP Term Facility to the DIP Term Agent on or prior to the Closing Date. Such commitments are subject to the Syndication Procedures as defined below. Upon the Closing Date, such schedule shall be deemed to be the initial register of the DIP Term Loans and the DIP Term Lenders under the DIP Term Facility.

DIP Term Agent:

Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (in such capacities, the “**DIP Term Agent**”).

DIP Term Lenders:

All eligible holders of the 8.25% Second Priority Senior Secured Notes due 2020 (the “**Second Priority Notes**”) issued by the Borrower under that certain Indenture, dated as of May 2, 2013 (as amended, restated, supplemented or otherwise modified from time to time, the “**Existing**

Indenture”), among the Erickson, the guarantors from time to time party thereto, and Wilmington Trust, National Association, as trustee and notes collateral agent (in such capacities, the “**Indenture Trustee**”) shall be offered the right to participate in the DIP Term Facility on a ratable basis following the funding of the Subsequent DIP Term Loans (as defined below) pursuant to procedures reasonably satisfactory to the DIP Term Agent, the Backstop Parties and the Borrower (“**Syndication Procedures**”), which shall include, among other things, a provision that any holders participating in such offer shall become a party to the Creditor Support Agreement (the holders participating in such offer, together with the Backstop Parties, collectively, the “**DIP Term Lenders**”). Any amounts of the DIP Term Facility not so allocated shall be allocated to the Backstop Parties on a ratable basis based on their respective Backstop Commitments.

Requisite Lenders under the DIP Term Facility:

“**Requisite DIP Term Lenders**” shall mean, (x) prior to the syndication of the DIP Term Loans pursuant to the Syndication Procedures (the “**Syndication**”), at least two (2) unaffiliated DIP Term Lenders holding at least 50.1% of the outstanding commitments and/or exposure under the DIP Term Facility and (y) after the Syndication, DIP Term Lenders holding at least 50.1% of the outstanding commitments and/or exposure under the DIP Term Facility.

DIP Term Facility:

The DIP Term Lenders shall commit to provide a second lien super-priority term loan facility in an aggregate principal amount of \$66.67 million (the “**DIP Term Facility**”) of which (i) a principal amount of up to the amount equal to the First Lien Repayment (as defined below) plus the aggregate amount of all fees, costs and expenses set forth in the DIP Budget (as defined below) for the period from the Petition Date to the date that is 34 days following the Petition Date will be available to be drawn in a single drawing on or after the Closing Date upon satisfaction of the conditions set forth in the DIP Term Loan Documents and the entry of the Interim Order (as defined below) (but no later than 2 business days following the entry of the Interim Order) (the date of such drawing, the “**Initial Draw Date**” and the loans advanced on the Initial Draw Date, the “**Initial DIP Term Loans**”) and (ii) an additional principal amount of up to the undrawn portion of the DIP Term Facility will be available to be drawn in a single drawing after the Closing Date upon satisfaction of the conditions set forth in the DIP Term Loan Documents and the entry of the Final Order (as defined below) (but no later than 2 business days following the entry of the Final Order) (the date of such drawing, the “**Subsequent Draw Date**” and, together with the Initial Draw Date, each a “**Draw Date**”, and the loans advanced on the Subsequent Draw Date, the “**Subsequent DIP Term Loans**” and, together with the Initial DIP Term Loans, the “**DIP Term Loans**”). The principal amount of DIP Term Loans advanced on the Initial Draw Date will be deemed increased by an amount equal to the Put Option Premium and the Closing Fee.

DIP Term Priority Account:

Other than the First Lien Repayment (as defined below), which shall be paid to the Existing First Lien Agent (as defined below) for the ratable benefit of the Existing First Lien Lenders, all proceeds of the DIP Term

Loans under the DIP Term Facility shall be deposited into a segregated account of the Borrower (the “**DIP Term Priority Account**”) and invested at all times in cash and Cash Equivalents (to be defined in the DIP Term Loan Agreement (as defined below)). The DIP Term Priority Account shall be held at, and under the sole dominion and control of, the DIP Term Agent, and withdrawals from such account shall be pursuant to withdrawal procedures satisfactory to the Backstop Parties and shall only be used for the permitted purposes described under “Use of Proceeds” below in accordance with the DIP Budget or to make payments on the DIP Term Facility. Under no circumstances may any cash, funds, securities, financial assets or other property held in or credited to the DIP Term Priority Account or the proceeds thereof held therein or credited thereto be used to pay for any purpose not permitted under the DIP Orders. The Debtors shall not deposit any amounts in the DIP Term Priority Account other than the proceeds of the DIP Term Loans as described herein.

Existing First Lien Credit Facility:

Credit Agreement (as amended, restated, supplemented or modified from time to time prior to the Petition Date, the “**Existing First Lien Credit Agreement**”) dated as of May 2, 2013, by and among Erickson and EH, as borrowers, the lenders party thereto (the “**Existing First Lien Lenders**”) and Wells Fargo Bank, National Association (in its individual capacity, “**Wells Fargo**”), as agent for the Existing First Lien Lenders (in such capacity, the “**Existing First Lien Agent**”), pursuant to which the Prepetition First Lien Loans (as defined below) and other obligations are outstanding. The “Obligations” outstanding under the Existing First Lien Credit Agreement as of the Petition Date, including principal, interest, fees, costs and other charges incurred before or accruing after the commencement of the Cases are referred to herein as the “**Prepetition First Lien Obligations**”.

Prepetition Intercreditor Agreement:

Intercreditor Agreement, dated as of May 2, 2013, among the Existing First Lien Agent and the Indenture Trustee (as amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date, the “**Prepetition Intercreditor Agreement**”).

DIP Revolving Agent:

Wells Fargo, as agent (in such capacity, the “**DIP Revolving Agent**”).

DIP Revolving Lenders:

Wells Fargo, the other Existing First Lien Lenders and the other lenders from time to time party to the DIP Revolving Credit Agreement (“**DIP Revolving Lenders**”).

Required Lenders under the DIP Revolving Facility:

“**Required DIP Revolving Lenders**” shall mean at least two (2) unaffiliated DIP Revolving Lenders holding more than 66.667% of the aggregate “Revolving Loan Exposure” (as defined in the DIP Revolving Credit Agreement, which definition shall be the same as the definition under the Existing First Lien Credit Agreement) of all DIP Revolving Lenders.

DIP Revolving Facility:

The DIP Revolving Lenders shall commit to provide, ratably, a first lien super-priority revolving credit facility (the “**DIP Revolving Facility**” and the loans under the DIP Revolving Facility, the “**DIP Revolving Loans**)

with a maximum revolving credit amount equal to the principal amount of loans (the “**Prepetition First Lien Loans**”) outstanding under the Existing First Lien Credit Agreement *plus* the “Letter of Credit Usage” (as defined under the Existing First Lien Credit Agreement), in each case, as of the Petition Date, *minus*, after the First Lien Repayment Date, the amount of the First Lien Repayment (the “**Maximum Revolver Amount**”).

On and after the date on which the First Lien Repayment is made (such date, the “**First Lien Repayment Date**”), the DIP Revolving Loans will be available from time to time under the DIP Revolving Facility up to a maximum principal amount outstanding at any one time (the “**DIP Revolving Availability**”) not to exceed the *lesser of*:

- (i) the amount equal to (A) the Maximum Revolver Amount *less* (B) the aggregate principal amount of Prepetition First Lien Loans deemed to be outstanding at such time (after giving effect to all Deemed Prepetition First Lien Loan Repayments (as defined below) made prior to such time) *less* (C) the “Letter of Credit Usage” (as defined under the Existing First Lien Credit Agreement) at such time *less* (D) the “Letter of Credit Usage” (as defined under the DIP Revolving Facility) at such time *less* (E) the principal amount of Swing Loans (as defined under the DIP Revolving Facility) at such time; and
- (ii) the amount equal to (A) the “Borrowing Base” (as defined under the DIP Revolving Facility, which definition (and the component definition thereof) shall be substantially the same as the definition under the Existing First Lien Credit Agreement, subject to the immediately succeeding paragraph below) in effect at such time *less* (B) the aggregate principal amount of Prepetition First Lien Loans deemed to be outstanding at such time (after giving effect to all Deemed Prepetition First Lien Loan Repayments made prior to such time) *less* (C) the “Letter of Credit Usage” (as defined under the Existing First Lien Credit Agreement) at such time *less* (D) the “Letter of Credit Usage” (as defined under the DIP Revolving Facility) at such time *less* (E) the principal amount of Swing Loans (as defined under the DIP Revolving Facility) at such time.

The Borrowing Base (and the component definitions thereof) (i) shall be calculated based in a manner consistent with the calculation of the “Borrowing Base” under the Existing First Lien Credit Agreement, (ii) shall be based solely on the last appraisals conducted for the Existing First Lien Agent prior to the Petition Date and (iii) may not be amended without the written consent of the Requisite DIP Term Lenders. Further, the reserves under the Borrowing Base (the “**Reserves**”) shall (i)(x) include reserves under the borrowing base in effect as of the Petition Date under the Existing First Lien Credit Agreement and (y) otherwise, be based solely on events, conditions or other circumstances first becoming known to the DIP Revolving Agent after the Closing Date of the DIP Revolving Facility (including any prior inaccurate reporting by the Borrower), in the case of

each of clauses (i)(x) and (i)(y) above, (A) that have a reasonable relationship to the event, condition or other circumstance that caused such change and (B) will be eliminated when the event, condition or other circumstance causing the establishment thereof no longer exists or is no longer relevant to the Debtors' business as determined in the DIP Revolving Agent's Permitted Discretion (as defined under the Existing First Lien Credit Agreement), (ii) not be established to the extent that such Reserves would be duplicative of any specific item excluded as ineligible in the component definitions of the Borrowing Base and (iii) not include any amounts under the Carve-Out and the Refinancing Accommodation Fee (as defined below); provided, that no new Reserves shall be established or existing Reserves shall not be increased under the Borrowing Base without three (3) business days prior written notice to the Debtors and the DIP Term Agent on behalf of the DIP Term Lenders (absent exigent circumstances). The documentation for the DIP Revolving Facility shall not include any language or provision permitting the DIP Revolving Agent to adjust the advance rate or to create new criteria or adjusting existing criteria under the Borrowing Base (and the component definitions hereof) as set forth in the Existing First Lien Credit Agreement. The DIP Revolving Agent will use its commercially reasonable efforts to consult with the Debtors when establishing new or increasing existing Reserves under the Borrowing Base.

All cash collateral consisting of (i) proceeds of "First Lien Collateral" (as defined in the Prepetition Intercreditor Agreement) in existence as of the date of the entry of the Interim Order or coming into the possession or control of the Debtors after the date of the entry of the Interim Order, (ii) any proceeds of Existing First Lien Adequate Protection Liens (defined below) and (iii) proceeds of any and all of the Debtors' assets subject to liens granted to the DIP Revolving Agent under the DIP Orders (other than, for the avoidance of doubt, (x) assets held in or credited to the DIP Term Priority Account and (y) proceeds of any DIP Term Loan or DIP Revolving Loan), shall be applied to repay the Prepetition First Lien Obligations (other than the Refinancing Accommodation Fee) in accordance with the terms of the Existing First Lien Credit Agreement until all such amounts are Paid in Full (as defined below); provided, however, that, solely for purposes of determining DIP Revolving Availability, all such repayments of the Prepetition First Lien Obligations shall be deemed to have been applied first to repay the Prepetition First Lien Loans ("**Deemed Prepetition First Lien Loan Repayments**").

Use of Proceeds:

In accordance with the DIP Budget and the DIP Orders, (i) the proceeds of the DIP Term Facility will be used on the Initial Draw Date, to repay a portion of the outstanding Prepetition First Lien Loans in a principal amount equal to the sum of (x) \$10 million *plus* (y) the aggregate principal amount of advances under the Existing First Lien Credit Agreement made on or after October 31, 2016 and prior to the time of filing the petitions commencing the Cases (such period, the "**Pre-Filing Advance Period**") in accordance with a budget satisfactory to the Backstop Parties (the "**Pre-Filing Budget**") to the extent such advances result in the aggregate principal amount of the Prepetition First Lien Loans exceeding \$122,894,518 as of the Petition Date (such repayment, the "**First Lien**

Repayment”) and (ii) the proceeds of the DIP Term Facility funded on any Draw Date or disbursed on any Withdrawal Date (as defined below) will be used (A) to pay transaction costs, fees and expenses that are incurred in connection with the DIP Term Facility, for working capital and general corporate purposes of the Borrower and the Guarantors, and (B) to make payments providing for adequate protection as set forth in the section below entitled “Adequate Protection”.

In accordance with the DIP Budget and the DIP Orders, (i) proceeds of the DIP Revolving Facility will be used to (i) pay transaction costs, fees and expenses that are incurred in connection with the DIP Revolving Facility, (ii) pay, when due, those expenses enumerated in the DIP Budget, subject to any permitted variance under the DIP Revolving Facility, and (iii) make payments providing for adequate protection for the benefit of the Existing First Lien Lenders as set forth in the section below entitled "Adequate Protection". No repayment of the Second Priority Notes or the DIP Term Facility, or adequate protection payments, if any, to the Indenture Trustee or the Second Priority Noteholders (as defined below), shall be permitted with proceeds of the DIP Revolving Facility.

Notwithstanding the foregoing, no portion or proceeds of the DIP Term Loans, the DIP Revolving Loans, Prepetition First Lien Loans, Second Priority Notes, the Carve-Out or the DIP Collateral (as defined below) may be used in connection with the investigation (including discovery proceedings), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the Existing First Lien Agent, Existing First Lien Lenders, DIP Revolving Agent, DIP Revolving Lenders, Indenture Trustee, the holders of the Second Priority Notes (the “**Second Priority Noteholders**”), the DIP Term Agent or the DIP Term Lenders; provided, however, that no more than \$25,000, in the aggregate, of the proceeds of the DIP Term Facility, DIP Revolving Facility and the DIP Collateral may be used by, or to reimburse the fees, cost or expenses of, any statutory committee of unsecured creditors to investigate the prepetition liens and claims of the Existing First Lien Agent, Existing First Lien Lenders, Indenture Trustee and the Second Priority Noteholders. The use of proceeds of the DIP Revolving Facility and the DIP Term Facility shall in all cases be in accordance with the DIP Budget (including any permitted variances).

Term of DIP Term Facility:

The Obligations (as defined in the DIP Term Loan Agreement) under the DIP Term Facility shall become due and payable and all commitments to provide the DIP Term Loans shall be terminated on the DIP Term Facility Termination Date. The “**DIP Term Facility Termination Date**” shall be the earliest of: (a) the Scheduled Termination Date; (b) 34 days after Petition Date if the Final Order has not been entered by the Bankruptcy Court prior to the expiration of such 33-day period, unless otherwise extended by the Requisite DIP Term Lenders; (c) the consummation of any Section 363 sale of all or substantially all of the Debtors’ assets; (d) the substantial consummation (as defined in section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the “effective date”) of a plan of reorganization filed in the Cases that is confirmed

pursuant to an order entered by the Bankruptcy Court; and (e) the acceleration of the loans and the termination of the commitment with respect to the DIP Term Facility in accordance with the DIP Term Loan Documents.

“**Scheduled Termination Date**” means the date that is six (6) months after the Closing Date.

On the DIP Term Facility Termination Date (or such earlier date on which the DIP Term Facility shall have been terminated), all obligations under the DIP Term Facility shall be repaid in full.

There shall be no amortization under the DIP Term Facility.

Term of DIP Revolving Facility:

The Obligations (as defined in the DIP Revolving Credit Agreement) under the DIP Revolving Facility shall become due and payable and all commitments to provide the DIP Revolving Loans shall be terminated on the DIP Revolving Facility Termination Date. The “**DIP Revolving Facility Termination Date**” shall be the earliest of: (a) the Scheduled Termination Date; (b) 34 days after the Petition Date if the Final Order has not been entered by the Bankruptcy Court prior to the expiration of such 33-day period, unless otherwise extended by the DIP Revolving Agent; (c) the consummation of any Section 363 sale of all or substantially all of the Debtors’ assets; (d) the substantial consummation (as defined in section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the “effective date”) of a plan of reorganization filed in the Cases that is confirmed pursuant to an order entered by the Bankruptcy Court; and (e) the acceleration of the loans and the termination of the commitment with respect to the DIP Revolving Facility in accordance with the DIP Revolving Loan Documents.

On the DIP Revolving Facility Termination Date (or such earlier date on which the DIP Revolving Facility shall have been terminated), all Obligations (as defined in the DIP Revolving Credit Agreement) under the DIP Revolving Facility shall be repaid in full.

DIP Term Loan Documents:

The DIP Term Facility will be documented by a Second Lien Super-Priority Debtor-in-Possession Credit Agreement (the “**DIP Term Loan Agreement**”) and other guarantee, security and other relevant documentation (together with the DIP Term Loan Agreement, collectively, the “**DIP Term Loan Documents**”) reflecting the terms and provisions set forth in this Term Sheet and otherwise in form and substance satisfactory to the DIP Term Agent, the Backstop Parties and the Borrower.

DIP Revolving Loan Documents:

The DIP Revolving Facility will be documented by a First Lien Super-Priority Debtor-in-Possession Credit Agreement (the “**DIP Revolving Credit Agreement**”) and other guarantee, security and other relevant documentation (together with the DIP Revolving Credit Agreement, collectively, the “**DIP Revolving Loan Documents**”) reflecting the terms and provisions set forth in this Term Sheet and otherwise in form and

substance satisfactory to the DIP Revolving Agent and the Borrower.

Security and Priority:

Pursuant to section 364(c)(2), (c)(3) and (d)(1) of the Bankruptcy Code, subject to the Carve-Out and DIP Intercreditor Agreement (as defined below), (a) all amounts owing by the Debtors under the DIP Revolving Facility and the obligations of the Guarantors in respect thereof will be secured, by a perfected, first priority security interest in and lien on substantially all of the assets of the Borrower and the Guarantors (the “**DIP Collateral**”) and (b) all amounts owing by the Debtors under the DIP Term Facility and the obligations of the Guarantors in respect thereof will be secured, by a perfected, second priority security interest in and lien on the DIP Collateral, in each case, with the priority set forth in the immediately succeeding paragraph. For the avoidance of doubt, the DIP Collateral securing the DIP Term Facility shall be identical to the DIP Collateral securing the DIP Revolving Facility.

The liens and security interests granted under the DIP Term Facility (i) will prime and be senior to the liens and security interests in the DIP Collateral securing any prepetition indebtedness, other than the Prepetition First Lien Obligations, and (ii) will be junior to (x) the Carve-Out, (y) the liens on, and security interests in, the DIP Collateral securing the Prepetition First Lien Obligations under the Existing First Lien Credit Agreement (including, without limitation, any replacement liens constituting Existing First Lien Adequate Protection Liens) and (z) the liens on, and security interests in, the DIP Collateral securing the DIP Revolving Facility; provided, however, that the liens and security interests granted under the DIP Term Facility in the DIP Term Priority Account, and all amounts held therein or credited thereto, will prime and be senior to the liens and security interests securing (A) any prepetition indebtedness, including the indebtedness under the Existing First Lien Credit Agreement (including, without limitation, any replacement liens constituting Existing First Lien Adequate Protection Liens) and (B) the DIP Revolving Facility. In addition, the DIP Revolving Facility will be junior in priority of lien and in payment to the Prepetition First Lien Obligations until such Prepetition First Lien Obligations are indefeasibly paid in full in cash and other contingent obligations thereunder are cash collateralized (“**Paid in Full**”).

In the Cases, (a) the DIP Revolving Agent and the DIP Revolving Lenders will be granted in each of the Interim Order and the Final Order a super-priority administrative claim under section 364(c)(1) of the Bankruptcy Code for the payment of the obligations under the DIP Revolving Facility with priority above all other administrative claims, subject to (x) the Existing First Lien Adequate Protection Liens and Claims and (y) for the avoidance of doubt, any super-priority administrative claim for the payment of the obligations under the DIP Term Facility with funds held in or credited to the DIP Term Priority Account and (b) the DIP Term Agent and DIP Term Lenders will be granted in each of the Interim Order and the Final Order a super-priority administrative claim under section 364(c)(1) of the Bankruptcy Code for the payment of the obligations under the DIP Term Facility with priority above all other administrative claims, subject to the Carve-Out, the Existing First Lien Adequate Protection Liens and

Claims and the super-priority administrative claim for the payment of the obligations under the DIP Revolving Facility (other than any super-priority administrative claim for the payment of the obligations under the DIP Revolving Facility with funds held in or credited to the DIP Term Priority Account).

Intercreditor Provisions:

The respective priorities of (a) the liens on the DIP Collateral securing the obligations under the Second Priority Notes and the DIP Term Facility and (b) the liens on the DIP Collateral securing the obligations under the Existing First Lien Credit Agreement and the DIP Revolving Facility shall be governed by terms and conditions set forth in an intercreditor agreement (the “**DIP Intercreditor Agreement**”) on substantially the same terms as the Prepetition Intercreditor Agreement (with such changes as necessary to reflect the transactions contemplated by this Term Sheet), and otherwise reasonably satisfactory to the DIP Revolving Agent, DIP Term Agent, the Backstop Parties and the Borrower.

Carve-Out:

The liens and claims of the DIP Term Agent and the DIP Term Lenders shall be subject to a carve-out (the “**Carve-Out**”) for (i) all quarterly fees required to be paid to the clerk of the Bankruptcy Court and to the Office of the United States Trustee under section 1930(a)(6) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (ii) below); (ii) in an aggregate amount not to exceed the amount set forth in the DIP Budget, to the extent allowed at any time, whether by interim order, procedural order or otherwise, all unpaid reasonable and documented fees, costs and expenses incurred by persons or firms retained by the Loan Parties pursuant to section 327, 328 or 363 of the Bankruptcy Code or retained by no more than one statutory committee appointed in the Cases pursuant to section 1103 of the Bankruptcy Code (“**Professional Fees**”), in each case, before or on the date of delivery by the DIP Term Agent or the DIP Revolver Agent of a Carve-Out Trigger Notice (as defined below) to the Loan Parties and any statutory committee, whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice (such amounts in this provision (ii), the “**Pre-Trigger Notice Professional Fees**”); and (iii) after the date of delivery of the Carve-Out Trigger Notice (the “**Trigger Date**”), to the extent incurred after the Trigger Date and allowed at any time thereafter, whether by interim order, procedural order or otherwise, the payment of Professional Fees in an aggregate amount not to exceed \$250,000 (the amount set forth in this clause (iii) being the “**Post-Carve-Out Trigger Notice Cap**”). Any transaction or success fee (other than any transaction or success fee payable to the professionals for the DIP Term Lenders) shall not be included in the Carve-Out. For purposes of the foregoing, “**Carve-Out Trigger Notice**” shall mean notice by (x) the DIP Term Agent to the Loan Parties and the United States Trustee, delivered upon or after the occurrence of an event of default under the DIP Term Facility (including events of default resulting from defaults under the Interim Order or Final Order, as applicable) or (y) the DIP Revolving Agent to the Loan Parties and the United States Trustee, delivered upon or after the occurrence of an event of default under the DIP Revolving Facility (including events of default resulting from defaults under the Interim Order or Final Order, as

applicable), in each case, stating that the Post-Carve-Out Trigger Notice Cap has been invoked. Notwithstanding anything herein to the contrary, the Carve-Out shall be satisfied exclusively from (i) the proceeds in the DIP Term Priority Account and (ii) the proceeds from any assets of the Debtors that do not constitute Prepetition Collateral (as defined below) securing the Prepetition First Lien Obligations and the DIP Collateral securing the obligations under the DIP Revolving Facility and that are not subject to the Existing First Lien Adequate Protection Liens. For the avoidance of doubt, the liens and claims of (a) the DIP Revolving Lenders, (b) DIP Revolving Agent, (c) Existing First Lien Agent and (d) the Existing First Lien Lenders, in each case, in or to the DIP Term Priority Account shall be subject to the Carve-Out.

Notwithstanding anything to the contrary herein, no portion of the Carve-Out may be utilized for the payment of professional fees, disbursements, costs or expenses incurred in connection with asserting or preparing for any claims or causes of actions against the Existing First Lien Agent, Existing First Lien Lenders, DIP Revolving Agent, DIP Revolving Lenders, Indenture Trustee, the Second Priority Noteholders, the DIP Term Agent or the DIP Term Lenders and/or challenging or raising any defenses to the obligations under the DIP Revolving Loan Documents, Existing First Lien Credit Agreement, Second Priority Notes, the Existing Indenture or the DIP Term Loan Documents, or the liens of the Existing First Lien Agent, Existing First Lien Lenders, DIP Revolving Agent, DIP Revolving Lenders, Indenture Trustee, the Second Priority Noteholders, the DIP Term Agent or the DIP Term Lenders.

Following the delivery of the Carve-Out Trigger Notice, (i) the DIP Term Agent shall be entitled to sweep all funds held in or credited to the DIP Term Priority Account for the repayment of all Obligations (as defined in the DIP Term Loan Agreement) in accordance with the DIP Term Loan Documents in excess of the amounts necessary to fund: (A) the Carve-Out (after giving effect to the Post-Carve-Out Trigger Notice Cap, including for the avoidance of doubt, the Pre-Trigger Notice Professional Fees) *plus* (B) to the extent any funds are remaining in excess of the Carve-Out, all employee payroll, employee benefits, employee taxes, claims for health care services pursuant to any of the Debtors' self-funded insurance, and employee expenses that have been accrued since the last post-petition funded payroll period immediately prior to the Trigger Date through and including the Trigger Date which remain unpaid and have not been separately segregated in any account designated for such payments in an aggregate amount not to exceed \$1.3 million (the amounts described in clauses (A) and (B) above, collectively, the "**Post-Trigger Carve-Out and Accrued Employee Benefit Amounts**") and (ii) following such sweep, all funds held in or credited to the DIP Term Priority Account shall not be used for any purpose other than to satisfy the Post-Trigger Carve-Out and Accrued Employee Benefit Amounts, as applicable, and any remaining balance shall be applied to the repayment of all Obligations (as defined in the DIP Term Loan Agreement) in accordance with the DIP Term Loan Documents.

Interim and Final Orders:

The order approving the DIP Revolving Facility and the DIP Term Facility on an interim basis, which shall be satisfactory in form and substance to the DIP Revolving Agent, DIP Term Agent and the Backstop Parties (the “**Interim Order**”), shall authorize and approve (i) the Debtors to enter into the DIP Revolving Loan Documents and the DIP Term Loan Documents, (ii) the making of the DIP Revolving Loans and the DIP Term Loans, (iii) the granting of the super-priority claims and liens against the Loan Parties and their assets in accordance with the DIP Revolving Loan Documents and DIP Term Loan Documents with respect to the DIP Collateral, (iv) the payment of all fees and expenses (including the fees and expenses of outside counsel and financial advisors) required to be paid to the DIP Revolving Agent, DIP Revolving Lenders, DIP Term Agent and the DIP Term Lenders as described in “Indemnification and Expenses” by the Loan Parties and (v) the use of prepetition cash collateral for purposes of reducing the outstanding balance of the Prepetition First Lien Obligations (other than the Refinancing Accommodation Fee) except to the extent required to be paid pursuant to the Final Order. The order approving the DIP Revolving Facility and the DIP Term Facility on a final basis and authorizing the use of prepetition cash collateral shall be in form and substance satisfactory to the DIP Revolving Agent, the DIP Term Agent and the Backstop Parties and shall not permit any non-consensual use of cash collateral or any subsequent debtor-in-possession financing on a senior or pari passu basis to the DIP Revolving Facility or the Prepetition First Lien Obligations (the “**Final Order**” and, together with the Interim Order, the “**DIP Orders**”).

DIP Term Facility Fees and Interest:

As set forth on Annex I.

DIP Revolving Facility Fees and Interest:

As set forth on Annex II.

Mandatory Prepayments:

The DIP Revolving Facility will contain customary mandatory prepayment events for financings of its type, including, without limitation, prepayments from proceeds of non-ordinary course dispositions of collateral, casualty and such other mandatory prepayments required to be applied to the Prepetition First Lien Obligations pursuant to the Existing First Lien Credit Agreement.

Subject to the DIP Intercreditor Agreement, after the Prepetition First Lien Obligations (other than the Refinancing Accommodation Fee) and the obligations under the DIP Revolving Facility have been Paid in Full, mandatory prepayments of the DIP Term Loans shall be required with 100% of net cash proceeds from (A) the sale or other disposition of assets, subject to exceptions to be agreed; (B) casualty events, subject to exceptions to be agreed; (C) any sale or issuance of debt (other than permitted debt to be agreed); (D) equity securities (other than certain permitted equity issuances to be agreed); and (E) other extraordinary receipts to be agreed between the Debtors and the DIP Term Lenders.

Optional Prepayments:

The Debtors may prepay in whole or in part the DIP Revolving Loans at

any time, without premium or penalty.

The Debtors may prepay in whole or in part the DIP Term Loans at any time, without penalty, subject to customary notice periods and payment of breakage costs and the Exit Premium (as defined below), if applicable.

Conditions Precedent to the Closing of the DIP Term Facility:

The Closing Date under the DIP Term Facility shall be subject to conditions, which are satisfactory to the Backstop Parties, including the satisfaction of the conditions set forth on Annex III.

Conditions Precedent to the Closing of the DIP Revolving Facility:

The Closing Date under the DIP Revolving Facility shall be subject to conditions, which are satisfactory to the DIP Revolving Agent, including the satisfaction of the conditions set forth on Annex IV.

For purposes of this Term Sheet, the “**Closing Date**” shall mean the closing date under the DIP Term Facility or the DIP Revolving Facility, as applicable.

Conditions Precedent to Each DIP Term Loan and Each Withdrawal Date:

On each Draw Date and each date of distribution of proceeds from the DIP Term Priority Account (each a “**Withdrawal Date**”), (i) there shall exist no default under the DIP Term Loan Documents, (ii) the representations and warranties of the Borrower and each Guarantor therein shall be true and correct in all material respects (or in the case of representations and warranties with a “materiality” qualifier, true and correct in all respects) immediately prior to, and after giving effect to, such funding, (iii) the making of such DIP Term Loan shall not violate any requirement of law and shall not be enjoined, temporarily, preliminarily or permanently, (iv) no later than 34 days after the Petition Date, the Bankruptcy Court shall have entered a Final Order; (v) the Interim Order or Final Order, as the case may be, shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed in any respect without the consent of the Requisite DIP Term Lenders, (vi) with respect to each Withdrawal Date after the Initial Draw Date, availability under the DIP Revolving Facility shall not exceed \$50,000 (after giving effect to the borrowing amounts set forth in any pending borrowing requests delivered by the Borrower to the DIP Revolving Agent), (vii) the funding of the DIP Term Loan or the distribution of proceeds from the DIP Term Priority Account complies with the DIP Budget (including any permitted variances) and in no event shall such distribution of proceeds from the DIP Term Priority Account exceed the amounts set forth in the DIP Budget on a weekly basis and (viii) the delivery of a borrowing request or withdrawal certificate (the “**Withdrawal Certificate**”) (in each case, in form and substance to be agreed among the Borrower, the DIP Term Agent and the Backstop Parties).

The DIP Term Agent shall be authorized to disburse amounts from the DIP Term Priority Account upon receipt of and in accordance with the instructions set forth in the Withdrawal Certificate. The Withdrawal Certificate must be received by the DIP Term Agent not later than 5:00 PM (ET) four (4) days’ prior (or such shorter time as may be agreed by the DIP Term Agent) to the requested date of the distribution of proceeds from the

DIP Term Priority Account.

Representations and Warranties:

The DIP Term Loan Documents will contain representations and warranties customarily found in loan agreements for similar debtor-in-possession financings and other representations and warranties deemed by the Backstop Parties appropriate to the specific transaction (which will be applicable to the Borrower, the Guarantors and their respective subsidiaries and subject to certain exceptions and qualifications to be agreed).

The DIP Revolving Loan Documents will contain representations and warranties customarily found in loan agreements for similar debtor-in-possession financings and other representations and warranties deemed by the DIP Revolving Agent appropriate to the specific transaction (which will be applicable to the Borrower, the Guarantors and their respective subsidiaries and subject to certain exceptions and qualifications to be agreed).

Financial Covenants, Reporting Covenants, Affirmative Covenants and Negative Covenants under the DIP Term Facility:

The DIP Term Loan Documents will contain the following financial covenants:

As of end of each Test Period (as defined below) (i) the sum of the Debtors' actual "Receipts" during such Test Period shall not be less than 87.5% of the projected "Receipts" for such Test Period as set forth in the DIP Budget, (ii) the sum of the Debtors' actual "Operating Disbursements" during such Test Period shall not exceed 112.5% of the projected "Operating Disbursements" for such Test Period as set forth in the DIP Budget and (iii) the Debtors' actual "Cash Flow before Debt Service" for such Test Period shall not be less than 90% of the projected "Cash Flow before Debt Service" for such Test Period as set forth in the DIP Budget; provided, however, that (x) any variance unfavorable to the DIP Term Lenders of (A) less than \$2.0 million related to Receipts and Operating Disbursements and (B) less than \$4.0 million related to Cash Flow before Debt Service, in each case, shall be deemed a permitted variance and (y) for purposes of calculating variances under the DIP Budget, projected Receipts and projected Cash Flow before Debt Service shall be adjusted for specifically identified receipts timing items subject to the approval of the Requisite DIP Term Lenders (which approval shall not be unreasonably withheld).

For purposes of the DIP Term Facility and DIP Revolving Facility, "**Test Period**" shall mean (i) with respect to actual Receipts and Operating Disbursements, (x) initially, the four-week period commencing on October 29, 2016 and ending on November 25, 2016 and (y) thereafter, each weekly rolling four-week period and (ii) with respect to Cash Flow before Debt Service, the period commencing on October 29, 2016 and ending on the Friday of each week thereafter.

The DIP Term Loan Documents will contain reporting requirements, affirmative covenants and negative covenants customarily found in loan documents for similar debtor-in-possession financings and other reporting requirements, affirmative covenants and negative covenants deemed by the

Backstop Parties appropriate to the specific transaction, including, without limitation, (i) on or prior to the third business day after the end of the last week of each four week period following the Petition Date, commencing with November 30, 2016, the rolling delivery of an updated 13-week cash forecast reviewed and approved by the Debtors' Financial Advisor (as defined below) and in form and substance satisfactory to the Requisite DIP Term Lenders in their sole discretion (together with the Initial DIP Budget, the "**DIP Budget**"), which may include restated projections for the immediately preceding three weeks only to adjust for specifically identifiable timing differences (and for any such adjustments, the Debtors shall provide the rationale for such adjustments) (to the extent any updated DIP Budget is not approved by the Requisite DIP Term Lenders and the DIP Revolving Agent, the DIP Budget that is then effect shall continue to constitute the DIP Budget for purposes of the DIP Term Facility); (ii) the delivery of a report on or prior to the third business day after the end of every week, which shall include (x) actual Receipts and Operating Disbursements on an aggregate basis for such immediately preceding week on a cumulative basis for the four week period through and including the Friday immediately preceding the delivery date of such report and the actual Cash Flow before Debt Service on a cumulative basis from October 29, 2016 and (y) the variance in dollar amounts of such actual Receipts, Operating Disbursements and Cash Flow before Debt Service for the immediately preceding week and the applicable Test Period; (iii) the satisfaction of the milestones under the heading "DIP Term Facility Milestones" set forth on Annex V (the "**DIP Term Facility Milestones**"); (iv) the Debtors shall provide the DIP Term Lenders' counsel with advance notice and copies of any material motions or other material documents to be filed in the Cases; (v) retaining a chief restructuring officer acceptable to the Backstop Parties, who will be responsible for certain duties acceptable to the Backstop Parties; (vi) not to permit the existence of any claims, other than those arising under the DIP Term Facility and the replacement liens and super-priority claims as described in "Adequate Protection" below, entitled to a super-priority under section 364(c)(1) of the Bankruptcy Code; (vii) not to permit any payments on account of any prepetition claims in excess of \$75,000, including any prepetition "critical vendor" payments or payments on account of claims or expenses arising under section 503(b)(9) of the Bankruptcy Code, without the consent of the Requisite DIP Term Lenders, (viii) not to permit any disbursements in excess of \$100,000, other than disbursements in the ordinary course of business, without the consent of the financial advisor to the Backstop Parties and (ix) not to permit the incurrence of any administrative obligations or other administrative claims not set forth in the DIP Budget.

Financial, Covenants, Reporting Covenants, Affirmative Covenants, and Negative Covenants under the DIP Revolving Facility:

The DIP Revolving Loan Documents will contain the following financial covenants:

As of end of each Test Period (i) the sum of the Debtors' actual "Receipts" during such Test Period shall not be less than 85% of the projected "Receipts" for such Test Period as set forth in the DIP Budget, (ii) the sum of the Debtors' actual "Operating Disbursements" during such Test Period shall not exceed 115% of the projected "Operating Disbursements" for such

Test Period as set forth in the DIP Budget and (iii) the Debtors' actual "Cash Flow before Debt Service" for such Test Period shall not be less than 85% of the projected "Cash Flow before Debt Service" for such Test Period as set forth in the DIP Budget; provided, however, that (x) any variance unfavorable to the DIP Revolving Lenders of (A) less than \$2.5 million related to Receipts and Operating Disbursements and (B) less than \$5.0 million related to Cash Flow before Debt Service, in each case, shall be deemed a permitted variance and (y) for purposes of calculating variances under the DIP Budget, projected Receipts and projected Cash Flow before Debt Service shall be adjusted for specifically identified receipts timing items subject to the approval of the DIP Revolving Agent (which approval shall not be unreasonably withheld).

The DIP Revolving Credit Agreement will include affirmative covenants consistent with those in the Existing First Lien Credit Agreement and such other bankruptcy-related affirmative covenants applicable to the Debtors and their respective subsidiaries as are usual and customary for financings of this type, including, without limitation, (i) on or prior to the third business day after the end of the last week of each four week period following the Petition Date, commencing with November 30, 2016, the rolling delivery of the DIP Budget, which shall (A) be reviewed and approved by the Debtors' Financial Advisor and in form and substance satisfactory to the DIP Revolving Agent and (B) include restated projections for the immediately preceding three weeks only to adjust for specifically identifiable timing differences (and for any such adjustments, the Debtors shall provide the rationale for such adjustments) (to the extent any updated DIP Budget is not approved by DIP Revolving Agent and the Requisite DIP Term Lenders, the DIP Budget that is then in effect shall continue to constitute the DIP Budget for purposes of the DIP Revolving Facility); (ii) delivery of a report on or prior to the third business day after the end of every week, which shall include (x) actual cash Receipts and Operating Disbursements on an aggregate basis for such immediately preceding week on a cumulative basis for the four week period through and including the Friday immediately preceding the delivery date of such report and the actual Cash Flow before Debt Service on a cumulative basis from October 29, 2016 and (y) the variance in dollar amounts of such actual Receipts, Operating Disbursements and Cash Flow before Debt Service for the immediately preceding week and the applicable Test Period; (iii) satisfaction of the milestones under the heading "DIP Revolving Facility Milestones" set forth on Annex V (the "**DIP Revolving Facility Milestones**"), each of which shall be 10 calendar days later than the comparable dates set forth in the DIP Term Facility Milestones, except with respect to the milestones regarding entry of the DIP Orders, which shall be identical to the comparable DIP Term Facility Milestones; (iv) the Debtors shall provide the DIP Revolving Agent's counsel with advance notice and copies of any material motions or other material documents to be filed in the Cases and (v) retaining a chief restructuring officer acceptable to the DIP Revolving Agent, who will be responsible for certain duties acceptable to the DIP Revolving Agent.

The DIP Revolving Credit Agreement will include negative covenants

consistent with those in the Existing First Lien Credit Agreement and such other bankruptcy-related negative covenants applicable to the Debtors and their respective subsidiaries as are usual and customary for financings of this type, including, without limitation, (i) not to permit the existence of any claims, other than those arising under the DIP Revolving Facility and the replacement liens and super-priority claims as described in "Adequate Protection" below, entitled to a super-priority under section 364(c)(1) of the Bankruptcy Code and (ii) not to permit the incurrence of any administrative obligations or other administrative claims not set forth in the DIP Budget.

Notwithstanding anything to the contrary in the foregoing, any covenant related to the conduct of appraisals or valuations will limit DIP Revolving Agent to one appraisal or valuation by HeliValue\$, Inc., or such other appraiser acceptable to the DIP Revolving Agent and reasonably acceptable to the Required DIP Revolving Lenders, during the term of the DIP Revolving Facility (unless an event of default has occurred and is continuing under the DIP Revolving Facility); provided, that no such updated appraisal or valuation may be used to adjust the Borrowing Base.

Other than as expressly set forth in this Term Sheet, each numerical "basket" or "cushion" set forth in the covenants and events of default contained in the DIP Revolving Facility shall be at least 20% more favorable to the Debtors than the corresponding provision under the DIP Term Facility.

For the avoidance of doubt, the DIP Revolving Facility will not include any provisions related to Excess Availability.

Events of Default:

Prior to the execution of the DIP Term Loan Documents, the events of default under the DIP Term Facility shall be consistent with those in the Existing First Lien Credit Agreement and the events of default set forth in on Annex VI and the DIP Term Loan Documents will contain events of default customarily found in loan agreements for similar debtor-in-possession financings and other events of default deemed by the Backstop Parties to be appropriate to the specific transaction, including, without limitation, as set forth on Annex VI.

Prior to the execution of the DIP Revolving Loan Documents, the events of default under the DIP Revolving Facility shall be consistent with those in the Existing First Lien Credit Agreement and the events of default set forth in on Annex VII and the DIP Revolving Loan Documents will contain events of default consistent with those in the Existing First Lien Credit Agreement and such other bankruptcy-related events of default applicable to the Debtors and their respective subsidiaries as are usual and customary for financings of this type, including as set forth on Annex VII; provided, that any event of default under the DIP Revolving Loan Documents related to the DIP Term Facility shall be limited to a cross-acceleration to the DIP Term Facility.

Upon the occurrence and during the continuation of any Event of Default

under the DIP Revolving Loan Documents, the DIP Revolving Agent may and at the direction of the Required DIP Revolving Lenders will have the right to cease making DIP Revolving Loans and, upon not more than five days' notice to the Borrower (which shall be filed with the Bankruptcy Court and served on all key notice parties), otherwise exercise customary rights and remedies.

Letter of Credit Obligations under the DIP Revolving Facility:

Same as under Existing First Lien Credit Agreement. All Prepetition First Lien Obligations consisting of contingent Prepetition First Lien Obligations (including Prepetition First Lien Obligations for Letters of Credit and Bank Product Obligations, as each term is defined in the Existing First Lien Credit Agreement) would be deemed assumed by Borrower or otherwise reissued and incurred under the DIP Revolving Facility and, effective upon such deemed assumption or deemed reissuance and incurrence, such amount would be deemed refinanced (in accordance with the Prepetition Intercreditor Agreement).

Cash Management:

Debtors will maintain their primary depository and treasury management relationships with Wells Fargo Bank, National Association or one of its affiliates or such other depository institutions acceptable to DIP Revolving Agent; provided that all accounts with such depository institution shall be subject to control agreements in form and substance satisfactory to DIP Revolving Agent and the Backstop Parties.

Adequate Protection:

As adequate protection for the use of the collateral securing the Existing First Lien Credit Agreement and the Second Priority Notes (including cash collateral) (collectively, the "**Prepetition Collateral**"), (i) the Existing First Lien Lenders shall, during the pendency of the Cases, (a) receive indefeasible cash payments of interest on a current basis, calculated at the non-default rate under the Existing First Lien Credit Agreement (without prejudice to such Existing First Lien Lenders' right to later assert claims for interest at the default rate), and (b) receive payments in cash on a current basis of all reasonable and documented fees, costs and expenses of the Existing First Lien Lenders' legal counsel and their respective professional advisors; provided, however, that none of such fees, costs and expenses provided as adequate protection payments under this clause (i) shall be subject to approval by the Bankruptcy Court or the United States Trustee, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Bankruptcy Court; (ii) during the pendency of the Cases (a) interest, calculated at the non-default rate, under the Second Priority Notes (without prejudice to the Second Priority Noteholders' right to later assert claims for interest at the default rate) shall continue to accrue and (b) the Indenture Trustee and the Second Priority Noteholders party to the Creditor Support Agreement shall receive payments in cash on a current basis of all reasonable and documented fees, costs and expenses of their legal counsel and their respective professional advisors; provided, however, that none of such fees, costs and expenses provided as adequate protection payments under this clause (ii) shall be subject to approval by the Bankruptcy Court or the United States Trustee, and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Bankruptcy Court, (iii)

the Existing First Lien Agent and Existing First Lien Lenders shall, during the pendency of the Cases, be granted additional and replacement liens on all property of the Debtors' estates (the "**Existing First Lien Adequate Protection Liens**") and a super-priority claim pursuant to section 507(b) of the Bankruptcy Code, in each case, of the same relative priority to the extent of the post-petition diminution in value of its Prepetition Collateral, subject, in each case, to (x) the liens and super-priority claims granted to secured the DIP Revolving Facility, (y) the Carve-Out and (z) any super-priority administrative claim for the payment of the obligations under the DIP Term Facility with funds held in or credited to the DIP Term Priority Account (the "**Existing First Lien Adequate Protection Liens and Claims**") and (iv) the Indenture Trustee and Second Priority Noteholders shall, during the pendency of the Cases, be granted additional and replacement liens on all property of the Debtors' estates and a super-priority claim pursuant to section 507(b) of the Bankruptcy Code, in each case, of the same relative priority to the extent of the post-petition diminution in value of its Prepetition Collateral, subject, in each case, to (w) the liens and super-priority claims granted to secure the DIP Term Facility, (x) the liens and super-priority claims granted to secured the DIP Revolving Facility, (y) the Existing First Lien Adequate Protection Liens and Claims and (z) the Carve-Out. The foregoing shall be without prejudice to the right of the Existing First Lien Agent, Existing First Lien Lenders, the Indenture Trustee and the Second Priority Noteholders to later request or otherwise seek additional forms of adequate protection.

To the extent Section 1110 of the Bankruptcy Code applies to the Prepetition First Lien Obligations and/or the obligations in respect of the Second Priority Notes, the adequate protection afforded to the holders of such obligations as applicable described in the immediately preceding paragraph shall be deemed to constitute an agreement under Section 1110(b) of the Bankruptcy Code; provided, however, that any such deemed agreement shall automatically terminate and be of no further force or effect with respect to the Prepetition First Lien Obligations upon the occurrence of the DIP Revolving Facility Termination Date and with respect to the obligations in respect of the Second Priority Notes upon the occurrence of the DIP Term Facility Termination Date.

Right to Credit Bid:

Subject to entry of the Interim Order, the DIP Term Lenders (and the DIP Term Agent, at the written direction of the Requisite DIP Term Lenders) shall have the right to credit bid as part of any asset sale process or plan sponsorship process and shall have the right to credit bid the full amount of their claims during any sale of Debtors' assets (in whole or in part), including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code; provided, that such relief will be binding on the Debtors' chapter 11 estates and all parties in interest upon entry of the Final Order; provided, further, that in connection with the consummation of such credit bid, the obligations under the Existing First Lien Credit Agreement (other than the Refinancing Accommodation Fee, to the extent such fee is not payable) and

the obligations under the DIP Revolving Facility shall be Paid in Full.

Subject to entry of the Interim Order and the DIP Intercreditor Agreement, the Debtors shall agree the holders of the Second Priority Notes shall have the right to credit bid as part of any asset sale process or plan sponsorship process and shall have the right to credit bid the full amount of their claims during any sale of Debtors' assets (in whole or in part) with respect to any asset subject to a duly perfected lien in favor of the Second Priority Notes as of the Petition Date, including without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code; provided, that such relief will be binding on the Debtors' chapter 11 estates and all parties in interest upon entry of the Final Order; provided, further, that in connection with the consummation of such credit bid, the obligations under the Existing First Lien Credit Agreement (other than the Refinancing Accommodation Fee, to the extent such fee is not payable), the obligations under the DIP Revolving Facility and the obligations under the DIP Term Facility shall be Paid in Full.

Indemnification and Expenses:

The Loan Parties will indemnify the DIP Term Agent, the DIP Term Lenders, their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each, an "**Term Loan Indemnified Person**") and hold them harmless from and against all costs, expenses (including reasonable and documented fees, disbursements and other charges of outside counsel, including local Texas counsel) and liabilities of such Term Loan Indemnified Person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such Term Loan Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of its affiliates) that relates to the DIP Term Facility or the transactions contemplated thereby; provided that, no Term Loan Indemnified Person will be indemnified for any cost, expense or liability to the extent determined in the final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from its gross negligence or willful misconduct. In addition, (a) all reasonable and documented out-of-pocket expenses (including, without limitation, reasonable and documented fees, disbursements and other charges of outside counsel and financial advisors) of the DIP Term Agent and DIP Term Lenders in connection with the DIP Term Facility and the transactions contemplated thereby shall be paid by the Loan Parties from time to time, whether or not the Closing Date occurs, (b) all reasonable and documented out-of-pocket expenses (including, without limitation, documented fees, disbursements and other charges of outside counsel, local Texas counsel, independent appraisers, consultants and financial advisors) of the DIP Term Agent and the DIP Term Lenders, for enforcement costs and documentary taxes associated with the DIP Term Facility and the transactions contemplated thereby will be paid by the Loan Parties and (c) all out-of-pocket expenses (including, without limitation, documented fees, disbursements and other charges of outside counsel and financial advisors) of an ad hoc committee of holders of the Second Priority Notes, whether incurred prior or subsequent to the commencement of the Cases will be

paid by the Loan Parties. All fees and expenses described above shall be payable by the Loan Parties, on a joint and several basis, whether accrued or incurred prior to, on, or after the Petition Date.

The Loan Parties will indemnify the DIP Revolving Agent, the DIP Revolving Lenders, their respective affiliates, successors and assigns and the officers, directors, employees, agents, advisors, controlling persons and members of each of the foregoing (each, an “**Revolving Loan Indemnified Person**”) and hold them harmless from and against all costs, expenses (including reasonable and documented fees, disbursements and other charges of outside counsel, including local Texas counsel) and liabilities of such Revolving Loan Indemnified Person arising out of or relating to any claim or any litigation or other proceeding (regardless of whether such Revolving Loan Indemnified Person is a party thereto and regardless of whether such matter is initiated by a third party or by the Borrower or any of its affiliates) that relates to the DIP Revolving Facility or the transactions contemplated thereby; provided that, no Revolving Loan Indemnified Person will be indemnified for any cost, expense or liability to the extent determined in the final, non-appealable judgment of a court of competent jurisdiction to have resulted solely from its gross negligence or willful misconduct. In addition, (a) all reasonable and documented out-of-pocket expenses (including, without limitation, reasonable and documented fees, disbursements and other charges of outside counsel and financial advisors) of the DIP Revolving Agent and DIP Revolving Lenders in connection with the DIP Revolving Facility and the transactions contemplated thereby shall be paid by the Loan Parties from time to time, whether or not the Closing Date occurs and (b) all reasonable and documented out-of-pocket expenses (including, without limitation, documented fees, disbursements and other charges of outside counsel, local Texas counsel, independent appraisers, consultants and financial advisors) of the DIP Revolving Agent and the DIP Revolving Lenders, for enforcement costs and documentary taxes associated with the DIP Revolving Facility and the transactions contemplated thereby will be paid by the Loan Parties. All fees and expenses described above shall be payable by the Loan Parties, on a joint and several basis, whether accrued or incurred prior to, on, or after the Petition Date.

Assignments and Participations:

Assignments and participations under the DIP Term Facility are subject to the consent of the DIP Term Agent (which shall not be unreasonably withheld or delayed), payment of a customary processing fee and other customary assignment provisions. No participation under the DIP Term Facility shall include voting rights, other than for matters requiring consent of 100% of the DIP Term Lenders.

Assignments and participations under the DIP Revolving Credit Agreement shall be subject to terms and conditions consistent with those in the Existing First Lien Credit Agreement. For the avoidance of doubt, assignments under the DIP Revolving Facility will be subject to the consent of the DIP Revolving Agent (which shall not be unreasonably withheld or delayed).

<i>Amendments and Waivers under DIP Term Facility:</i>	Requisite DIP Term Lenders, except for (i) provisions customarily requiring approval by affected DIP Term Lenders and (ii) for provisions affecting the rights or duties of the DIP Term Agent, the DIP Term Agent.
<i>Amendments and Waivers under DIP Revolving Facility:</i>	Same as Existing First Lien Credit Agreement.
<i>Miscellaneous:</i>	The DIP Term Loan Documents will include (i) standard yield protection provisions (including, without limitation, provisions relating to compliance with risk-based capital guidelines, increased costs and payments free and clear of withholding taxes (subject to customary qualifications)), (ii) waivers of consequential damages and jury trial, (iii) customary agency, set-off and sharing language, (iv) customary agency language, including, without limitation, customary rights of the DIP Term Agent to obtain written instruction from the Requisite DIP Term Lenders prior to taking any action with respect to the DIP Term Facility (and to rely upon and be fully protected in relying upon such instructions) and customary indemnification provisions by the DIP Term Lenders in favor of the DIP Term Agent.
<i>Governing Law and Submission to Non-Exclusive Jurisdiction:</i>	State of New York (and to the extent applicable, the Bankruptcy Code).
<i>Counsel to DIP Term Agent</i>	Ropes & Gray LLP.
<i>Counsel to DIP Term Lenders:</i>	Akin Gump Strauss Hauer & Feld LLP.
<i>Counsel to DIP Revolving Agent:</i>	Goldberg Kohn Ltd.

ANNEX I
DIP TERM FACILITY FEES AND INTEREST

- Interest:* The DIP Term Loans shall bear interest at a per annum rate equal 12.00% *per annum*. All interest accruing will be payable monthly in kind on the first business day of each calendar month.
- Interest shall be calculated on the basis of the actual number of days elapsed in a 360 day year.
- Default Interest:* During the continuance of an event of default (as defined in the DIP Term Loan Documents), the DIP Term Loans will bear interest at an additional 2.00% *per annum* and any overdue amounts (including overdue interest) will bear interest at the applicable non-default interest rate plus an additional 2.00% *per annum*. Default interest shall be payable on demand.
- Put Option Premium:* A put option premium in an amount equal to 6.00% of the principal amount of the Backstop Commitments shall be paid in additional DIP Term Loans to the Backstop Parties on the Initial Draw Date, ratably based on their respective Backstop Commitments on the Initial Draw Date.
- Closing Fee:* 4.00% of the principal amount of the DIP Term Facility shall be paid in additional DIP Term Loans to the Backstop Parties on the Initial Draw Date, ratably based on their respective Backstop Commitments on the Initial Draw Date, which Closing Fee shall be shared with the other Term Lenders pursuant to the Syndication Procedures.
- Exit Premium:* All repayments of principal amounts of DIP Term Loans, whether through optional prepayments, mandatory prepayments, at maturity, upon acceleration or otherwise, shall be subject to a premium in an amount equal to 7.50% of the principal amount of DIP Term Loans to be repaid (the “**Exit Premium**”), which shall be payable in cash; provided, (i) if Backstop Parties holding 66.67% in the amount of the outstanding DIP Term Loans owned by the Backstop Parties participate in the placement or issuance of equity, debt or any other rights offering, instrument or security that results in the Debtors’ consummation of a chapter 11 plan (an “**Exit Financing**”), the Exit Premium due to all Term Lenders shall be waived and (ii) the entire Exit Premium due to all Term Lenders may be waived by the Backstop Parties holding 66.67% in the amount of the outstanding DIP Term Loans owned by the Backstop Parties, in their sole discretion; provided, further, however, that the obligations under the Existing First Lien Credit Agreement (other than the Refinancing Accommodation Fee) and the obligations under the DIP Revolving Facility shall have been Paid in Full.

ANNEX II
DIP REVOLVING FACILITY FEES AND INTEREST

Interest Rate Options: Borrower may elect that the loans bear interest at a rate *per annum* equal to:

- (i) the Base Rate plus the Applicable Margin; or
- (ii) the LIBOR Rate plus the Applicable Margin.

As used herein:

"**Base Rate**" has the meaning set forth in the Existing First Lien Credit Agreement.

"**LIBOR Rate**" has the meaning set forth in the Existing First Lien Credit Agreement. The LIBOR Rate shall be available for interest periods consistent with the Existing First Lien Credit Agreement.

"**Applicable Margin**" shall mean, as of any date of determination and with respect to Base Rate Loans or LIBOR Rate Loans, as applicable, the applicable margin set forth in the following table:

Applicable Margin in respect of Base Rate Loans	Applicable Margin in respect of LIBOR Rate Loans
6.50%	7.50%

Interest Payment Dates: Same as Existing First Lien Credit Agreement.

Letter of Credit Fees: Same as Existing First Lien Credit Agreement.

Default Rate: Same as Existing First Lien Credit Agreement

Computation: Same as Existing First Lien Credit Agreement.

Refinancing Accommodation Fee: The Refinancing Accommodation Fee as defined and set forth in the Amendment Fee Letter, dated as of July 22, 2016, among Borrowers and the Existing First Lien Agent (such fee, the "**Refinancing Accommodation Fee**") shall cease to accrue upon entry of the Interim Order and shall otherwise be waived as set forth in the Creditor Support Agreement.

DIP Revolving Agent Administrative Fee: Same as required under Existing First Lien Credit Agreement as in effect on the date the Creditor Support Agreement becomes effective (the "**DIP Revolving Agent Administrative Fee**").

Appraisal and Examination Fees: Same as Existing First Lien Credit Agreement.

For the avoidance of doubt, the DIP Revolving Facility shall not include any fees, including any closing fee, arrangement fee, commitment fee, unused commitment fee, exit fee, prepayment fee or penalty, servicing fee or other similar fees, other than (i) the DIP Revolving Agent Administrative Fee, (ii) fees, disbursements and other charges of outside counsel, local Texas counsel, independent appraisers, consultants and financial advisors of the DIP Revolving Agent and DIP Revolving Lenders and (iii) any amendment or waivers fees.

ANNEX III
CONDITIONS PRECEDENT TO THE CLOSING OF THE DIP TERM FACILITY

- A. All documentation relating to the DIP Term Facility, including, without limitation, the DIP Intercreditor Agreement, shall be in form and substance consistent with this Term Sheet and satisfactory to the DIP Term Agent, the Backstop Parties and their counsel.
- B. The DIP Term Agent and DIP Term Lenders shall have received evidence that the Bankruptcy Court shall have entered the Interim Order, which Interim Order shall not have been vacated, reversed, modified, amended or stayed.
- C. The Cases shall have been commenced by the Borrower and the Guarantors and the same shall each be a debtor and a debtor-in-possession. All first-day motions and related orders (including, without limitation, any motions related to the DIP Term Facility, cash management and any critical vendor or supplier motions) entered by the Bankruptcy Court in the Cases shall, in each case, be in form and substance satisfactory to the DIP Term Agent and the Backstop Parties and their counsel.
- D. All agency fees and all reasonable and documented out-of-pocket fees and expenses (including the fees and expenses of outside counsel and financial advisors) required to be paid to the DIP Term Agent and the DIP Term Lenders on or before the Closing Date shall have been paid.
- E. The Backstop Parties shall be satisfied that there shall not occur as a result of, and after giving effect to, the initial extension of credit under the DIP Term Facility, a default (or any event which with the giving of notice or lapse of time or both would be a default) under any of the Loan Parties' or their respective subsidiaries' debt instruments and other material agreements which would permit the counterparty thereto to exercise remedies thereunder (other than any default which the exercise of remedies is stayed by the Bankruptcy Code).
- F. The DIP Term Agent shall have received (i) satisfactory opinions of counsel to the Loan Parties, addressing such customary matters as the Backstop Parties shall request, including, without limitation, the enforceability of all DIP Term Loan Documents and other customary matters and (ii) officer's certificates, in form and substance, satisfactory to the DIP Term Agent and Backstop Parties.
- G. The absence of a material adverse change, or any event or occurrence, other than the commencement of the Cases and defaults under certain contracts to be identified in writing by the Borrower as disclosed and reasonably satisfactory to the Backstop Parties and DIP Revolving Lenders, which could reasonably be expected to result in a material adverse change, in (i) the business, condition (financial or otherwise), operations, performance, properties, contingent liabilities, material agreements or prospects of the Borrower, the Guarantors and their respective subsidiaries, taken as a whole, since September 30, 2016, (ii) the ability of the Borrower or the Guarantors to perform their respective obligations under the DIP Term Loan Documents or (iii) the ability of the DIP Term Agent and the DIP Term Lenders to enforce the DIP Term Loan Documents (any of the foregoing being a "**Material Adverse Change**").
- H. There shall exist no action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Loan Parties) threatened in any court or before any arbitrator or governmental instrumentality (other than the Cases and any action, suit, investigation or proceeding arising from the commencement and continuation of the Cases or the consequences that would normally result from the commencement and continuation of the Cases) that is not stayed or could reasonably be expected to result in a Material Adverse Change (any such action, suit, investigation, litigation or proceeding, a "**Material Litigation**").
- I. All necessary governmental and third party consents and approvals necessary in connection with the DIP Term Facility and the transactions contemplated thereby shall have been obtained (without the imposition of any

materially adverse conditions that are not acceptable to the Backstop Parties) and shall remain in effect; and no law or regulation shall be applicable in the reasonable judgment of the Backstop Parties that restrains, prevents or imposes materially adverse conditions upon the DIP Term Facility or the transactions contemplated thereby.

- J. The DIP Term Agent and each DIP Term Lender who has requested the same shall have received “know your customer” and similar information.
- K. The DIP Term Agent and DIP Term Lenders shall have a valid and perfected lien on and security interest in the DIP Collateral with the priority set forth in this Term Sheet; the Loan Parties shall have delivered uniform commercial code financing statements and shall have executed and delivered any other security agreements requested by the Backstop Parties, in each case, in suitable form for filing, if applicable; and provisions satisfactory to the Backstop Parties for the payment of all fees and taxes for such filings shall have been duly made.
- L. Certain of the Existing First Lien Lenders and certain holders of the Second Priority Notes shall have entered into a Creditor Support Agreement (the “**Creditor Support Agreement**”), in form and substance satisfactory to the Backstop Parties and the Existing First Lien Lenders party thereto. The Creditor Support Agreement shall be in full force and effect as of the Closing Date and shall not have been amended or modified without the Backstop Parties’ prior written consent.
- M. The DIP Term Agent shall have received endorsements naming the DIP Term Agent, on behalf of the DIP Term Lenders, as an additional insured and loss payee, as applicable, under all insurance policies to be maintained with respect to the DIP Collateral.
- N. The DIP Term Agent and the DIP Term Lenders shall have received a 13-week cash forecast in form and substance satisfactory to the Backstop Parties, which reflects on a line-item basis, the Debtors’ (i) weekly projected cash receipts, (ii) weekly projected disbursements (including ordinary course operating expenses, capital expenditures and bankruptcy-related expenses) under the Cases and (iii) the weekly outstanding principal balance of the DIP Term Loans and DIP Revolving Loans (the “**Initial DIP Budget**”).
- O. On the Closing Date, after giving effect to the DIP Term Loan Agreement and the transactions contemplated thereby, the Borrower and its subsidiaries shall have no outstanding indebtedness or liens, other than indebtedness or liens permitted under the DIP Term Loan Agreement and DIP Revolving Facility; provided, the DIP Term Loan Agreement and DIP Revolving Facility documentation will permit all existing unsecured debt.
- P. The loan documentation with respect to the DIP Revolving Facility shall be in form and substance consistent with this Term Sheet and otherwise satisfactory to the Backstop Parties.
- Q. Alvarez & Marsal shall have been engaged by the Debtors as a financial advisor, and the scope of engagement of Alvarez & Marsal, as financial advisor, shall be satisfactory to the Backstop Parties.

For purposes of determining compliance with the conditions specified in this Annex III, each DIP Term Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the DIP Term Lenders unless an officer of the DIP Term Agent responsible for the transactions contemplated by the DIP Term Facility shall have received written notice from such DIP Term Lender prior to the Closing Date specifying its objection thereto and such DIP Term Lender shall not have made available to the DIP Term Agent such DIP Term Lender’s ratable portion of the DIP Term Facility to be drawn on the Closing Date.

ANNEX IV
CONDITIONS PRECEDENT TO THE CLOSING OF THE DIP REVOLVING FACILITY

- A. All documentation relating to the DIP Revolving Facility, including, without limitation, the DIP Intercreditor Agreement, shall be in form and substance satisfactory to the DIP Revolving Agent and DIP Revolving Lenders.
- B. The DIP Revolving Agent shall have received evidence that the Bankruptcy Court shall have entered the Interim Order, which Interim Order shall not have been vacated, reversed, modified, amended or stayed.
- C. The Cases shall have been commenced by the Borrower and the Guarantors and the same shall each be a debtor and a debtor-in-possession. All first-day motions and related orders (including, without limitation, any motions related to the DIP Revolving Facility, cash management and any critical vendor or supplier motions) entered by the Bankruptcy Court in the Cases shall, in each case, be in form and substance satisfactory to the DIP Revolving Agent.
- D. All reasonable and documented out-of-pocket fees and expenses (including the fees and expenses of outside counsel, local Texas counsel, independent appraisers, consultants and financial advisors) required to be paid to the DIP Revolving Agent and the DIP Revolving Lenders on or before the Closing Date shall have been paid.
- E. All motions and other documents to be filed with and submitted to the Bankruptcy Court in connection with the DIP Revolving Facility, and the approval thereof shall be in form and substance satisfactory to the DIP Revolving Agent.
- F. Certain of the Existing First Lien Lenders and certain holders of the Second Priority Notes shall have entered into a Creditor Support Agreement, in form and substance satisfactory to the Backstop Parties and the Existing First Lien Lenders party thereto.
- G. The Creditor Support Agreement shall be in full force and effect as of the Closing Date and shall not have been amended or modified without the DIP Revolving Agent's prior written consent.
- H. DIP Revolving Agent shall have received the Initial DIP Budget.
- I. The loan documentation with respect to the DIP Term Facility shall be in form and substance consistent with this Term Sheet and otherwise satisfactory to the DIP Revolving Agent.
- J. Alvarez & Marsal shall have been engaged by the Debtors as a financial advisor, and the scope of engagement of Alvarez & Marsal, as financial advisor, shall be satisfactory to the DIP Revolving Agent.
- K. As a condition to funding under the Interim Order, DIP Revolving Agent shall have received evidence that the conditions precedent to the closing of the DIP Term Facility have been satisfied or waived in writing in accordance with the terms thereof (other than those conditions that by their terms are satisfied at the time, or upon the closing of the DIP Term Facility) and that Borrower has received proceeds under the DIP Term Facility in an aggregate principal amount of not less than the amounts required under this Term Sheet.

ANNEX V
MILESTONES

DIP TERM FACILITY MILESTONES:

Milestone / Number of days after the Petition Date

1. Entry of Interim Order that is acceptable to the Requisite DIP Term Lenders: 2 days
2. Delivery of a business plan reviewed and approved by the Debtors' Financial Advisor in a form acceptable to the Requisite DIP Term Lenders: 14 days
3. Entry of Final Order that is acceptable to the Requisite DIP Term Lenders 34 days
4. Filing of a plan of reorganization that provides that the obligations under the DIP Term Facility are Paid in Full in cash or is otherwise acceptable to the Requisite DIP Term Lenders and disclosure statement with respect to such plan of reorganization (the "**Disclosure Statement**") with the Bankruptcy Court: 50 days
5. Entry by Bankruptcy Court of an order approving a disclosure statement acceptable to the Requisite DIP Term Lenders: 95 days
6. Entry by Bankruptcy Court of an order confirming a plan of reorganization that provides that the obligations under the DIP Term Facility are Paid in Full in cash or is otherwise acceptable to the Requisite DIP Term Lenders: 140 days
7. Consummation of the confirmed plan of reorganization that provides that the obligations under the DIP Term Facility are Paid in Full in cash or is otherwise acceptable to the Requisite DIP Term Lenders: 150 days

DIP REVOLVING FACILITY MILESTONES:

Milestone / Number of days after the Petition Date

1. Entry of Interim Order that is acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders: 2 days
2. Delivery of a business plan reviewed and approved by the Debtors' Financial Advisor in a form acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders; provided that the Debtors shall deliver a business plan to the DIP Revolving Agent on the same date as a business plan is delivered to the DIP Term Agent and the DIP Term Lenders: 24 days
3. Entry of Final Order that is acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders: 34 days
4. Filing of a plan of reorganization that provides that the obligations under the DIP Revolving Facility, the Prepetition First Lien Obligations (other than the Refinancing Accommodation Fee) and the obligations under the DIP Term Facility are Paid in Full in cash or is otherwise acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders and disclosure statement with respect to such plan of reorganization with the Bankruptcy Court: 60 days
5. Entry by Bankruptcy Court of an order approving a disclosure statement acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders: 105 days

6. Entry by Bankruptcy Court of an order confirming a plan of reorganization that provides that the obligations under the DIP Revolving Facility, the Prepetition First Lien Obligations (other than the Refinancing Accommodation Fee) and the obligations under the DIP Term Facility are Paid in Full in cash or is otherwise acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders: 150 days
7. Consummation of the confirmed plan of reorganization that provides that the obligations under the DIP Revolving Facility, the Prepetition First Lien Obligations (other than the Refinancing Accommodation Fee) and the obligations under the DIP Term Facility are Paid in Full in cash or is otherwise acceptable to the DIP Revolving Agent and Required DIP Revolving Lenders: 160 days

ANNEX VI
DIP TERM FACILITY EVENTS OF DEFAULT

- (a) If any Debtor makes any payment on account of any indebtedness existing as of the Petition Date, except for any payments expressly authorized by the DIP Orders and DIP Term Loan Agreement or any payments set forth in the DIP Budget;
- (b) If the DIP Orders are not entered by the DIP Term Facility Milestones (or such other period as DIP Term Agent and Requisite DIP Term Lenders may agree to in writing); or any DIP Order is stayed, revised, revoked, remanded, rescinded, amended, reversed, vacated, or modified in any manner not acceptable to the Requisite DIP Term Lenders;
- (c) If an order with respect to any of the Cases shall be entered by the Bankruptcy Court (i) appointing a trustee under section 1104, or an examiner with enlarged powers relating to the operation of the business of any Debtor under section 1106(b) of the Bankruptcy Code or (ii) terminating any Debtor's exclusive rights to file and solicit acceptances for its plan;
- (d) If any person other than a Debtor shall assert any claim arising under section 506(c) of the Bankruptcy Code against the Indenture Trustee, any Second Priority Noteholder, DIP Term Agent, DIP Term Lender or the DIP Collateral, and either (i) the same shall remain unopposed by the applicable Debtor for more than 5 business days, or (ii) in any event, any such claim shall not be disallowed, dismissed or withdrawn, with prejudice, within 60 days after the assertion thereof; or if any Second Priority Noteholder, Indenture Trustee, any DIP Term Lender, DIP Term Agent or the DIP Collateral is surcharged pursuant to sections 105, 506(c), 552 or any other section of the Bankruptcy Code;
- (e) If (i) any Debtor shall attempt to invalidate, reduce or otherwise impair the liens or security interests of Indenture Trustee and the Second Priority Noteholders or DIP Term Agent and DIP Term Lenders, or their respective claims or rights against any Debtor, or (ii) any Lien or security interest created by the DIP Term Loan Documents or the DIP Orders shall, for any reason, cease to be valid.
- (g) If an order with respect to any of the Cases shall be entered by the Bankruptcy Court converting any Case to a case under chapter 7 of the Bankruptcy Code;
- (h) If any plan of reorganization is filed that, or an order shall be entered by the Bankruptcy Court confirming a reorganization plan in the Bankruptcy Case which, does not (i) require that the obligations under the DIP Term Facility to be Paid in Full on the effective date of such plan and (ii) provide for the continuation of the extent, validity and priority of the Liens and security interests granted to secure the obligations under the Second Priority Notes and obligation under the DIP Revolving Facility until all such obligations are Paid in Full;
- (i) If an order shall be entered by the Bankruptcy Court dismissing the Cases which does not contain a provision for termination of the DIP Term Loan Agreement and the obligations under the Second Priority Notes and all obligations under the DIP Term Facility to be Paid in Full on or before such dismissal;
- (j) If an order with respect to the Bankruptcy Case shall be entered without the express prior written consent of the DIP Term Agent and Requisite DIP Term Lenders, to revoke, vacate, reverse, stay, modify, supplement or amend the DIP Term Loan Agreement, any DIP Term Loan Document or the DIP Orders; or if any Debtor breaches or fails to perform in accordance with the terms of the DIP Orders;
- (k) If a motion shall be filed seeking authority, or an order shall be entered in the Bankruptcy Case, that permits any Debtor to incur debt or use cash DIP Collateral in violation of the terms of the DIP Orders;
- (l) Breach of any DIP Term Facility Milestones;

- (m) If the chief restructuring officer is terminated or disqualified for any reason or is in material breach of his obligations and scope of engagement; provided an event of default shall not occur if upon such termination or disqualification, such chief restructuring officer is replaced by a person satisfactory to the Requisite DIP Term Lenders within a time period to be agreed;
- (n) Alvarez & Marsal is terminated or disqualified for any reason as a financial advisor to the Debtors (“**Debtors’ Financial Advisor**”) or unless otherwise agreed to by the Backstop Parties in writing, the scope of such Debtors’ Financial Advisor’s engagement is reduced from the scope of engagement of such Debtors’ Financial Advisor on the Closing Date; provided an event of default shall not occur if upon such termination or disqualification, Alvarez & Marsal is replaced by a financial advisor satisfactory to the Requisite DIP Term Lenders within a time period to be agreed;
- (o) Breach of any financial covenant under the DIP Term Facility;
- (p) any termination of the use of prepetition cash collateral pursuant to the DIP Orders; and
- (q) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code (i) to the holder or holders of any security interest to proceed against, including foreclosure (or the granting of a deed in lieu of foreclosure or the like) on, any assets of any of the Debtors that have a value in excess of \$100,000 in the aggregate or (ii) to state or local environmental or regulatory agency or authority to proceed against, including foreclose (or the granting of a deed in lieu of foreclosure or the like) on, any assets of any of the Debtors that have a value in excess of \$100,000.

ANNEX VII
DIP REVOLVING FACILITY EVENTS OF DEFAULT

- (a) If any Debtor makes any payment on account of any Indebtedness (as defined in the DIP Revolving Credit Agreement) existing as of the Petition Date, except for any payments expressly authorized by the DIP Orders and DIP Revolving Credit Agreement or any payments set forth in the DIP Budget;
- (b) If the DIP Orders are not entered by the DIP Revolving Facility Milestones (or such other period as DIP Revolving Agent and Required DIP Revolving Lenders may agree to in writing); or any DIP Order is stayed, revised, revoked, remanded, rescinded, amended, reversed, vacated, or modified in any manner not acceptable to the DIP Revolving Agent;
- (c) If an order with respect to any of the Cases shall be entered by the Bankruptcy Court (i) appointing a trustee under section 1104, or an examiner with enlarged powers relating to the operation of the business of any Debtor under section 1106(b) of the Bankruptcy Code or (ii) terminating any Debtor's exclusive rights to file and solicit acceptances for its plan;
- (d) If any person other than a Debtor shall assert any claim arising under section 506(c) of the Bankruptcy Code against Existing First Lien Agent, any Existing First Lien Lender, DIP Revolving Agent, DIP Revolving Lender or the DIP Collateral, and either (i) the same shall remain unopposed by the applicable Debtor for more than 5 business days, or (ii) in any event, any such claim shall not be disallowed, dismissed or withdrawn, with prejudice, within 60 days after the assertion thereof; or if any Existing First Lien Lender, Existing First Lien Agent, any DIP Revolving Lender, DIP Revolving Agent or the DIP Collateral is surcharged pursuant to sections 105, 506(c), 552 or any other section of the Bankruptcy Code;
- (e) If (i) any Debtor shall attempt to invalidate, reduce or otherwise impair the liens or security interests of Existing First Lien Agent and the Existing First Lien Lenders or DIP Revolving Agent and DIP Revolving Lenders, or their respective claims or rights against any Debtor, or (ii) any Lien or security interest created by the DIP Revolving Loan Documents or the DIP Orders shall, for any reason, cease to be valid.
- (g) If an order with respect to any of the Cases shall be entered by the Bankruptcy Court converting any Case to a case under chapter 7 of the Bankruptcy Code;
- (h) If any plan of reorganization is filed that, or an order shall be entered by the Bankruptcy Court confirming a reorganization plan in the Bankruptcy Case which, does not (i) require that the Prepetition First Lien Obligations and all obligations under the DIP Revolving Facility to be Paid in Full on the effective date of such plan and (ii) provide for the continuation of the extent, validity and priority of the Liens and security interests granted to secure the Prepetition First Lien Obligations and obligation under the DIP Revolving Facility until all such obligations are Paid in Full;
- (i) If an order shall be entered by the Bankruptcy Court dismissing the Cases which does not contain a provision for termination of the DIP Revolving Credit Agreement and the Prepetition First Lien Obligations and all obligations under the DIP Revolving Facility to be Paid in Full on or before such dismissal;
- (j) If an order with respect to the Bankruptcy Case shall be entered without the express prior written consent of DIP Revolving Agent, to revoke, vacate, reverse, stay, modify, supplement or amend the DIP Revolving Credit Agreement, any DIP Revolving Loan Document or the DIP Orders; or if any Debtor breaches or fails to perform in accordance with the terms of the DIP Orders;
- (k) If a motion shall be filed seeking authority, or an order shall be entered in the Bankruptcy Case, that permits any Debtor to incur debt or use cash DIP Collateral in violation of the terms of the DIP Orders;

- (l) If proceeds of any sale of any DIP Collateral are not directly remitted to DIP Revolving Agent at the closing thereof if required under the DIP Revolving Credit Agreement; and if any sale of all or substantially all assets pursuant to section 363 of the Bankruptcy Code that does not provide sufficient proceeds to cause the DIP Revolving Facility and Existing First Lien Credit Facility to be Paid in Full;
- (m) Breach of any DIP Revolving Facility Milestones;
- (n) If the chief restructuring officer is terminated or disqualified for any reason or is in material breach of his obligations and scope of engagement; provided an event of default shall not occur if upon such termination or disqualification, such chief restructuring officer is replaced by a person satisfactory to the DIP Revolving Agent and Required DIP Revolving Lenders within a time period to be agreed;
- (o) Alvarez & Marsal is terminated or disqualified for any reason as the Debtors' Financial Advisor or unless otherwise agreed to by the DIP Revolving Agent in writing, the scope of such Debtors' Financial Advisor's engagement is reduced from the scope of engagement of such Debtors' Financial Advisor on the Closing Date; provided an event of default shall not occur if upon such termination or disqualification, Alvarez & Marsal is replaced by a financial advisor satisfactory to the DIP Revolving Agent and Required DIP Revolving Lenders within a time period to be agreed;
- (p) Breach of any financial covenant under the DIP Revolving Facility;
- (q) any termination of the use of prepetition cash collateral pursuant to the DIP Orders; and
- (r) the Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under section 362 of the Bankruptcy Code (i) to the holder or holders of any security interest to proceed against, including foreclosure (or the granting of a deed in lieu of foreclosure or the like) on, any assets of any of the Debtors that have a value in excess of \$120,000 in the aggregate or (ii) to state or local environmental or regulatory agency or authority to proceed against, including foreclose (or the granting of a deed in lieu of foreclosure or the like) on, any assets of any of the Debtors that have a value in excess of \$120,000.

EXHIBIT B

BUDGET

Consolidated Debtors
 Exhibit: Debtor in Possession Budget
 (\$ 000's)

Week Ending:	Filing																Total 05/05/17
	1 11/11/16	2 11/18/16	3 11/25/16	4 12/02/16	5 12/09/16	6 12/16/16	7 12/23/16	8 12/30/16	9 01/06/17	10 01/13/17	11 01/20/17	12 01/27/17	13 - 17 03/03/17	18 - 21 03/31/17	Exit 22 - 26 05/05/17		
Receipts	531	\$ 209	\$ 4,503	\$ 4,956	\$ 1,372	\$ 8,111	\$ 7,589	\$ 3,148	\$ 4,551	\$ 6,604	\$ 3,405	\$ 3,770	\$ 20,750	\$ 14,443	\$ 18,367	\$ 102,309	
Operating Disbursements	(4,751)	(3,995)	(7,521)	(4,929)	(5,847)	(2,075)	(5,019)	(2,914)	(5,341)	(3,321)	(4,405)	(2,855)	(19,823)	(14,053)	(18,321)	(105,170)	
Net Operating Cash Flow	\$ (4,220)	\$ (3,787)	\$ (3,018)	\$ 27	\$ (4,474)	\$ 6,036	\$ 2,570	\$ 234	\$ (790)	\$ 3,283	\$ (1,000)	\$ 915	\$ 927	\$ 390	\$ 46	\$ (2,861)	
Contract Startup Costs	(14,236)	(149)	(303)	(755)	(1,866)	(1,206)	(606)	-	-	-	-	-	-	-	-	(19,121)	
Restructuring Costs	-	(550)	(500)	-	(25)	(1,227)	(2,388)	-	(25)	-	(1,897)	(125)	(1,670)	(1,695)	(5,994)	(16,096)	
Total Other Disbursements	\$ (14,236)	\$ (699)	\$ (803)	\$ (755)	\$ (1,891)	\$ (2,433)	\$ (2,994)	\$ -	\$ (25)	\$ -	\$ (1,897)	\$ (125)	\$ (1,670)	\$ (1,695)	\$ (5,994)	\$ (35,217)	
Cash Flow before Debt Service	\$ (18,456)	\$ (4,485)	\$ (3,821)	\$ (728)	\$ (6,365)	\$ 3,603	\$ (424)	\$ 234	\$ (815)	\$ 3,283	\$ (2,897)	\$ 790	\$ (743)	\$ (1,306)	\$ (5,948)	\$ (38,078)	
Debt Service	-	-	-	(840)	-	-	-	-	(816)	-	-	-	(1,633)	(816)	(816)	(4,921)	
Cash Flow after Debt Service	\$ (18,456)	\$ (4,485)	\$ (3,821)	\$ (1,567)	\$ (6,365)	\$ 3,603	\$ (424)	\$ 234	\$ (1,631)	\$ 3,283	\$ (2,897)	\$ 790	\$ (2,376)	\$ (2,122)	\$ (6,765)	\$ (43,000)	

DEBT ROLL FORWARD SCHEDULE:

Pre-Petition ABL Loans [A]																
Beginning Balance	\$ 127,989	\$ 111,211	\$ 109,652	\$ 104,024	\$ 98,618	\$ 95,596	\$ 86,584	\$ 78,714	\$ 75,472	\$ 70,921	\$ 64,317	\$ 60,912	\$ 57,142	\$ 36,392	\$ 21,949	\$ 122,894
Borrowings/(Repayments)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	6,822
Paydown from Term Loan	(14,955)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(14,955)
Paydown from Receivables	(1,823)	(1,559)	(5,628)	(5,406)	(3,022)	(9,011)	(7,870)	(3,242)	(2,551)	(6,604)	(3,405)	(3,770)	(20,750)	(14,443)	(18,367)	(107,452)
Paydown from Other Proceeds	-	-	-	-	-	-	-	-	(2,000)	-	-	-	-	-	-	(2,000)
Ending Balance	\$ 111,211	\$ 109,652	\$ 104,024	\$ 98,618	\$ 95,596	\$ 86,584	\$ 78,714	\$ 75,472	\$ 70,921	\$ 64,317	\$ 60,912	\$ 57,142	\$ 36,392	\$ 21,949	\$ 3,582	\$ 5,309
DIP Revolving Facility [B]																
Beginning Balance	\$ -	\$ 1,683	\$ 3,000	\$ 6,396	\$ 11,801	\$ 15,423	\$ 24,434	\$ 32,304	\$ 35,546	\$ 40,097	\$ 46,701	\$ 50,106	\$ 53,877	\$ 74,626	\$ 89,069	\$ -
Borrowings/(Repayments)	1,683	1,317	3,396	5,406	3,621	9,011	7,870	3,242	4,551	6,604	3,405	3,770	20,750	14,443	18,367	107,436
Ending Balance	\$ 1,683	\$ 3,000	\$ 6,396	\$ 11,801	\$ 15,423	\$ 24,434	\$ 32,304	\$ 35,546	\$ 40,097	\$ 46,701	\$ 50,106	\$ 53,877	\$ 74,626	\$ 89,069	\$ 107,436	\$ 107,436
Total First Lien Loans [A + B]	\$ 112,894	\$ 112,652	\$ 110,420	\$ 110,420	\$ 111,018	\$ 111,018	\$ 111,018	\$ 111,018	\$ 111,018	\$ 111,018	\$ 111,018	\$ 111,018	\$ 111,018	\$ 111,018	\$ 111,018	\$ 111,018
Letters of Credit [C]	2,979	3,221	5,453	5,453	4,854	4,854	4,854	4,854	4,854	4,854	4,854	4,854	4,854	4,854	4,854	4,854
Ending Balance	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873	\$ 115,873
DIP Term Facility [D]																
Beginning Balance	\$ -	\$ 49,000	\$ 49,000	\$ 49,000	\$ 49,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ -
DIP Term Facility Draws	49,000	-	-	-	11,000	-	-	-	-	-	-	-	-	-	-	60,000
Ending Balance	\$ 49,000	\$ 49,000	\$ 49,000	\$ 49,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000
Total [A + B + C + D]	\$ 164,873	\$ 164,873	\$ 164,873	\$ 164,873	\$ 175,873	\$ 175,873	\$ 175,873	\$ 175,873	\$ 175,873	\$ 175,873	\$ 175,873	\$ 175,873	\$ 175,873	\$ 175,873	\$ 175,873	\$ 175,873

DIP Priority Account																
Beginning Balance	\$ -	\$ 15,503	\$ 10,776	\$ 4,722	\$ 3,155	\$ 8,388	\$ 11,991	\$ 11,567	\$ 11,802	\$ 10,170	\$ 13,453	\$ 10,556	\$ 11,346	\$ 8,971	\$ 6,849	\$ -
Borrowings/(Repayment)	49,000	-	-	-	11,000	-	-	-	-	-	-	-	-	-	-	-
Net Cash Flow + Use of Proceeds	(33,497)	(4,727)	(6,053)	(1,567)	(5,767)	3,603	(424)	234	(1,631)	3,283	(2,897)	790	(2,376)	(2,122)	(6,765)	
Ending Balance	\$ 15,503	\$ 10,776	\$ 4,722	\$ 3,155	\$ 8,388	\$ 11,991	\$ 11,567	\$ 11,802	\$ 10,170	\$ 13,453	\$ 10,556	\$ 11,346	\$ 8,971	\$ 6,849	\$ 84	\$ -

EXHIBIT C

DIP LENDERS

DIP Revolving Lenders

Wells Fargo Bank, National Association

Deutsche Bank Trust Company Americas

Bank of the West

HSBC Bank USA, National Association

DIP Term Lenders

Wayzata Investment Partners LLC, on behalf of Wayzata Opportunities Fund III, L.P. and Wayzata Opportunities Fund Offshore III, L.P.

MHR Fund Management LLC, on behalf of MHR Institutional Partners IV LP

Foxhill Opportunity Fund L.P.

Corbin Opportunity Fund