

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:

The Cliffs Club & Hospitality Group, Inc., *et al.*,¹ d/b/a The Cliffs Golf & Country Club,

Debtors.

CHAPTER 11

Case No. 12-01220

Joint Administration Pending

NOTICE AND MOTION PURSUANT TO FEDERAL RULE OF
BANKRUPTCY PROCEDURE 4001(d)

TO: ALL CREDITORS AND PARTIES IN INTEREST ENTITLED TO NOTICE UNDER
FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001(d)

PLEASE TAKE NOTICE that The Cliffs Club & Hospitality Group, Inc. and its affiliated debtors in the above captioned Chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”) herewith move the Court, pursuant to SC LBR 4001-4, for an order approving the agreement by them which is described below and attached to this notice.

In conjunction with the filing and service of this Notice and Motion, the Debtors are filing their Debtors’ Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507(b) (I) Approving Post-Petition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Scheduling a Final Hearing [Docket Entry No. 40] (the “DIP Loan Motion”). In accordance with SC LBR 4001-4, this Notice and Motion summarizes the relief sought in the DIP Loan Motion. The Debtors have requested an expedited preliminary hearing on the DIP Loan Motion, pursuant to Rule 4001(c)(2) of the Federal Rules of Bankruptcy Procedure, for relief on an interim basis pending a final hearing on the DIP Loan Motion. The relief sought on an interim basis is stated in the attached proposed Interim Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (I) Approving Post-Petition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting

¹ The Debtors, followed by the last four digits of their respective taxpayer identification numbers, are as follows: The Cliffs Club & Hospitality Group, Inc. (6338); CCHG Holdings, Inc. (1356); The Cliffs at Mountain Park Golf & Country Club, LLC (2842); The Cliffs at Keowee Vineyards Golf & Country Club, LLC (5319); The Cliffs at Walnut Cove Golf & Country Club, LLC (9879); The Cliffs at Keowee Falls Golf & Country Club, LLC (3230); The Cliffs at Keowee Springs Golf & Country Club, LLC (2898); The Cliffs at High Carolina Golf & Country Club, LLC (4293); The Cliffs at Glassy Golf & Country Club, LLC (6559); The Cliffs Valley Golf & Country Club, LLC (6486); Cliffs Club & Hospitality Service Debtors, LLC (9665).

Adequate Protection, (IV) Modifying Automatic Stay, and (V) Scheduling a Final Hearing (the "Interim DIP Order").

TAKE FURTHER NOTICE that any response, return and/or objection to this Notice and Motion should be filed with the Clerk of the Bankruptcy Court no later than **fourteen (14) days** from service of this Notice and Motion (pursuant to Rule 4001(d)(2) of the Federal Rules of Bankruptcy Procedure) and a copy simultaneously served on all parties in interest.

TAKE FURTHER NOTICE that the Debtors have requested that the Court conduct an expedited preliminary hearing on the Motion and schedule a final hearing to consider entry of a final order on the Motion. Please take notice that no final hearing may be held on this Notice and Motion unless a response, return and/or objection is timely filed and served, in which case, the Court will conduct a hearing on **March 16, 2012, at 9:00 a.m. at the J. Bratton Davis United States Bankruptcy Courthouse, 1100 Laurel Street, Columbia, SC 29201-2423**. No further notice of this hearing will be given.

(A) **TYPE OF AGREEMENT:** As set forth in the attached Debtor in Possession Loan and Security Agreement (the "DIP Agreement") and proposed Interim DIP Order, the Debtors, Carlile Development Company ("Carlile" or the "DIP Lender"), and Wells Fargo Bank, N.A., in its capacity as the trustee (the "Indenture Trustee") under that certain Indenture dated April 30, 2010 (more fully identified in the DIP Loan Motion), have agreed to terms upon which (A) the DIP Lender will provide post-petition financing (the "DIP Loan" or the "DIP Facility") to the Debtors, each of which shall be a "Borrower" secured by a first priority lien on substantially all assets of the Debtors pursuant to 11 U.S.C. §§ 364(c)(2) and (d)(1), and by a junior lien on assets that are subject to certain permitted prepetition liens (as set forth in the Interim DIP Order) pursuant to 11 U.S.C. § 364(c)(3), and which indebtedness to the DIP Lender shall have superpriority administrative priority status under 11 U.S.C. § 364(c)(1); (B) the use of cash collateral shall be authorized, in accordance with an approved budget, consistent with provisions stated in a separate order authorizing the use of cash collateral; (C) the Indenture Trustee will be granted adequate protection, consistent with adequate protection provisions stated in a separate order authorizing the use of cash collateral securing the Indenture Trustee; and (D) modifying the automatic stay to enable the execution and implementation of the terms of the Interim DIP Order, and to afford the DIP Lender remedies in the event of a default in the terms of the post-petition financing. The Debtors also seek entry of a final order authorizing and finalizing the terms stated in the Interim DIP Order.

It must be noted that **the liens granted pursuant to the DIP Loan will be subject to the Carve Out**, as defined in the Interim DIP Order.

(B) A copy of the DIP Agreement, which states the terms of the agreement, is attached hereto as Exhibit A. A copy of the proposed Interim DIP Order, which states the terms of the agreement on an interim basis, is attached hereto as Exhibit B.

(C) **PROVISIONS OF THE AGREEMENT:** It is contemplated that the proposed final order shall state terms which are substantially the same as the terms stated in the DIP Agreement and the Interim DIP Order. All parties in interest should review the attached DIP Agreement and

Interim DIP Order for a complete recitation of the agreement between the Debtors, the DIP Lender and the Indenture Trustee (as relates to the DIP Loan). Any capitalized terms not defined herein shall have the meaning ascribed thereto in the DIP Agreement. The provisions of the agreement, as described above, may be summarized as providing that:

- (I) OBTAINING POST-PETITION CREDIT. The DIP Lender will provide post-petition financing to the Debtors in the form of the DIP Loan, which will be secured by a first priority lien on substantially all assets of the Debtors' bankruptcy estates pursuant to 11 U.S.C. §§ 364(c)(2) and (d)(1), and by a junior lien on assets that are subject to certain permitted prepetition liens (as set forth in the Interim DIP Order) pursuant to 11 U.S.C. § 364(c)(3), and which obligations to the DIP Lender under the DIP Loan shall have superpriority administrative priority status under 11 U.S.C. § 364(c)(1); provided, however, that the DIP Loan will be subject to the Carve Out, as defined in the Interim DIP Order;
- (II) USE OF CASH COLLATERAL. The use of cash collateral shall be authorized, in accordance with an approved budget (the "DIP Budget");
- (III) ADEQUATE PROTECTION PROVISIONS. The Indenture Trustee will be granted adequate protection, consistent with adequate protection provisions stated in a separate order authorizing the use of cash collateral securing the Indenture Trustee;
- (IV) MODIFICATION OF THE AUTOMATIC STAY. The automatic stay shall be modified to enable the execution and implementation of the terms of the Interim DIP Order, and to afford the DIP Lender remedies in the event of a default in the terms of the post-petition financing;
- (V) ENTRY OF A FINAL DIP LOAN ORDER. The Debtors seek entry of a final order authorizing and finalizing the terms stated in the Interim DIP Order; and
- (VI) INDEMNIFICATION. The DIP Agreement contains indemnification provisions in favor of the DIP Lender.

(D) IMPACT ON PRE-PETITION CLAIMS: Absent this agreement, it appears that the Debtors' estates would be unable to continue operations, and the assets of the estates would not generate sufficient value for payment of creditors. This agreement enables the Debtors to proceed with the sale of their assets in a manner which is expected to enable a significantly better payment to creditors than would otherwise exist. However, as conditions for the DIP Loan, the DIP Loan will be secured by priming liens and have superpriority administrative expense status, the effect of which will be to subordinate the prepetition claims to the repayment of the DIP Loan.

(E) DEFAULT: The failure to make payments or to otherwise comply with the terms of the DIP Agreement, or the documents executed in connection with the DIP Agreement (collectively, the "DIP Loan Documents"), shall constitute events of default under the DIP Loan. In addition, it shall be an event of default under the DIP Loan if an order is entered in any of the Debtors' cases that authorizes the obtaining of credit or the incurrence of indebtedness by any Debtor (or any trustee or examiner) that is (a) secured by a security interest, mortgage, collateral interest or other lien on all or any part of the DIP Collateral (as defined in the DIP Agreement) that is equal to or senior to the DIP Liens (as defined in the DIP Agreement), or (b) entitled to priority

administrative status that is equal or senior to the DIP Superpriority Claim (as defined in the DIP Agreement) granted to the DIP Lender herein; provided, however, that nothing herein shall prevent the entry of an order that specifically conditions the granting of the benefits of clauses (a) or (b) above upon the full payment of all amounts owed under the DIP Loan Documents and the Prepetition Bridge Loan (as defined in the Interim DIP Order) from the first proceeds of such credit or indebtedness. More specifically:

Events of Default. Each of the following shall constitute an "Event of Default:"

(a) The payment of claims existing prior to the Petition Date or claims or expenses existing prior to a confirmed Reorganization Plan other than as set forth in the DIP Budget or as approved by DIP Lender and the Indenture Trustee and authorized by a Bankruptcy Court order;

(b) Dismissal or conversion to Chapter 7 of any Borrowers' Chapter 11 Cases without the written consent of DIP Lender;

(c) The appointment of a trustee or examiner in any Borrowers' Chapter 11 Cases with any powers to operate or manage the financial affairs of Borrower(s);

(d) (i) The entry of an order that, in the reasonable determination of DIP Lender, in any way modifies, stays, reverses, or vacates the DIP Orders (the order(s) authorizing the DIP Facility) or the DIP Facility in each case in a manner materially adverse to DIP Lender without the written consent of DIP Lender and (ii) such order being in effect for more than three days;

(e) Either of the DIP Orders or the DIP Facility ceases to be in full force and effect;

(f) One or more Borrowers petitions the Bankruptcy Court to obtain additional financing *pari passu* or senior to the DIP Facility;

(g) The entry of an order granting any other super-priority claim or lien equal or superior to that granted to DIP Lender on the assets of Borrowers;

(h) The entry of an order granting relief from the automatic stay so as to allow anyone other than DIP Lender or the Indenture Trustee to proceed against any material assets of Borrowers;

(i) The entry of any order confirming any Reorganization Plan that does not contain a provision for termination of the DIP Facility, and repayment in full in cash of all of the DIP Obligations and the obligations under the Prepetition Bridge Loan (which is defined in the Interim DIP Order), on or before the effective date of such Reorganization Plan;

(j) Any Borrower violates or breach any DIP Order in any respect, or file any pleadings seeking, joining in, or otherwise consenting to any violation or breach of any DIP Order, in each case in a manner adverse to DIP Lender;

(k) One or more Borrowers (i) engage in any challenge to the validity, perfection, priority, extent or enforceability of the DIP Facility or the Prepetition Bridge Loan or the liens on or security interests in the assets of Borrowers securing the DIP Facility or the Prepetition Bridge Loan, including, without limitation, seeking to subordinate in any way or avoid such Liens, or (ii) engage in any investigation or its assertion of any claims or causes of action against DIP Lender; provided, however, it shall not constitute an Event of Default if Borrowers provide basic loan information with respect to the Prepetition Bridge Loan or reasonably requested information relating to the DIP Facility, in each case to a party in interest or is compelled to provide information by an order of the Bankruptcy Court, and provides prior written notice to DIP Lender of the intention or requirement to do so;

(l) Borrowers shall seek a determination under Section 506(a) of the Bankruptcy Code with respect to the Prepetition Bridge Loan that is unacceptable to DIP Lender;

(m) The allowance of any claim or claims under Bankruptcy Code § 506(c) against or with respect to any of the DIP Collateral;

(n) The use of cash collateral other than as expressly contemplated by the DIP Orders, the DIP Budget (giving consideration to the variances and carry-forward positions of Sections 4.2 and 4.3), and the Cash Collateral Order prior to the Full Payment of the DIP Obligations, and payment in full of the Prepetition Bridge Loan;

(o) The consummation of the sale of any material portion of Borrowers' assets unless DIP Lender and the Indenture Trustee have consented in writing;

(p) Katie Goodman, or such other person whom DIP Lender and the Indenture Trustee in their collective sole discretion approve, ceases to be CRO;

(q) The governing board of any Borrower has taken any action to limit the powers of the CRO, including without limitation, the CRO's power over any accounts containing any Advance or any proceeds of any DIP Collateral;

(r) Subject to the next sentence, order(s) is(are) not in effect, whether no such order was ever in effect or any order ceased to be in effect, doing all of the following: (i) an order approving Katie Goodman, or such other person that DIP Lender and the Indenture Trustee and their collective sole discretion approve, as the CRO; and (ii) an order granting the CRO powers reasonably acceptable to DIP Lender and Indenture Trustee, including without limitation all power over any accounts containing any Advance or any proceeds of any DIP Collateral. Notwithstanding the immediately preceding sentence, this Event of Default shall exist only from and after the first day following entry of the second Interim DIP Order or the Final DIP Order (whichever occurs earlier);

(s) Any representation or warranty of any Borrower made or deemed made in any DIP Facility Document is incorrect or misleading in any material respect when made or deemed made; provided that if (i) such party was not aware that such representation or

warranty was incorrect or misleading at the time such representation or warranty was made or deemed repeated, (ii) the fact, event or circumstance resulting in such incorrect or misleading representation or warranty is capable of being cured, corrected or otherwise remedied, and (iii) such fact, event or circumstance resulting in such incorrect or misleading representation or warranty is cured, corrected or otherwise remedied within 14 days from the date any Borrower obtains knowledge thereof, then such incorrect representation or warranty shall not constitute an Event of Default;

(t) Any Borrower defaults in the due performance and observance of any covenant or agreement contained in any DIP Facility Document, and such default continues unremedied for a period of 7 days if the default is monetary in nature after such Borrower obtains knowledge thereof, and for a period of 14 days if the default is non-monetary in nature after such Borrower obtains knowledge thereof;

(u) The failure by Borrowers to file a Reorganization Plan within 75 days following the Petition Date, provided that the Carlile Development Group has been prompt in its necessary cooperation;

(v) Loss, theft, damage, or destruction of any material portion of the DIP Collateral for which there is either no insurance coverage or for which, in DIP Lender's reasonable opinion, there is insufficient insurance coverage; or

(w) Litigation has been commenced, and is not subject to a stay of the Bankruptcy Code or Bankruptcy Court, or a request for payment under 11 U.S.C. § 503(a) is made, which, in each case, if successful, would have a Material Adverse Effect.

(F) RESULT OF DEBTOR'S BREACH: During the existence of any Default or Event of Default, DIP Lender may, without notice to any Borrower and at its option, refuse to make any Advances. During the existence of any Event of Default, but subject at all times to any notice requirements and limitations in the DIP Orders, DIP Lender may, at its option, exercise from time to time all rights and remedies available to DIP Lender under the DIP Facility Documents to enforce collection of the DIP Obligations then outstanding and may take any or all of the following actions:

(a) DIP Lender may declare any or all DIP Obligations to be immediately due and payable (if not earlier demanded), terminate its obligation to make Advances, bring suit against any Borrower to collect the DIP Obligations, exercise any remedy available to DIP Lender hereunder or at law, and take any action or exercise any remedy provided herein or in any other DIP Facility Document or under applicable law, all as may be limited by the Bankruptcy Code and Bankruptcy Court orders;

(b) DIP Lender shall have all rights and remedies of a secured party under the UCC (and the Uniform Commercial Code of any other applicable jurisdiction) and such other rights and remedies as may be available under any of the DIP Facility Documents, under the DIP Orders, under other applicable law, or pursuant to contract. If requested by DIP Lender, Borrowers will promptly assemble the DIP Collateral and make it available

to DIP Lender at a place reasonably requested by DIP Lender. Each Borrower agrees that any notice by DIP Lender of the sale or disposition of the DIP Collateral or any other intended action hereunder, whether required by the UCC or otherwise, shall constitute reasonable notice to such Borrower if the notice is mailed to such Borrower by regular or certified mail, postage prepaid, at least 10 days before the action to be taken. The proceeds realized from the sale or other disposition of any DIP Collateral shall be applied to the DIP Obligations as provided in Section 2.5.

(c) DIP Lender may demand, collect, and sue for all amounts owed pursuant to Accounts, Chattel Paper, Instruments, or Documents or for proceeds of any DIP Collateral (either in any Borrower's name or DIP Lender's name at DIP Lender's option), with the right to enforce, compromise, settle, or discharge any such amounts.

(d) Each Borrower hereby grants DIP Lender a worldwide, non-exclusive, and royalty-free license to use solely during the existence of an Event of Default such Borrower's trademarks, service marks, and trade names for purposes of invoicing and collecting Accounts and otherwise disposing of or liquidating DIP Collateral.

(e) DIP Lender may exercise the mechanism set forth in a DIP Order for modification of the Bankruptcy Code 362(a) stay without further Bankruptcy Court order.

An exercise of a right or refraining from exercising a right does not waive any other right set forth above or elsewhere in any DIP Facility Document.

(G) DESCRIPTION OF PROPERTY SUBJECT TO LIEN: The DIP Lender shall be granted a security interest in, lien on and assignment of all assets of the Debtors' estates, except for the Carve Out (as defined in the Interim DIP Order) and certain avoidance actions of the Debtors' estates under Chapter 5 of the Bankruptcy Code, as more specifically set forth in the Interim DIP Order.

(H) APPRAISED VALUE OF THE PROPERTY SUBJECT TO THE LIENS: There is no recent appraisal on the collateral.

(I) LIEN AMOUNT: The Debtors assets are subject to security interests and liens held by the Indenture Trustee in the prepetition amount in excess of \$64 million.

(J) MOVING PARTIES: The Debtors, by and through undersigned counsel.

(K) LOCAL RULE DISCLOSURE: It must be noted that the DIP Agreement includes provisions which, under SC LBR 4001-4, are deemed not normally allowed, and which require disclosure. The Debtors and the DIP Lender are informed and believe that the provisions falling into this category are, according to their specific terms, appropriate and justified in this case. They are:

Disclosures Under SC LBR 4001-4.

The capital letters below correspond to the subparagraphs of SC LBR 4001-4(b)(1):

(A) The Debtors' stipulations in the Interim DIP Order (and in the final order) constitute admissions against interest of the Debtors as debtors and debtors in possession, but do not bind anyone else, for example, the United States Trustee, a Committee, a trustee or examiner in any of the Debtors' cases, or any creditor in any of the Debtors' cases.

(B) The DIP Agreement and Interim DIP Order provide that the DIP Loan is secured by a first priority lien on substantially all assets of the Debtors pursuant to 11 U.S.C. §§ 364(c)(2) and (d)(1), and by a junior lien on assets that are subject to certain permitted prepetition liens (as set forth in the Interim DIP Order) pursuant to 11 U.S.C. § 364(c)(3), and which indebtedness to the DIP Lender shall have superpriority administrative priority status under 11 U.S.C. § 364(c)(1).

(D) DIP Agreement Section 8.16, reproduced in the footnote below,² contains a negative covenant that divests the Debtors, as debtors-in-possession, of some discretion in formulating a chapter 11 plan. The Carliles explain that provision as follows. They are not in the business of lending money to bankrupt estates; rather, they seek to provide the operating capital needed to keep the Debtors alive until they have sufficient time to purchase the Debtors' assets through a chapter 11 plan. The Carliles explain that DIP Agreement Section 8.16 does not prohibit the Debtors from filing a plan that contains a higher and better offer for the assets than the Carliles' offer; rather, DIP Agreement Section 8.16 ensures the Carliles reasonable and appropriate reimbursement and compensation, given the particular facts of the Debtors' cases, if the assets are sold to another buyer.

(G) The provisions of the proposed orders bind the Debtors with respect to releases of the Indenture Trustee, Carlile and the principals of Carlile, but no other parties are deemed to grant releases under the proposed orders.

[signature follows]

⁵ "8.16. **Content of Plan.**

(a) Proscription. No Borrower shall file, otherwise propose, or consent, to any Reorganization Plan in which DIP Lender or an affiliate is not a Reorganization Plan proponent, unless, before that act of filing, proposing, or consenting, either (i) DIP Lender has given its express written consent to that act, (ii) DIP Lender or Carlile Development Group has withdrawn as a Reorganization Plan proponent, or (iii) the Bankruptcy Court has approved 'Substitution Conditions,' defined in Paragraph 8.16(b) below, in full in a final order no longer subject to appeal.

(b) Definition. 'Substitution Conditions' means payment in full of the following, no later than Plan closing: (i) all outstanding obligations of the Prepetition Bridge Loan; (ii) all outstanding obligations of the DIP Facility; and (iii) to the extent earned (as described in the motion to approve bid procedures filed by one or more Borrowers on the Petition Date), a \$1,000,000 break-up fee, plus a \$750,000 expense reimbursement which shall increase by an additional \$100,000 per month for each month after the first six months after the Petition Date until paid in full."

Dated: March 1, 2012

/s/ Däna Wilkinson

Däna Wilkinson
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-and-

/s/ J. Michael Levengood

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Proposed Attorneys for Debtors and Debtors in Possession

Exhibit A

Debtor in Possession Loan and Security Agreement

DEBTOR IN POSSESSION LOAN AND SECURITY AGREEMENT

THIS DEBTOR IN POSSESSION LOAN AND SECURITY AGREEMENT (the "Agreement") is dated as of February [], 2012, by and among The Cliffs Club & Hospitality Group, Inc.; CCHG Holdings, Inc.; The Cliffs at Mountain Park Golf & Country Club, LLC; The Cliffs at Keowee Vineyards Golf & Country Club, LLC; The Cliffs at Walnut Cove Golf & Country Club, LLC; The Cliffs at Keowee Falls Golf & Country Club, LLC; The Cliffs at Keowee Springs Golf & Country Club, LLC; The Cliffs at High Carolina Golf & Country Club, LLC; The Cliffs at Glassy Golf & Country Club, LLC; The Cliffs Valley Golf & Country Club, LLC; and Cliffs Club & Hospitality Service Company, LLC, each, as a borrower, debtor and a debtor in possession (jointly and severally, "Borrowers" and, each, a "Borrower"); and Carlile Development Company, LLC (together with its successors and assigns, "DIP Lender").

RECITALS:

The parties agree that the following facts are true:

A. The state of formation of each Borrower other than The Cliffs at High Carolina Golf & Country Club, LLC is South Carolina, and the state of formation of The Cliffs at High Carolina Golf & Country Club, LLC is North Carolina.

B. Each Borrower filed the case set forth below opposite such Borrower's name (collectively, the "Chapter 11 Cases") in the United States Bankruptcy Court for the District of South Carolina, Spartanburg Division on February 28, 2012 (the "Petition Date") and remains a debtor in possession:

The Cliffs Club & Hospitality Group, Inc.	12-01220
CCHG Holdings, Inc.	12-01223
The Cliffs at Mountain Park Golf & Country Club, LLC	12-01225
The Cliffs at Keowee Vineyards Golf & Country Club, LLC	12-01226
The Cliffs at Walnut Cove Golf & Country Club, LLC	12-01227
The Cliffs at Keowee Falls Golf & Country Club, LLC	12-01229
The Cliffs at Keowee Springs Golf & Country Club, LLC	12-01230
The Cliffs at High Carolina Golf & Country Club, LLC	12-01231
The Cliffs at Glassy Golf & Country Club, LLC	12-01234
The Cliffs Valley Golf & Country Club, LLC	12-01236
Cliffs Club & Hospitality Service Company, LLC	12-01237

C. The Chapter 11 Cases are administratively consolidated under F.R.B.P. 1015(b) by order entered on February __, 2012 at docket no. _____ in the case of Borrower _____, which has been designated as the main Chapter 11 Case (the "Main Case").

D. Borrowers have requested that DIP Lender extend financing to Borrowers in connection with the Chapter 11 Cases in accordance with the provisions of this Agreement.

E. DIP Lender is willing to lend subject to the terms and conditions of this Agreement and to the orders of the Bankruptcy Court approving this Agreement and the financing that it memorializes.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained and to induce DIP Lender to extend credit to Borrowers, the parties agree as follows:

1. DEFINITIONS AND WORD USAGE

1.1 **Stated Definitions.** For purposes of this Agreement, capitalized terms not otherwise defined in the Agreement shall have the meaning given them in Appendix 1 attached hereto and made a part hereof.

1.2 **Referenced Definitions and Constructions.** Any word or phrase not otherwise defined in this Agreement or in any ancillary document, for example, a related financing statement, shall be defined, or construed, as the case may be, as set forth in the United States Bankruptcy Code (11 U.S.C. Section 101 et seq.) (the "Bankruptcy Code"), including in the F.R.B.P. Any word or phrase defined in the UCC and not otherwise defined as set forth above in this paragraph shall have the meaning set forth in the UCC. All financial terms used herein, except as set forth above in this paragraph, shall have the meanings assigned to them under GAAP unless another meaning shall be specified.

1.3 **Periods of Time.** Periods of time in this Agreement, including "days," are counted as F.R.B.P. 9006(a) counts periods of time made applicable by an order of the court.

1.4 Other Rules of Construction.

(a) Any pronoun used shall be deemed to cover all genders.

(b) The section titles, table of contents, and list of exhibits appear as a matter of convenience only and shall not affect the interpretation of this Agreement.

(c) All references to statutes and related regulations shall include all related rules and implementing regulations and any amendments of same and any successor statutes, rules, and regulations.

(d) All references to any agreement, instrument, or other documents (including any of the DIP Facility Documents) shall include any and all modifications and supplements thereto and any and all restatements, extensions, or renewals thereof to the extent such modifications, supplements, restatements, extensions, or renewals of any such documents are permitted by the terms thereof.

(e) All references to any property of any Borrower shall mean and include all property of such Borrower's estate.

(f) All references to any entity (including Borrowers or DIP Lender) shall mean and include the successors and permitted assigns of such entity.

(g) A Default or an Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing by DIP Lender pursuant to this Agreement or is cured.

(h) An Event of Default shall "continue" or be "continuing" until such Event of Default has been waived in writing by DIP Lender or is cured.

(i) Preamble, recital, section, clause, schedule, appendix and exhibit references herein or in any Appendix or Exhibit hereto are a part of this to this Agreement for all purposes.

(j) Unless otherwise specified, any reference to a preamble, recital, section, clause, schedule, or exhibit means a reference to that place in this Agreement. For example, "Section 3.5" means "Section 3.5 of this Agreement."

(k) The terms "includes" and "including" are not limiting.

2. COMMITMENT AND DIP OBLIGATIONS

2.1 **DIP Commitment.** Subject to this Agreement, DIP Lender agrees to make Advances under the DIP Facility to Borrowers from time to time until the Maturity Date, in an aggregate maximum principal amount not to exceed \$7,500,000 at any time (the "DIP Commitment").

2.2 **Borrowers' Obligations Generally and DIP Note.** Borrowers shall pay all DIP Obligations in accordance with the terms of this Agreement and any DIP Note, without defense, offset or counterclaim and in immediately available funds. All Borrowers have joint and several liability for all DIP Obligations, and the DIP Collateral of any Borrower shall be security for the repayment of all DIP Obligations, all without regard to the uses of funds provided through the DIP Facility. On the Closing Date, Borrowers shall execute and deliver to DIP Lender a promissory note in the form of Exhibit B attached hereto and made a part hereof (the "DIP Note"), which DIP Note, together with DIP Lender's records, shall further evidence Borrowers' acceptance of their DIP Obligations, including their joint and several liability.

2.3 **Bankruptcy Priority.** Subject to Section 3.5, repayment of all Advances and all other DIP Obligations shall have super-priority administrative expense status under Bankruptcy Code § 364(c)(1), with priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of the Final DIP Order), 507(a), 507(b), 726, 1113, 1114 or any other provisions of the Bankruptcy Code.

2.4 **Interest.**

(a) Generally. Subject to Section 2.4(b), each Borrower agrees to pay interest, monthly in arrears in cash, at the rate of 12.0% per annum on all unpaid Advances from the date each Advance is made until the DIP Facility is paid (whether at stated maturity, upon acceleration, or otherwise). Until the Maturity Date, accrued interest for the prior month shall be due and payable on the first day of each month. All interest on the DIP Facility and on all other DIP Obligations shall be calculated on the presumed basis of a year of 365 days, for the actual number of days elapsed.

(b) Default Rate. Upon the occurrence and during the continuance of any Event of Default and at the election of DIP Lender, interest shall accrue and be payable on all outstanding principal or any other obligation under the DIP Facility at the rate of 14.0% per annum.

2.5 Application of Proceeds. Except to the extent of regular interest payments made by Borrowers or as otherwise expressly provided in this Agreement or any other DIP Facility Document, DIP Lender shall be entitled to apply any sums received with respect to the DIP Obligations in payment of the following items in any order or amount in its sole discretion: (i) to the extent not paid (or being Property Contested) by any Borrower, Taxes; (ii) to the extent not paid by any Borrower, insurance premiums; (iii) interest on the unpaid principal balance of the DIP Note; (iv) the unpaid principal balance of the DIP Note; (v) to the extent not paid by any Borrower, Fees then due and payable to Lender; and (vi) to the extent not paid by any Borrower, any other DIP Obligations then due and payable.

2.6 Maturity. Borrowers shall repay the DIP Obligations and the Prepetition Bridge Loan in full on the Maturity Date, which shall be the earliest of (a) 6 months after the Closing Date; (b) the date of acceleration of repayment of any outstanding Advances pursuant to the terms hereof; (c) the first Business Day on which the Interim Order expires by its terms or is terminated, unless the Final DIP Order shall have been entered and become effective prior thereto; (d) conversion of a Borrower's Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code ("Chapter 7") unless otherwise consented to in writing by DIP Lender; (e) dismissal of a Borrower's Chapter 11 Case unless otherwise consented to in writing by DIP Lender; (f) the end of any Borrower's exclusivity under Bankruptcy Code § 1121(b); and (g) the effective date of Borrowers' Reorganization Plan. Borrowers have the option to extend the Maturity Date as defined in clause (a) only for a period of 6 months if no Event of Default exists.

2.7 Prepayments. Prepayment of the DIP Obligations may occur at any time without premium or other prepayment charge of any other nature. If, after the Closing Date, any Borrower shall dispose of any of its assets pursuant to a sale requiring approval under Section 363 of the Bankruptcy Code, receive any insurance proceeds as a result of a casualty loss of any Collateral or receive any proceeds as a result of any condemnation or other Governmental Entity taking, 100.0% of the net cash proceeds received by such Borrower from such sale, loss or taking shall be paid no later than 2 Business Days after the date of receipt of the proceeds thereof by such Borrower to DIP Lender as a mandatory payment of the DIP Obligations; provided, however, that Borrowers shall not be required to make such mandatory prepayments with respect to insurance proceeds received to the extent such insurance proceeds reasonably required for repair or replacement of the subject casualty so long as the insurance proceeds retained by the Borrowers are escrowed for the necessary repairs in a manner approved by DIP Lender and the

proceeds so escrowed are sufficient to complete the required repairs or replacement. Each such mandatory prepayment shall be applied, first to the payment of any All Inclusive Fee then due and payable to DIP Lender; second, to the payment of any accrued and unpaid interest due and payable on the Advances; third, to the repayment of principal of the Advances; and fourth, to the repayment of any other outstanding DIP Obligations then due and payable, in each case until repaid in full.

3. SECURITY AND DIP COLLATERAL

3.1 DIP Collateral

(a) Grant of Interest. Subject to Sections 3.1(c) and 3.1(d), as security for the Full Payment of the DIP Obligations, each Borrower hereby grants to DIP Lender a continuing Lien on and security interest in and to all right, title, and interest in all prepetition and post-petition assets of such Borrower or its estates, whether now existing or hereafter acquired or arising, and wherever located (collectively, the “DIP Collateral”). The DIP Collateral shall include any and all rents, issues, products, offspring, proceeds and profits generated by any item of DIP Collateral, without the necessity of any further action of any kind or nature by DIP Lender in order to claim or perfect such rents, issues, products, offspring, proceeds and/or profits.

(b) Cross-collateralization. All DIP Collateral shall be security for repayment of all DIP Obligations without regard to the use any Advance or to the value received by any Borrower from that Advance.

(c) Causes of Action. DIP Collateral does not include any and all causes of action that any Borrower’s trustee, or such Borrower as debtor in possession, owns under Chapter 5 of the Bankruptcy Code and any other causes of action that are not assignable under applicable nonbankruptcy law (collectively, “Avoidance and Non-assignable Actions”), and the proceeds thereof and property received thereby, whether by judgment, settlement, or otherwise. DIP Collateral does include any and all causes of action that any Borrower owns under applicable nonbankruptcy law (and that accordingly enters any Borrower’s bankruptcy estate under 11 U.S.C. § 541), to the extent a security interest is assignable in such cause of action under applicable nonbankruptcy law (“Assignable Actions”), and the proceeds thereof and property received thereby whether by judgment, settlement, or otherwise.

(d) Carve Out. DIP Collateral released under the Carve Out conditions set forth in Section 3.5 is no longer DIP Collateral when so released.

3.2 Lien Priority. The Liens and security interests granted to DIP Lender pursuant to the provisions of this Section 3 and pursuant to any of the other DIP Facility Documents shall have the priority provided in the DIP Orders.

3.3 Perfection of Interests in DIP Collateral; Power of Attorney.

(a) Authorization. Each Borrower authorizes DIP Lender to file any financing statements (and other similar filings or public records or notices relating to the perfection

of Liens), fixture filings, and amendments thereto relating to the DIP Collateral which DIP Lender deems reasonably appropriate to perfect its Lien on the DIP Collateral, in form and substance reasonably required by DIP Lender, and to (a) describe the DIP Collateral thereon (i) as "all personal property of the debtor," "all assets," or words of similar effect, if appropriate and permitted by applicable law, regardless of whether any particular asset comprised in the DIP Collateral falls within the scope of Article 9 of the UCC or any other applicable law, or (ii) by specific DIP Collateral category and (b) include therein all other information which is required by Article 9 of the UCC or other applicable law with respect to the preparation or filing of a financing statement (or other similar filings or public records or notices relating to the perfection of Liens), fixture filing, or amendment.

(b) Appointment as Attorney in Fact. Each Borrower appoints DIP Lender as its attorney-in-fact to perform all acts which DIP Lender deems appropriate to perfect and to continue perfection of the Lien granted to DIP Lender under this Agreement or any other DIP Facility Document if an Event of Default exists, including, without limitation, (i) the filing of financing statements (and other similar filings or public records or notices relating to the perfection of Liens), fixture filings, and amendments, (ii) the execution in such Borrower's name of any agreements providing for Control over any applicable DIP Collateral, and (iii) the endorsement, presentation, and collection on behalf of such Borrower and in such Borrower's name of any Items or other documents necessary or desirable to collect any amounts which such Borrower may be owed, such power of attorney being coupled with an interest and is therefore irrevocable.

(c) License. To the extent permitted by applicable law or contract, each Borrower grants DIP Lender a non-exclusive, royalty-free license or other right to use, if an Event of Default exists, any interest such Borrower holds in labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks and advertising matter, and any property of a similar nature, as it pertains to the DIP Collateral, in advertising for sale and selling any DIP Collateral, and all rights that the Borrower holds under all licenses and all franchise agreements shall inure to DIP Lender's benefit to the extent permitted under the applicable document.

(d) Control; Further Assurances. Each Borrower will, at its expense, cooperate with the reasonable requests of DIP Lender in (a) obtaining Control of or Control agreements with respect to DIP Collateral for which Control or a Control agreement is required for perfection of DIP Lender's security interest under the UCC and (b) perfecting DIP Lender's Lien in the DIP Collateral.

(e) Noncompliance under Applicable Nonbankruptcy Law. Irrespective of any actions taken or not taken by DIP Lender to perfect any security interest or other Lien granted or conveyed to DIP Lender pursuant to any of the DIP Facility Documents, all security interests and other Liens at any time granted or conveyed, or otherwise conferred upon, DIP Lender pursuant to the DIP Facility Documents or the DIP Orders shall be automatically perfected as provided in the DIP Orders without the necessity of the filing or recording of any other instrument or agreement, the taking of possession of any of the DIP Collateral or any other action on the part of DIP Lender.

3.4. Certain Rights and Obligations Concerning DIP Collateral

(a) Entry. Each Borrower irrevocably consents to any act by DIP Lender or its agents in entering upon any premises for the purposes of either (a) inspecting any DIP Collateral or (b) taking possession of any DIP Collateral; provided, that DIP Lender or its agents shall not enter onto the any such premises for purposes of taking possession of any DIP Collateral except when an Event of Default shall exist. DIP Lender may enter such premises with reasonable notice and during normal business hours so long as no Event of Default is then in effect, and DIP Lender may enter such premises at any time with or without notice at any time that an Event of Default exists. Each Borrower waives, as to DIP Lender and its agents, any now existing or hereafter arising claim based upon trespass or any similar cause of action for entering upon any premises where DIP Collateral may be located as permitted in this Section 3.4. Each Borrower also subordinates, as to DIP Lender, any Lien it may have with in and to the assets of any other Borrower stored at or located on any premises or real property owned, leased, or controlled by, or in the possession of, such Borrower.

(b) No Obligation of DIP Lender. Except as expressly required herein or by applicable law, DIP Lender shall have no obligation (i) to exercise any degree of care in connection with any DIP Collateral in its possession or (ii) to take any steps necessary to preserve any rights in the DIP Collateral or to preserve any rights in the DIP Collateral against senior or prior parties (which steps each Borrower agrees to take upon the reasonable request of DIP Lender). In any case, DIP Lender shall be deemed to have exercised reasonable care of the DIP Collateral if the DIP Collateral is accorded treatment substantially equal to that which other lenders accord similar property under financings similar to the DIP Facility.

(c) Other Rights. Each Borrower authorizes DIP Lender from time to time (a) to (i) take from any party and hold additional collateral for the payment of the DIP Obligations or any part thereof, (ii) exchange, enforce, or release such DIP Collateral or any part thereof, and (iii) release or substitute any endorser or any party who has granted DIP Lender any security interest in any property as security for the payment of the DIP Obligations or any part thereof or any party in any way obligated to pay the DIP Obligations or any part thereof, and (b) during the existence of any Event of Default, to direct the manner of the disposition of the DIP Collateral and the enforcement of any endorsements, guaranties, letters of credit, or other security or supporting obligations relating to the DIP Obligations or any part thereof as DIP Lender in its discretion may determine, all subject to applicable law.

(e) Turn Over of DIP Collateral Proceeds. During the existence of an Event of Default, Borrowers shall promptly turn over to DIP Lender all proceeds received from any collection, sale or other disposition of any DIP Collateral upon written demand of

DIP Lender. To the extent such proceeds are to be applied to the DIP Obligations, the provisions of Section 2.5 shall apply.

(f) Waiver of Marshaling. Each Borrower hereby waives any right it may have to require marshaling of its assets.

3.5. Carve-Out for Professional Fees and Other Expenses.

(a) Generally. In the event that DIP Lender ceases to make Advances under the DIP Facility, whether because of an Event of Default, the occurrence of the Maturity Date, or otherwise, DIP Lender consents to release the following from DIP Collateral, and to exclude from subjection to any super-priority status set forth above, in the other DIP Facility Documents or in any Order of the Bankruptcy Court (the "Carve-Out"):

(i) all Carve-Out Expenses that accrued on or before the date of that cessation (the "Carve-Out Date"), whether or not already billed or recorded in any time recording system, up to and in accordance with the terms of the DIP Budget up to the date of such cessation;

(ii) those Carve-Out Expenses incurred after the Carve-Out Date, as subsequently allowed by the Bankruptcy Court, and in no event to exceed \$150,000 in the aggregate (the "Post Carve-Out Date Expenses"), and

(iii) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930. (The parties recognize that U.S. Trustee Fees otherwise due under 28 U.S.C. § 1930 are not prorated for parts of calendar quarters.)

(b) Preservation of Objection Rights. This Section 3.5 is subject to DIP Lender's and Indenture Trustee's rights to object to approval of fees and expenses, all as set forth in Section(s) 4.2 and 4.3.

(c) Subrogation. To any extent that the release of collateral under this Section 3.5 causes all DIP Obligations and all obligations under the Prepetition Bridge Loan not to be paid in full, DIP Lender shall retain an administrative expense claim under Bankruptcy Code § 503(b) for any amounts released (as to DIP Collateral) or subordinated (as to super-priority status). (DIP Lender recognizes that a § 503(b) claim under Chapter 7 takes priority over a § 503(b) claim under chapter 11, pursuant to § 726(b).)

3.6 Final Release of Collateral.

(a) Generally. Subject to the paragraphs below in this Section 3.6, DIP Lender shall release its Liens on all remaining DIP Collateral upon Full Payment of the DIP Obligations.

(b) Dishonor. DIP Lender shall not be required to release or terminate its Liens upon any of the DIP Collateral unless, with respect to any loss or damage DIP Lender

may incur as a result of the dishonor or return of any Items applied to the DIP Obligations, DIP Lender shall have received either (i) a written agreement, executed by Borrowers and any entity whose advances to Borrowers are used in whole or in part to satisfy the DIP Obligations, indemnifying DIP Lender from any such loss or damage, or (ii) such Cash DIP Collateral as DIP Lender, in its reasonable credit judgment, may deem necessary to protect DIP Lender from any such loss or damage.

(c) Survival of Indemnification Obligations. All obligations of Borrowers to indemnify DIP Lenders pursuant to this Agreement shall in all events survive any termination of the DIP Facility and DIP Lender's release or termination of any Liens.

4. USE OF FUNDS AND DIP BUDGET

4.1 Advances and DIP Collateral.

(a) General. Borrowers may use Advances and DIP Collateral (including cash): (i) to fund operating expenses, limited capital expenditures and other amounts for general corporate and ordinary course purposes of Borrowers, all in accordance with the DIP Budget, and (ii) to pay certain other administrative payments, including professional fees, other Carve-Out Expenses and fees to the U.S. Trustee under 28 U.S.C. § 1930. Any authorization in the immediately preceding sentence shall at all times be subject to the following, as applicable: (i) compliance with the DIP Budget as set forth in Section 4.2, (ii) approval of DIP Lender and the Indenture Trustee where indicated below, (iii) all other applicable provisions of this Agreement, and (iv) authorization of the Bankruptcy Court as set forth below or as otherwise required under the Bankruptcy Code, the F.R.B.P., or local rule.

(b) Prohibited Uses. Notwithstanding Section 4.1(a), but subject to Section 4.1(c), no Advances or DIP Collateral may be used as follows:

(i) to challenge the amount, validity, perfection, priority or enforceability of, or assert any defense, counterclaim or offset to the DIP Facility, the Prepetition Bridge Loan, the Liens securing the DIP Obligations or the Prepetition Bridge Loan or the Liens of the Indenture Trustee or the notes secured by the Indenture Trustee; or

(ii) otherwise to litigate against DIP Lender, SP 50 Investments, Ltd ("SP 50") or the Indenture Trustee or the notes issued under the Trust Indenture.

(c) Exceptions to Prohibited Uses. Notwithstanding Section 4.1(b), Advances and proceeds of DIP Collateral may be used up to an aggregate maximum of \$25,000, by a Committee only, to investigate potential claims arising out of, or in connection with, the Prepetition Bridge Loan or the Liens securing the Prepetition Bridge Loan, or the Liens and claims of and/or against the Indenture Trustee.

(d) No Waiver. Nothing in this Section 4.1 constitutes a waiver of DIP Lender's or Indenture Trustee's right to object to any requests, motions or applications made in or filed with the Bankruptcy Court.

4.2 DIP Budget

(a) General. Borrowers shall prepare an operating budget consisting of their estimated projected cash flow position on a rolling 13-week basis (the "DIP Budget"), commencing as of the Petition Date. The initial DIP Budget is attached to this Agreement as Exhibit A. Borrowers shall provide an updated DIP Budget to DIP Lender and the Indenture Trustee within one week following the conclusion of the first four weeks of each DIP Budget.

(b) Approvals. The DIP Budget shall be subject to approval of DIP Lender and the Indenture Trustee. Any subsequent material changes to the DIP Budget may be made only with the approval of DIP Lender and the Indenture Trustee.

(c) Variance. Borrowers will be allowed a 7.5% variance on the expense line items set forth in the DIP Budget, measured on a weekly basis, except that (i) the aggregate amount of expenditures shall not exceed the aggregate DIP Budget on a monthly basis plus a variance of 5%, and (ii) this Section 4.2(c) is subject to Section 4.3.

4.3 Fees and Adequate Protection

(a) Professional Fees, Loan Costs, and Adequate Protection. The DIP Budget shall include provision for professional fees and expenses of Borrowers any Committee, and for adequate protection payments to the Indenture Trustee under the Cash Collateral Agreement. Amounts not spent on professional fees and expenses in any period may be carried forward to future periods. The DIP Budget shall include payments to DIP Lender and its professionals as set forth in Section 4.3(b), but shall otherwise include no reimbursement of costs or expenses of any kind to DIP Lender. Subject to the second sentence of this Section 4.3(a), no variance shall be permitted on professional fees and expenses. The provision of any such line items in the DIP Budget, and DIP Lender's and Indenture Trustee's budget approval, shall not be interpreted to hinder or prohibit either party from objecting to the approval of professional fees, expenses, or anything else that requires Bankruptcy Court approval.

(b) Fees to Lender. DIP Lender shall receive a Facility Fee and All Inclusive Fees as set forth in this Section 4.3(b). Such Fees are in lieu of any other reimbursement to DIP Lender for professional or other fees, costs or expenses incurred in regard to the DIP Facility. Such Fees shall remain fixed without regard to the actual amount of any fees, costs or expenses that might have been reimbursed to DIP Lender in the absence of such Fees. Borrowers shall make the following payments to DIP Lender:

(i) a fee of 2.0% of the DIP Commitment to DIP Lender, upon the Maturity Date, as a Facility Fee;

(ii) a fee in the amount of \$242,000 as a Prepetition All Inclusive Fee, 50% of which shall be paid on the Closing Date and 50% of which shall be paid on the Maturity Date; and

(iii) the sum of \$50,000 to DIP Lender monthly in arrears as a Post-petition All Inclusive Fee. The Post-petition All Inclusive Fee shall accrue for the period beginning on the Closing Date and ending on the date on which at payment in full of the DIP Obligations, and shall be prorated for a partial month.

The Prepetition All Inclusive Fee and the Post-petition All Inclusive Fee are collectively the "All Inclusive Fees."

4.4 Requesting Advances and Making Payments.

(a) Making Requests. Each request for an Advance (each, an "Advance Request") shall be in the form set forth in Exhibit D attached hereto, which request shall specify (i) the date for the Advance under the DIP Facility; (ii) lawful instructions for the disbursement of the proceeds of such Advance; provided that, if such instructions are not included, the proceeds will be deposited into a Funding Account; and (iii) such other information DIP Lender may reasonably require from time to time related to the requested Advance.

(b) Timing and Acceptance of Requests. Requests made under this Section 4.4 are irrevocable. Requests under this Section 4.4 which DIP Lender receives after 1:00 p.m. (Greenville, South Carolina time) shall be deemed received on the next day. DIP Lender's acceptance of an Advance Request under this Section 4.4 shall be indicated by its making the Advance requested. DIP Lender shall make such Advance under the DIP Facility in immediately available funds on the same day as the Advance Request is deemed to have been received, subject to such delays as DIP Lender may reasonably require to confirm that all conditions precedent to making such Advance under Section 5.2 or 5.3, as applicable, have been satisfied or waived by DIP Lender.

(c) Authorization to Debit. If an Event of Default exists, DIP Lender may, without notice to, or the consent of, any Borrower, debit any Funding Account, Collections Account, other Deposit Account, or other account over which DIP Lender has Control and apply such amounts to the payment of DIP Obligations which are then due and payable.

(d) Time and Location of Payment. Borrowers shall make each payment of interest and other DIP Obligations which are due and payable not later than 3:00 p.m. (Greenville, South Carolina time) on the day it is due, without set-off, counterclaim, or other deduction, in immediately available funds to DIP Lender at its address referred to in Section 10.4.

(e) Counting Days. For the removal of all doubt, the parties note that "day" as set forth above is subject to F.R.B.P. 9006(a).

5. CLOSING, CONDITIONS PRECEDENT, AND DIP ORDERS

5.1 **Closing.** At the closing of this Agreement (the "Closing"), Borrowers shall deliver the following to DIP Lender, each of which must be in form and substance reasonably satisfactory to DIP Lender, and duly executed as the case may be:

- (a) This Agreement;
- (b) The DIP Note;
- (c) A copy of the governing instruments of each Borrower, and good standing certificates of each Borrower, certified by the appropriate official of their respective states of formation and each state in which such Borrower is qualified to do business and such qualification is necessary to the operation of such Borrower's business;
- (d) Incumbency certificate and certified resolutions of the board of directors (or other appropriate governing body) of each Borrower, signed by the secretary or another authorized officer of such Borrower, authorizing (i) the filing of a Chapter 11 Case by such Borrower and (ii) the execution, delivery, and performance of the DIP Facility Documents by such Borrower, such Borrower's incurrence of the DIP Obligations thereunder and the grant of Liens in favor of DIP Lender as provided in the Agreement and the DIP Orders;
- (e) UCC-1 searches and other Lien searches satisfactory to DIP Lender showing no existing security interests in or Liens on the DIP Collateral (other than Permitted Liens);
- (f) The DIP Budget; and
- (g) Satisfactory evidence of insurance meeting the requirements of Section 7.6;

5.2 Conditions Precedent to Initial Interim Advance. DIP Lender's obligation to make the initial Interim Advance shall be subject to the following:

- (a) The Interim DIP Order meeting the requirements set forth in Section 5.3(l) has been entered;
- (b) The Interim DIP Order is in effect;
- (c) All of the "first day orders" in the Chapter 11 Cases shall have been entered and shall be in form and substance reasonably satisfactory to DIP Lender;
- (d) The Closing occurred on or before March 5, 2012;
- (e) Subject to the following sentence, DIP Lender has been paid in full in cash any Fees to Lender then due and payable under Section 4.3(b), as evidenced by an invoice that DIP Lender has provided to Borrowers. This reimbursement may occur simultaneously with the initial Interim Advance;
- (f) DIP Lender has received an Advance Request in proper form and properly executed, which Advance Request constitutes Borrowers' representation that all conditions precedent to such Advance are satisfied;

(g) Such Advance does not exceed \$3,000,000;

(h) No litigation has been commenced, and is not subject to a stay of the Bankruptcy Code or the Bankruptcy Court, and which, if successful, would have a material adverse impact on Borrowers, their business or ability to repay the DIP Obligations, or which would challenge the transactions under consideration;

(i) Borrowers shall have filed a motion or motions seeking Bankruptcy Court approval of Katie Goodman as CRO, with powers reasonably acceptable to DIP Lender and the Indenture Trustee, including power over, and responsibility for, any accounts containing any Advance or any proceeds of any DIP Collateral; and

(j) Borrowers' Affiliates that own, use or lease any real or personal property now used and otherwise needed in Borrowers' operations (the "Needed Property"), which Affiliates are not in bankruptcy, shall have entered into agreements, reasonably acceptable to DIP Lender, promising Borrowers' continued use of the Needed Property and further promising not to transfer any interest in any Needed Property to a third party without DIP Lender's express prior written consent other than any involuntary transfer of personalty or realty as a result of action brought by a third party owning or having a lien on the Needed Property.

5.3 Conditions Precedent to Subsequent Advances. DIP Lender's obligation to make any Advance after the initial Interim Advance shall be subject to the following:

(a) The initial Interim Advance occurred;

(b) DIP Lender has received an Advance Request in proper form and properly executed, which Advance Request constitutes Borrowers' representation that all conditions precedent to such Advance are satisfied;

(c) A DIP Order, meeting the requirements set forth in Section 5.3(l), is then in effect that permits such Advance;

(d) No Default or Event of Default shall have occurred and be continuing, nor shall the Maturity Date have otherwise occurred;

(e) The Advance is consistent with the DIP Budget (giving consideration to the variances and carry-forward provisions of Sections 4.2 and 4.3) and the requirements of Section 4.3(a);

(f) Unless the Final DIP Order has been entered and is then in effect, the Advance will not cause the aggregate principal amount of the DIP Obligations to exceed \$3,000,000;

(g) The Advance will not cause the aggregate amount of DIP Obligations to exceed the DIP Commitment or otherwise cause an Event of Default;

(h) Representations and warranties are true and correct in all material respects as of the date of such Advance;

(i) Subject to the following sentence, DIP Lender has been paid in full in cash any Fees to Lender then due and payable under Section 4.3(b), as evidenced by an invoice that DIP Lender has provided to Borrowers. This reimbursement may occur simultaneously with the applicable Advance;

(j) With respect to any Advance requested after 28 days after the Petition Date, the Final DIP Order has been entered;

(k) With respect to any Advance requested after entry of the Final DIP Order, the Bankruptcy Court has approved Katie Goodman as CRO, with powers reasonably acceptable to DIP Lender and the Indenture Trustee, including power over and responsibility for any accounts containing any Advance or any proceeds of any DIP Collateral;

(l) Borrowers' computer storage of members' and others' credit card information will be certified as having met necessary protocol standards; and

(k) Each DIP Order shall meet the following requirements:

(i) Such DIP Order shall be in form and substance reasonably acceptable to DIP Lender and the Indenture Trustee,

(ii) Such DIP Order has been entered after notice given and a hearing conducted in accordance with F.R.B.P. 4001(c), and any applicable local bankruptcy rules, authorizing and approving the transactions contemplated by the DIP Facility Documents,

(iii) Except as may be prohibited or modified by local rule, such DIP Order contains a finding that DIP Lender is extending credit to Borrowers in good faith within the meaning of Bankruptcy Code section 364(e),

(iv) The DIP Order shall contain provisions prohibiting Borrowers from incurring any indebtedness which (i) ranks *pari passu* with or senior to the Advances or (ii) benefits from a first priority lien under Bankruptcy Code § 364,

(v) To the extent permitted by local rule, such DIP Order shall provide that, upon the occurrence and during the continuation of an Event of Default under the DIP Facility, DIP Lender shall have customary remedies, including, without limitation, deemed automatic termination of the automatic stay under Bankruptcy Code § 362, without further order or the need for filing any motion for relief from the automatic stay or any other pleading,

(vi) Except as local rule prohibits, such DIP Order shall provide the following:

(A) Borrowers acknowledge the validity and enforceability of the Prepetition Bridge Loan, without defense, offset or counterclaim of any kind;

(B) Borrowers acknowledge the validity, perfection and priority of the Trust Indenture Liens;

(C) Borrowers waive any right to challenge or contest the Trust Indenture Liens; and

(D) Borrowers acknowledge that they have no valid claims or causes of action, whether based in contract, tort or otherwise, against DIP Lender with respect to the Prepetition Bridge Loan or the related documents or transactions.

(vii) Such DIP Order shall provide a mechanism for stay relief, without need for DIP Lender to file a motion for relief, substantially as follows:

(A) If DIP Lender intends to exercise any remedies against any DIP Collateral under applicable nonbankruptcy law upon an Event of Default, and DIP Lender intends to pursue stay relief without further order of the Bankruptcy Court, DIP Lender shall send written notice (the "Initial Notice") to Borrowers, the CRO, counsel to the Indenture Trustee, any Committee and the United States Trustee of such intent (which notice may be delivered by facsimile), with specific reference to the subject DIP Collateral and remedies,

(B) If the alleged Event of Default is not remedied to DIP Lender's satisfaction within one week after the Initial Notice is sent, and DIP Lender intends to pursue stay relief without further order of this court, then DIP Lender shall promptly file a notice of the alleged Event of Default and DIP Lender's proposed remedies,

(C) The CRO, the Indenture Trustee or a Committee may file a motion in the Bankruptcy Court to stop such action no later than two weeks from the day that DIP Lender sent the Initial Notice,

(D) If no motion under clause (C) is timely filed, DIP Lender may take the actions set forth in the notice, and the stay under Bankruptcy Code 362(a) shall be deemed modified to permit such actions. DIP Lender shall file an affidavit with the Bankruptcy Court no later than three days after its actions to give notice of its actions, and

(E) If any motion under clause (C) is timely filed, DIP Lender shall take no action that would otherwise violate the Bankruptcy Code 362(a) stay without further Bankruptcy Court order modifying the stay.

6. REPRESENTATIONS AND WARRANTIES.

To induce DIP Lender to enter into this Agreement and to make Advances as provided for herein, each Borrower makes the following representations and warranties, all of which shall survive the execution and delivery of the DIP Facility Documents. Unless otherwise specified, such representations and warranties shall be deemed made as of the date hereof and as of the date of each Advance Request:

6.1 **Valid Existence and Power.** Such Borrower is existing under the laws of the state disclosed in Recital number 1 and has not changed the jurisdiction of its formation within the 5 years preceding the date hereof. Such Borrower is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its formation. Such Borrower is duly qualified or licensed to transact business in all places where the failure to be so qualified would reasonably be likely to have a Material Adverse Effect. Subject to the DIP Orders, such Borrower has the power to make and perform the DIP Facility Documents executed by it.

6.2 **Binding Obligations.** Subject to entry and effectiveness of the DIP Orders, all DIP Facility Documents will constitute the legal, valid, and binding obligations of such entity, enforceable in accordance with their respective terms, except to the extent that the enforceability thereof may be limited by any order of the Bankruptcy Court, applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditor's rights generally or by other matters of law that place limitations on remedial provisions of the DIP Facility Documents; provided, however, that such limitations on remedial provisions do not materially interfere with the practical realization of the benefits and security intended to be conferred by the DIP Facility Documents.

6.3 **Authority.** Subject to entry and effectiveness of the DIP Orders and the Cash Collateral Order, the execution, delivery, and performance of the DIP Facility Documents by such Borrower have been duly authorized by all necessary actions of such Borrower, and do not and will not violate any provision of law or regulation in any material respect, or any writ, order, or decree of any Governmental Entity in any material respect or any provision of the governing instruments of such Borrower, and do not and will not, with the passage of time or the giving of notice, result in a breach of, or constitute a default or require any consent under, or result in the creation of any Lien upon any property or assets of such Borrower pursuant to, material instrument or agreement to which such Borrower is a party or by which such Borrower or its respective properties may be subject, bound, or affected.

6.4 **Financial Condition.** As of the Closing Date, all operating and capital leases under which such Borrower is lessee are disclosed to DIP Lender or listed in a motion or filing with the Bankruptcy Court. All financial statements delivered to DIP Lender by such Borrower shall have been prepared in accordance with GAAP and fairly present, in all material respects, the financial condition of such entity as of the date thereof, subject to the absence of footnotes

and normal year-end adjustments. Such Borrower is not aware of any material adverse fact (other than facts which are generally available to the public and not particular to any Borrower, such as general economic trends and the fact of the existence of the Chapter 11 Cases) concerning the condition (financial or otherwise) of Borrowers which has not been fully disclosed to DIP Lender, including any material adverse change in the operations or financial condition of such Borrower since the date of the most recent financial statements delivered to DIP Lender.

6.5 Litigation. There are no suits or proceedings pending or, to such Borrower's knowledge, threatened by or before any Governmental Entity against or affecting any Borrower or any Subsidiary or their respective assets, which if adversely determined would reasonably be expected to have a Material Adverse Effect, except for the Chapter 11 Case filed by such Borrower, any suit or proceeding stayed by the Bankruptcy Code or the Bankruptcy Court and the suits and proceedings disclosed to Lender on Schedule 6.5 attached hereto.

6.6 Agreements. As of the Closing Date, except for the Chapter 11 Case filed by such Borrower or as Borrowers have disclosed to DIP Lender in writing or listed in a motion or filing with the Bankruptcy Court, such Borrower is not a party to any agreement or instrument or subject to any order or decree of any Governmental Entity or any charter or other corporate restriction, materially adversely affecting its business, assets, operations, or condition (financial or otherwise), nor is such Borrower in default in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument to which it is a party, or any law, regulation, decree, order, or the like to which it is subject, in each case, that would reasonably be expected to have a Material Adverse Effect.

6.7 Authorizations. Subject to entry and effectiveness of the DIP Orders, all material authorizations, consents, approvals, and licenses required under applicable law for the ownership or operation of the property owned or operated by such Borrower or for the conduct of any business in which it is engaged have been duly issued and are in full force and effect, and, subject to the Chapter 11 Cases, are not in default, nor has any event occurred, other than the Chapter 11 Cases, which with the passage of time or the giving of notice, or both, would constitute a default, under any of the terms or provisions of any part thereof, or under any order, decree, ruling, regulation, closing agreement or other decision or instrument of any governmental commission, bureau or other administrative agency or public regulatory body having jurisdiction over such Borrower, which default would have a Material Adverse Effect. No approval, consent or authorization of, or filing or registration with, any Governmental Entity is required with respect to the execution, delivery or performance of any DIP Facility Document, except for a DIP Order or as otherwise noted herein.

6.8 Title. Each Borrower has good title to all of the assets shown in its financial statements free and clear of all Liens, except Permitted Liens. Such Borrower has a good and valid ownership interest, leasehold interest, license interest or other right of use in all other property and assets (tangible and intangible) included in the DIP Collateral constituting assets of such Borrower.

6.9 DIP Collateral. The Liens granted to DIP Lender pursuant to this Agreement, any other DIP Facility Document, the Bankruptcy Code or any DIP Order constitute (a) as to personal property included in the DIP Collateral, a valid security interest in such personal

property and (ii) as to the real property including the DIP Collateral, a valid Lien of record in such real property, in each case with the priority specified in the DIP Orders.

6.10 Jurisdiction of Formation; Location. The jurisdiction in which each Borrower is formed, the chief executive office of each Borrower, the office where each Borrower's books and records are located, all of each Borrower's other places of business, and any other places where any DIP Collateral is kept, are all correctly and completely indicated in the schedules provided to DIP Lender or filed with the Bankruptcy Court on or before the Closing Date. The DIP Collateral (other than intangible assets and bank accounts) is located and shall at all times be kept and maintained only on real property that Borrowers own, lease or control and that has been disclosed to DIP Lender or listed in a filing or motion with the Bankruptcy Court.

6.11 Taxes. As of the Closing Date, except as Borrower has disclosed to DIP Lender in writing on or before the Closing Date or listed in a motion or filing with the Bankruptcy Court: (a) each Borrower has filed all federal and state income and other tax returns which are required to be filed, and, unless such Taxes are being Properly Contested, has paid all Taxes as shown on said returns and all Taxes, including withholding, FICA, and ad valorem taxes, shown on all assessments received by it to the extent that such taxes have become due; (b) no Borrower is subject to any federal, state, or local tax Liens nor has such entity received any notice of deficiency or other official notice to pay any taxes; and (c) unless such Taxes are being Properly Contested, each Borrower has paid all sales and excise Taxes it must pay.

6.12 Labor Law Matters. No goods or services have been or will be produced by any Borrower in violation of any applicable labor laws or regulations or any collective bargaining agreement or other labor agreements or in violation of any minimum wage, wage-and-hour or other similar laws or regulations.

6.13 Accounts. Except for membership dues owed by Series A Noteholders, as defined in the Trust Indenture, each account, instrument, chattel paper, and other writing constituting any portion of the DIP Collateral (a) is genuine and enforceable in accordance with its terms except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditor's rights generally or by general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law); (b) is not subject to any deduction or, defense, set-off, claim, or counterclaim of a material nature against such Borrower except as to which such Borrower promptly notified DIP Lender in writing or listed in a motion or filing with the Bankruptcy Court; (c) is not subject to any other circumstances that would impair the validity, enforceability or amount of such DIP Collateral except as to which such Borrower promptly notified DIP Lender in writing; (d) arises from a bona fide sale of goods or delivery of services in the ordinary course and in accordance with the terms and conditions of any applicable purchase order, contract or agreement; (e) except for Permitted Liens, is free of all Liens; and (f) is for a liquidated amount maturing as stated in its invoice.

6.14 Judgment Liens. As of the Closing Date, except as Borrowers have disclosed to DIP Lender in writing on or before the Closing Date or listed in a motion or filing with the Bankruptcy Court, such Borrower is not subject to any unpaid judgments (whether or not stayed) or any judgment Liens in any jurisdiction.

6.15 Corporate Structure.

(a) As of the date hereof, the Organizational Chart sets forth (a) the correct name of each subsidiary, if any, and its jurisdiction of formation; (b) the name of such Borrower's Affiliates (including, without limitation, any joint ventures) of which such Borrower have knowledge and the nature of the affiliation; and (c) the number, type or class, and name of the holder of all issued and outstanding Equity Interests of such Borrower and each of its subsidiaries, together with the number and percentage of Equity Interests held by each such holder.

(b) Such Borrower has good title to all of the Equity Interests it purports to own of each of its subsidiaries, if any, free and clear in each case of any Lien other than Permitted Liens. All such Equity Interests have been duly issued and, if applicable, are fully paid and non-assessable. Since the date of the last audited financial statements of each Borrower and its Subsidiaries delivered to DIP Lender, no Borrower has made, or obligated itself to make, any Restricted Payment, except as otherwise permitted hereunder. Except as disclosed in writing to DIP Lender or listed in a motion or filing with the Bankruptcy Court, there are no outstanding options to purchase, or any rights or warrants to subscribe for or acquire, or any commitments or agreements to issue or sell, or any Equity Interests or obligations convertible into, or any powers of attorney relating to, Equity Interests issued by any Borrower or any of its subsidiaries. Except as disclosed in writing to DIP Lender or listed in a motion or filing with the Bankruptcy Court, there are no outstanding agreements or instruments binding upon the holders of any of the Equity interests issued by any Borrower or any subsidiary relating to the ownership of such Equity Interests.

6.16 Deposit Accounts. Neither such Borrower nor its subsidiaries, if any, has any Deposit Accounts other than those disclosed to and permitted by the representative of the United States Trustee with authority over the Chapter 11 Cases.

6.17 ERISA. Such Borrower has furnished to DIP Lender true and complete copies of the latest annual report required to be filed by such Borrower pursuant to Section 104 of ERISA, with respect to each Plan, and no ERISA Termination Event with respect to any Plan has occurred and is continuing. Except as disclosed in writing to DIP Lender or listed in a motion or filing with the Bankruptcy Court, neither such Borrower nor its subsidiaries, if any, has any material unfunded liability with respect to any such Plan.

6.18 Investment Company Act. Such Borrower or its subsidiary, if any, is not an "investment company" as defined in the Investment Company Act of 1940.

6.19 Anti-Terrorism and Financial Control Laws. None of such Borrower's assets or interests, or those of any subsidiaries of such Borrower, is subject to being "blocked" under any Anti-Terrorism and Financial Control Laws, and neither such Borrower nor, to the knowledge of such Borrower, any entity holding any direct or indirect interest in such Borrower or their subsidiaries, if any, is in violation of any Anti-Terrorism and Financial Control Laws. Such Borrower is not a Barred Person nor, to its knowledge, is it owned or controlled, directly or

indirectly, by any Barred Person, and to its knowledge, such Borrower is not acting, directly or indirectly, for or on behalf of any Barred Person.

6.20 **Full Disclosure.** All financial and other written information provided to DIP Lender by or on behalf of such Borrower in connection with this Agreement (a) is true and correct in all material respects, (ii) does not omit any material fact that would cause such information to be misleading, and (iii) as to projections or valuations, including the DIP Budget, such projections or valuations are based on such Borrower's good faith assessment of the future of the business at the time made.

7. **AFFIRMATIVE COVENANTS OF BORROWERS.**

Each Borrower covenants and agrees that from the date hereof until the Full Payment of the DIP Obligations, such Borrower shall do the following:

7.1 **Compliance with DIP Budget.** Except as permitted by Section 4.2 and 4.3(a), each Borrower shall comply at all times with the DIP Budget, including without limitation its use of Advances and DIP Collateral only in accordance with this Agreement.

7.2 **Reportings.** Borrower shall maintain books and records in accordance with GAAP in all material respects and shall create, and furnish to DIP Lender and the Indenture Trustee, the financial information and reports set forth in this Section 7.2.

(a) Weekly Variance Report. Borrowers shall provide or cause to be provided to DIP Lender and the Indenture Trustee a weekly variance report comparing actual cash receipts and disbursements to amounts projected in the DIP Budget, and a weekly reconciliation report which compares the actual cash flow results (receipts and disbursements) against the prior month's cash flow projections (receipts and disbursements), indicating the cumulative percentage variance, if any, of actual results versus projections for such month as set forth therein.

(b) Monthly Operating Reports. Borrowers shall timely file all monthly operating reports required by the United States Trustee

(c) Compliance and No Default Certificate. Together with each report required by this Section 7.2, a compliance certificate in the form attached as Exhibit C (the "Compliance Certificate"), executed by the CRO, or in the CRO's absence, the Chief Financial Officer, certifying that no Event of Default then exists or, if an Event of Default exists, the nature and duration thereof and Borrowers' intention with respect thereto.

(d) Other information. Such other information reasonably requested by DIP Lender from time to time concerning the business, properties, or financial condition of Borrowers and their respective Subsidiaries.

7.3 **Compliance with Bankruptcy Code, Rules and Orders.** Each Borrower shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the DIP Orders and all other orders entered in the Chapter 11 Cases.

7.4 Existence and Asset Preservation. Each Borrower shall at all times (a) maintain, preserve, and protect all DIP Collateral and the remainder of its property used or useful in the conduct of its business, (b) keep the same in good repair, working order, and condition (subject to ordinary wear and tear and loss by condemnation and insured casualty), and (c) make, or cause to be made, to the extent permitted by the DIP Budget, all material needful and proper repairs, renewals, replacements, betterments, and improvements thereto so that the business carried on in connection therewith may be conducted properly and in accordance with standards generally accepted in businesses of a similar type and size. Each Borrower shall (y) maintain its existence and (z) maintain and keep in full force and effect all licenses and permits necessary to the proper conduct of its business, except where failure to do so will not have a Material Adverse Effect.

7.5 Cooperation with CRO. Each Borrower shall cooperate with the CRO so that the CRO may regularly communicate with DIP Lender, the Indenture Trustee and other interested parties in the Chapter 11 Case.

7.6 Insurance.

(a) Each Borrower shall continue to maintain the liability insurance, workers' compensation insurance, business interruption insurance, and casualty insurance in the amounts and with such coverage as disclosed to DIP Lender pursuant to the certificates of insurance delivered by Borrowers as required by this Section 7.6(a) by Borrowers; provided, however, that such insurance coverage shall be increased to the extent required by the U.S. Trustee. All hazard insurance covering DIP Collateral shall name DIP Lender as lender loss payee pursuant to endorsements reasonably acceptable to DIP Lender. Such insurance shall not be terminable except upon 30 days' written notice to DIP Lender; provided, however, that any such insurance may be terminable upon 10 days prior notice to DIP Lender in the event of non-payment of premiums. On or before the Closing Date, each Borrower shall furnish DIP Lender with certificates of insurance evidencing the insurance coverage so disclosed to DIP Lender and confirmation that the required lender loss payee endorsements have been appropriately requested by Borrowers.

(b) If any of such Borrower's real or personal property suffers a casualty or is condemned by a Governmental Entity (each, a "Loss"), all proceeds of such Loss shall be paid over to DIP Lender for application to the DIP Obligations in accordance with Section 2.7.

(c) Anything to the contrary contained herein or the other DIP Facility Documents notwithstanding, irrespective of any limitations, conditions or requirements related to the DIP Facility, DIP Lender shall be entitled to make advances to the Borrowers or direct payments to insurers or others entities in DIP Lender's sole discretion to keep all required insurance in effect until Full Payment of the DIP Obligations and all such advances for insurance shall be added to and become a part of the principal due under the DIP Note.

7.7 Certain Notices. Borrowers shall include counsel for DIP Lender and the Indenture Trustee on any "Special Notice List" or other similar list of parties to be served with papers in the Chapter 11 Case. Subject to the final sentence of this Section 7.7, each Borrower shall provide DIP Lender and Indenture Trustee prompt notice, or as the case may be, copies, of the following:

(a) the occurrence of an Event of Default and what action (if any) such Borrower is taking to correct the same;

(b) any litigation or material changes in existing litigation or any judgment against it or its assets that would have a Material Adverse Effect;

(c) any damage or loss to property (in each case, other than matters arising prior to the Petition Date that are subject to the automatic stay under the Bankruptcy Code) that would result in a Material Adverse Effect;

(d) any notice from taxing authorities as to claimed deficiencies or any tax lien or any notice relating to alleged ERISA violations;

(e) any Reportable Event, as defined in ERISA;

(f) any event having a Material Adverse Effect on any DIP Collateral;

(g) any acceleration of the maturity of any Debt of any Borrower or the occurrence or existence of any event or circumstances which gives the holder of such Debt the right to accelerate (in each case, other than Debt that is subject to the automatic stay under the Bankruptcy Code);

(h) any loss, or threat made in writing of loss, of material licenses or permits which would reasonably be expected to have a Material Adverse Effect;

(i) any Borrower's violation (or asserted violation made by a Governmental Entity in writing) of (i) any applicable law that could reasonably be expected to have a Material Adverse Effect or (ii) the Bankruptcy Code;

(j) any pleading filed with the Bankruptcy Court seeking relief from the automatic stay, conversion or dismissal of a Borrower's Chapter 11 Case or reclamation of any DIP Collateral;

(k) any offer or other expression of interest from anyone to purchase all or substantially all of the DIP Collateral (other than sales in the ordinary course of business);

(l) any proposed sale of all or substantially all of the DIP Collateral (including with such notice copies of all drafts of all instruments and agreements applicable to any such sale), which shall specify the identity of the proposed purchaser, the terms of the proposed sale and the expected date of closing, subject to Bankruptcy Court approval;

(m) all pleadings, motions, reports, applications and other papers filed by Borrowers with the Bankruptcy Court to the extent such document has not otherwise been provided pursuant to an order of the Bankruptcy Court establishing notice procedures in the Chapter 11 Cases or otherwise as well; and

(n) all billing and expense statements received from any professional or a Committee in connection with the Chapter 11 Cases.

As long as DIP Lender or an affiliate is a prospective purchaser of substantially all of the DIP Collateral, the obligations of Sections 7.7(k) and (l) above shall not apply to any communication that is inappropriate to make to a bidder competing with the offeror or person expressing interest as to Section 7.7(k) or the proposed purchaser as to Section 7.7(l).

7.8 Inspections of Books and Records and Field Examinations; Appraisals; Physical Inventories. Each Borrower shall permit DIP Lender and its agents to conduct inspections, verifications (of accounts and otherwise), appraisals, and field examinations of the DIP Collateral and such other property and books and records at such times and with such frequency as DIP Lender may request from time to time, with (a) reasonable notice there of when no Default or Event of Default is in existence, and (b) no notice when any Default or Event of Default is in existence.

7.9 Payment of Taxes. Each Borrower shall pay before delinquent all of its Taxes unless such Taxes are being Properly Contested and unless such Taxes accrued or arose prior to the Petition Date and the Bankruptcy Court has not approved such payment.

7.10 Compliance with Laws. Each Borrower shall comply in all material respects with all laws, regulations, ordinances, and other legal requirements, including, without limitation, ERISA, the Bankruptcy Code, all securities laws, all Anti-Terrorism and Financial Control Laws, and all Environmental Laws. Each Borrower shall promptly report to DIP Lender any notices of any violations of such laws or regulations received from any Governmental Entity, along with such Borrower's proposed corrective action as to such violation.

7.11 Further Assurances. Each Borrower shall at any time upon the reasonable request of DIP Lender take such further action or execute or deliver to DIP Lender any and all financing statements, fixture filings, security agreements, pledges, assignments, endorsements of certificates of title, mortgages, deeds of trust, opinions of counsel, notice of bankruptcy and all other documents (collectively, the "Additional Documents") that DIP Lender may request in form and substance satisfactory to DIP Lender, to create, perfect, and continue perfected or to better perfect Liens in the DIP Collateral, to create and perfect Liens in favor of DIP Lender in any owned real property of Borrowers, and in order to fully consummate all of the transactions contemplated hereby and under the other DIP Facility Documents. To the maximum extent permitted by applicable law, each Borrower authorizes DIP Lender to execute any such Additional Documents in the applicable Borrower's name and to file such executed Additional Documents in any appropriate filing office, in each case if an Event of Default exists.

7.12 Covenants Regarding DIP Collateral.

(a) Each Borrower shall use the DIP Collateral only in the ordinary course of its business and will not permit the DIP Collateral to be used in violation of (i) any applicable law where any such resulting violation would reasonably be expected to have a Material Adverse Effect or (ii) any policy of insurance where any such resulting violation would reasonably be expected to have a Material Adverse Effect;

(b) Each Borrower shall defend the DIP Collateral against all claims and demands of anyone, except for Permitted Liens;

(c) If and to the extent reasonably requested by DIP Lender, each Borrower shall exercise its commercially reasonable best efforts to obtain and deliver to DIP Lender such agreements with third parties as to protection of the DIP Collateral as DIP Lender may request from time to time;

(d) Each Borrower shall promptly deliver to DIP Lender all Items, Instruments, Chattel Paper, and, if requested by DIP Lender, Documents which constitute DIP Collateral, in each case appropriately endorsed to DIP Lender's order;

(e) No Borrower shall create any Electronic Chattel Paper without first granting DIP Lender Control thereof pursuant to such measures as DIP Lender shall reasonably request;

(f) Each Borrower shall promptly notify DIP Lender of any registered patents, trademarks, or copyrights to which any Borrower, or a subsidiary, if any, acquires title or rights after the Closing Date, and any license agreements entered into after the Closing Date by any Borrower or any Subsidiary authorizing such Borrower or such Subsidiary to use any third party's registered patents, trademarks, or copyrights;

(g) Each Borrower shall give DIP Lender at least 30 days' written notice before using any trade, assumed, or fictitious name not already disclosed to DIP Lender and shall use all trade, assumed, or fictitious names in accordance with all applicable laws;

(h) Each Borrower shall promptly notify DIP Lender of the existence of any commercial tort claims which arise after the Closing Date and shall provide DIP Lender with such information, and otherwise take such action with respect to such commercial tort claims, as is reasonably necessary for DIP Lender to perfect its security interest thereon; and

(i) Within 2 weeks after DIP Lender's request, each Borrower shall deliver to DIP Lender the original certificates of title or similar title documents for all of its owned vehicles and Equipment which are subject to certificate of title or similar statutes (as contemplated in Section 9-311 of the UCC), and take such further actions from time to time as DIP Lender requests for purposes of perfecting DIP Lender's security interest in and to such vehicles and Equipment.

7.13 Court Deadlines

The Borrowers shall comply with all deadlines in the process leading to the Reorganization Plan in any order of the Bankruptcy Court setting forth such deadlines.

8. NEGATIVE COVENANTS OF BORROWERS

Each Borrower covenants and agrees that from the date hereof until the Full Payment of the DIP Obligations, such Borrower shall not do the following:

8.1 **Debt.** Each Borrower shall not create or permit to exist any Debt, including any guaranties or other contingent obligations, except the following (collectively, "Permitted Debt"):

- (a) The DIP Obligations;
- (b) The Debt under the Trust Indenture and the agreements, instruments and other documents executed in connection therewith, the Prepetition Bridge Loan and any Debt of Bankruptcy Code § 507(a)(4) priority or lower (i.e., pre-petition debt);
- (c) Debts allowable as expenses under Bankruptcy Code § 503(b), to the extent incurred within the DIP Budget and not otherwise in violation of this Agreement or a DIP Order;
- (d) Fees and expenses of professionals;
- (e) Accounts payable to trade creditors incurred in the ordinary course of business that are not, unless incurred prior to the Petition Date, more than thirty (30) days past due;
- (f) the incurrence by Borrowers of Intercompany Obligations;
- (g) the incurrence by any Borrower of Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument inadvertently drawn against insufficient funds, so long as such Debt is repaid within one week;
- (h) contractual indemnity obligations entered into in the ordinary course of business in connection with the normal course of operation and obligations contained in a customary owner's affidavit title policy;
- (i) the incurrence by any Borrower of Debt arising in respect of worker's compensation claims, payment obligations in connection with self-insurance or similar obligations and bid, appeal and surety bonds, in each case in the ordinary course of business; and
- (j) Debt incurred in the ordinary course of business pursuant to leases of equipment used in connection with the business of Borrowers.

8.2 **Liens.** Each Borrower shall not create or permit or suffer to exist any Liens on any of its property except the following (collectively, "Permitted Liens"):

- (a) Liens securing the DIP Obligations;
- (b) Liens in existence on the Petition Date;
- (c) Liens arising after the Petition Date for Taxes, assessments, and charges or levies instituted or levied by any Governmental Entity (but not including any Lien imposed pursuant to ERISA or any Environmental Law) which are not yet due and payable or which are being Properly Contested or as to which payment and enforcement is stayed under the Bankruptcy Code or pursuant to an order of the Bankruptcy Court;
- (d) Liens arising by operation of law and securing Claims of others incurred after the Petition Date so long as the obligations secured thereby are junior in priority to the Liens in favor of DIP Lender;
- (e) Liens arising after the Petition Date in respect of deposits or pledges made in the ordinary course of business in connection with workers' compensation, unemployment insurance, social security, and similar laws;
- (f) Liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or the payment of which is being Properly Contested or for amounts as to which payment and enforcement is stayed under the Bankruptcy Code or pursuant to orders of the Bankruptcy Court;
- (g) normal and customary rights of setoff upon deposits in favor of depository institutions, and Liens of a collecting bank on checks and other Items in the course of collection;
- (h) such other Liens as DIP Lender may consent to in writing from time to time in its discretion;
- (i) Liens in respect of performance and surety bonds or bid bonds with respect to other regulatory requirements issued pursuant to the request of and for the account of any Borrower in the ordinary course of business; and
- (j) minor survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions as to the use of real properties or liens incidental to the conduct of the business of any Borrower or to the ownership of its properties which in each case were not incurred in connection with Debt and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of such Borrower.

8.3 **Payments on Subordinated Debt.** Each Borrower shall not make any payments of principal or interest on any subordinated Debt in violation of this Agreement or any other DIP Facility Document.

8.4 DIP Facility and Other Investments. Except as the Cash Collateral Order otherwise authorizes, each Borrower shall not (a) guarantee or become contingently liable, directly or indirectly, in connection with the obligations, leases, Equity Interests, or dividends or distributions of anyone, (b) own, purchase, or make any commitment to purchase any Equity Interests, bonds, notes, debentures, or other securities of, or any interest in anyone, or (c) make any capital contributions to anyone (all of which are sometimes collectively referred to herein as "investments"), except for (i) purchases of direct obligations of the United States; (ii) deposits in commercial banks; (iii) commercial paper of any U.S. corporation having the highest ratings then given by the Moody's or Standard & Poor's Corporation; (iv) existing investments in any subsidiaries and other investments existing on the Petition Date; (v) endorsement of negotiable Instruments for collection in the ordinary course of business; (vi) transactions permitted by Section 8.10 and Section 8.11; and (vii) advances to employees for business travel and other expenses incurred in the ordinary course of business which do not at any time exceed in the aggregate \$10,000.

8.5 Change in Business; Formation Documents.

(a) Each Borrower shall not enter into any business which is substantially different from the business in which it is engaged on the Closing Date.

(b) Each Borrower shall not permit or undergo any change in its business and related activities which could result in termination, revocation, ineffectiveness or unenforceability of any policy of insurance required to be maintained by Borrowers pursuant to Section 7.6.

(c) No Borrower shall amend, modify, its articles or certificate of incorporation, organization, or formation in any way which would reasonably be expected to have a Material Adverse Effect.

8.6 Accounts. Each Borrower shall not sell, assign, or discount any of its accounts, chattel paper, or instruments other than the discount of promissory notes in the ordinary course of business for collection.

8.7 Transactions with Affiliates. Except in the ordinary course of business on an arm's length basis consistent with prior practice or as otherwise disclosed in writing to DIP Lender or listed in a motion or filing with the Bankruptcy Court, each Borrower shall not (a) directly or indirectly purchase, acquire, or lease any property from any Affiliate, (b) sell, transfer, or lease any property to any Affiliate, (c) pay any management fees to any Affiliate, or (d) otherwise deal with any Affiliate.

8.8 No Change in Name, Offices, or Jurisdiction of Organization. Each Borrower shall not (a) unless it shall have given 30 days' advance written notice thereof to DIP Lender, change its name or the jurisdiction in which it is organized, (b) unless it shall have given 30 days' advance written notice thereof to DIP Lender, change the location of its chief executive office or other office where books or records are kept, or (c) permit any tangible DIP Collateral to leave its real property.

8.9 Tangible DIP Collateral. Each Borrower shall not, except to the extent otherwise permitted herein or as otherwise permitted by DIP Lender in writing, (a) allow any DIP Collateral to be commingled with, or become an Accession to or part of any property of anyone else or (b) allow any DIP Collateral to become a Fixture.

8.10 Subsidiaries. Each Borrower shall not (a) acquire or form any subsidiary, (b) cause or permit any subsidiary to dissolve, voluntarily or involuntarily, unless the assets thereof are owned by a Borrower after such dissolution, or (c) permit any subsidiary to issue any Equity Interests except to its parent.

8.11 Liquidation, Mergers, Consolidations, and Dispositions of Assets; Name and Good Standing. Except under authority of a Bankruptcy Court order then in effect, each Borrower shall not (a) merge, reorganize, consolidate, or amalgamate with anyone; (b) liquidate, wind up its affairs or dissolve itself; (c) acquire by purchase, lease, or otherwise any of the assets of anyone else except in the ordinary course of business; (d) sell, transfer, lease, or otherwise dispose of any of its assets out of the ordinary course of business; provided, however, that Borrowers shall be permitted to (i) dispose of assets that are promptly replaced in accordance with the then current DIP Budget, (ii) dispose of assets to the extent that such assets are uneconomical, obsolete or no longer useful or no longer usable in connection with the operation or maintenance of the business of Borrowers and (iii) so long as such disposal does not, and would not reasonably be expected to, adversely affect the operation or maintenance of the business of Borrowers, dispose of assets with a fair market value of, or if greater, at a disposal price of, less than \$100,000 in the aggregate during the term of this Agreement; (e) sell or dispose of any Equity Interests in any subsidiary, whether in a single transaction or in a series of related transactions; (f) change its federal employer identification number; or (g) fail to remain in good standing and qualified to transact business as a foreign entity in any state or other jurisdiction in which it is required to be qualified to transact business as a foreign entity and in which the failure to do so would reasonably be expected to have a Material Adverse Effect. Irrespective of the forgoing, this Section 8.11 shall not exempt any Borrower from compliance with Bankruptcy Code § 363.

8.12 Change of Fiscal Year or Accounting Methods. Each Borrower shall not change its fiscal year or its accounting methods.

8.13 Deposit Accounts; Exclusive Control. No Borrower shall open or maintain a Deposit Account unless:

(a) such Deposit Account is under the CRO's sole control, except as the CRO may delegate to a subordinate;

(b) The CRO has previously disclosed such Deposit Account to DIP Lender or listed such Deposit Account in a motion or filing with the Bankruptcy Court; and

(c) The Borrower, whether through the CRO or otherwise, has timely complied with all United States Trustee requirements for such Deposit Account.

8.14 Filing of Motions and Applications. Each Borrower shall not apply to the Bankruptcy Court for authority (i) to take any action that is prohibited by the terms of any of the

DIP Facility Documents, (ii) to refrain from taking any action that is required to be taken by the terms of any DIP Facility Documents or the DIP Orders, or (iii) to permit any Debt or Claim incurred after the Petition Date to be *pari passu* with or senior to any of the DIP Obligations.

8.15 Modifications to DIP Facility. Each Borrower shall not seek or consent to any amendment, supplement or any other modification of any of the terms of the DIP Facility without DIP Lender's consent.

8.16 Contents of a Reorganization Plan.

(a) Proscription. No Borrower shall file, otherwise propose, or consent, to any Reorganization Plan in which DIP Lender or an Affiliate is not a proponent thereof, unless, before that act of filing, proposing, or consenting, either (i) DIP Lender has given its express written consent to that act, (ii) DIP Lender or the Carlile Development Group has withdrawn as a Reorganization Plan proponent, or (iii) the Bankruptcy Court has approved "Substitution Conditions," as defined in Section 8.16(b), in full in a final order no longer subject to appeal.

(b) Definition. "Substitution Conditions" means payment in full of the following, no later than the closing of the Reorganization Plan: (i) all outstanding obligations of the Prepetition Bridge Loan; (ii) all outstanding obligations of the DIP Facility; and (iii) to the extent earned (as described in the motion to approve bid procedures filed by one or more Borrowers on the Petition Date), a \$1,000,000 break-up fee, plus a \$750,000 expense reimbursement which shall increase by an additional \$100,000 per month for each month after the first six months after the Petition Date until paid in full.

9. DEFAULT.

9.1 Events of Default. Each of the following shall constitute an "Event of Default:"

(a) The payment of claims existing prior to the Petition Date or claims or expenses existing prior to a confirmed Reorganization Plan other than as set forth in the DIP Budget or as approved by DIP Lender and the Indenture Trustee and authorized by a Bankruptcy Court order;

(b) Dismissal or conversion to Chapter 7 of any Borrower's Chapter 11 Case without the written consent of DIP Lender;

(c) The appointment of a trustee or examiner in any Borrower's Chapter 11 Case with any powers to operate or manage the financial affairs of Borrower(s);

(d) (i) The entry of an order that, in the reasonable determination of DIP Lender, in any way modifies, stays, reverses, or vacates the DIP Orders or the DIP Facility in each case in a manner materially adverse to DIP Lender without the written consent of DIP Lender and (ii) such order being in effect for more than three days;

(e) Either of the DIP Orders or the DIP Facility ceases to be in full force and effect;

(f) One or more Borrowers petition the Bankruptcy Court to obtain additional financing *pari passu* or senior to the DIP Facility;

(g) The entry of an order granting any other super-priority claim or lien equal or superior to that granted to DIP Lender on the assets of Borrowers;

(h) The entry of an order granting relief from the automatic stay so as to allow anyone other than DIP Lender or the Indenture Trustee to proceed against any material assets of Borrowers;

(i) The entry of any order confirming any Reorganization Plan that does not contain a provision for termination of the DIP Facility, and repayment in full in cash of all of the DIP Obligations and the obligations under the Prepetition Bridge Loan, on or before the effective date of such Reorganization Plan;

(j) Any Borrower violates or breach any DIP Order in any respect, or file any pleadings seeking, joining in, or otherwise consenting to any violation or breach of any DIP Order, in each case in a manner adverse to DIP Lender;

(k) One or more Borrowers (i) engage in any challenge to the validity, perfection, priority, extent or enforceability of the DIP Facility or the Prepetition Bridge Loan or the liens on or security interests in the assets of Borrowers securing the DIP Facility or the Prepetition Bridge Loan, including, without limitation, seeking to subordinate in any way or avoid such Liens, or (ii) engage in any investigation or its assertion of any claims or causes of action against DIP Lender; provided, however, it shall not constitute an Event of Default if Borrowers provide basic loan information with respect to the Prepetition Bridge Loan or reasonably requested information relating to the DIP Facility, in each case to a party in interest or is compelled to provide information by an order of the Bankruptcy Court, and provides prior written notice to DIP Lender of the intention or requirement to do so;

(l) Borrowers shall seek a determination under Section 506(a) of the Bankruptcy Code with respect to the Prepetition Bridge Loan that is unacceptable to DIP Lender;

(m) The allowance of any claim or claims under Bankruptcy Code § 506(c) against or with respect to any of the DIP Collateral;

(n) The use of cash collateral other than as expressly contemplated by the DIP Orders, the DIP Budget (giving consideration to the variances and carry-forward provisions of Sections 4.2 and 4.3), and the Cash Collateral Order prior to the Full Payment of the DIP Obligations, and payment in full of the Prepetition Bridge Loan;

(o) The consummation of the sale of any material portion of Borrowers' assets unless DIP Lender and the Indenture Trustee have consented in writing;

(p) Katie Goodman, or such other person whom DIP Lender and the Indenture Trustee in their collective sole discretion approve, ceases to be CRO;

(q) The governing board of any Borrower has taken any action to limit the powers of the CRO, including without limitation, the CRO's power over any accounts containing any Advance or any proceeds of any DIP Collateral;

(r) Subject to the next sentence, order(s) is(are) not in effect, whether no such order was ever in effect or any order ceased to be in effect, doing all of the following: (i) an order approving Katie Goodman, or such other person that DIP Lender and the Indenture Trustee and their collective sole discretion approve, as the CRO; and (ii) an order granting the CRO powers reasonably acceptable to DIP Lender and Indenture Trustee, including without limitation all power over any accounts containing any Advance or any proceeds of any DIP Collateral. Notwithstanding the immediately preceding sentence, this Event of Default shall exist only from and after the first day following entry of the second Interim DIP Order or the Final DIP Order (whichever occurs earlier);

(s) Any representation or warranty of any Borrower made or deemed made in any DIP Facility Document is incorrect or misleading in any material respect when made or deemed made; provided that if (i) such party was not aware that such representation or warranty was incorrect or misleading at the time such representation or warranty was made or deemed repeated, (ii) the fact, event or circumstance resulting in such incorrect or misleading representation or warranty is capable of being cured, corrected or otherwise remedied, and (iii) such fact, event or circumstance resulting in such incorrect or misleading representation or warranty is cured, corrected or otherwise remedied within 14 days from the date any Borrower obtains knowledge thereof, then such incorrect representation or warranty shall not constitute an Event of Default;

(t) Any Borrower defaults in the due performance and observance of any covenant or agreement contained in any DIP Facility Document, and such default continues unremedied for a period of 7 days if the default is monetary in nature after such Borrower obtains knowledge thereof, and for a period of 14 days if the default is non-monetary in nature after such Borrower obtains knowledge thereof;

(u) The failure by Borrowers to file a Reorganization Plan within 75 days following the Petition Date, provided that the Carlile Development Group has been prompt in its necessary cooperation;

(v) Loss, theft, damage, or destruction of any material portion of the DIP Collateral for which there is either no insurance coverage or for which, in DIP Lender's reasonable opinion, there is insufficient insurance coverage; or

(w) Litigation has been commenced, and is not subject to a stay of the Bankruptcy Code or Bankruptcy Court, or a request for payment under 11 U.S.C. § 503(a) is made, which, in each case, if successful, would have a Material Adverse Effect.

9.2 Remedies. During the existence of any Default or Event of Default, DIP Lender may, without notice to any Borrower and at its option, refuse to make any Advances. During the existence of any Event of Default, but subject at all times to any notice requirements and

limitations in the DIP Orders, DIP Lender may, at its option, exercise from time to time all rights and remedies available to DIP Lender under the DIP Facility Documents to enforce collection of the DIP Obligations then outstanding and may take any or all of the following actions:

(a) DIP Lender may declare any or all DIP Obligations to be immediately due and payable (if not earlier demanded), terminate its obligation to make Advances, bring suit against any Borrower to collect the DIP Obligations, exercise any remedy available to DIP Lender hereunder or at law, and take any action or exercise any remedy provided herein or in any other DIP Facility Document or under applicable law, all as may be limited by the Bankruptcy Code and Bankruptcy Court orders;

(b) DIP Lender shall have all rights and remedies of a secured party under the UCC (and the Uniform Commercial Code of any other applicable jurisdiction) and such other rights and remedies as may be available under any of the DIP Facility Documents, under the DIP Orders, under other applicable law, or pursuant to contract. If requested by DIP Lender, Borrowers will promptly assemble the DIP Collateral and make it available to DIP Lender at a place reasonably requested by DIP Lender. Each Borrower agrees that any notice by DIP Lender of the sale or disposition of the DIP Collateral or any other intended action hereunder, whether required by the UCC or otherwise, shall constitute reasonable notice to such Borrower if the notice is mailed to such Borrower by regular or certified mail, postage prepaid, at least 10 days before the action to be taken. The proceeds realized from the sale or other disposition of any DIP Collateral shall be applied to the DIP Obligations as provided in Section 2.5.

(c) DIP Lender may demand, collect, and sue for all amounts owed pursuant to Accounts, Chattel Paper, Instruments, or Documents or for proceeds of any DIP Collateral (either in any Borrower's name or DIP Lender's name at DIP Lender's option), with the right to enforce, compromise, settle, or discharge any such amounts.

(d) Each Borrower hereby grants DIP Lender a worldwide, non-exclusive, and royalty-free license to use solely during the existence of an Event of Default such Borrower's trademarks, service marks, and trade names for purposes of invoicing and collecting Accounts and otherwise disposing of or liquidating DIP Collateral.

(e) DIP Lender may exercise the mechanism set forth in a DIP Order for modification of the Bankruptcy Code 362(a) stay without further Bankruptcy Court order.

(f) Subject to an order of the Bankruptcy Court, which Borrowers shall not oppose, the 120 day period of Bankruptcy Code § 1121(c)(2) and the 180 day period of § 1121(c)(3) are reduced under § 1121(d) to end on the day after an Event of Default, or at such later date as the Bankruptcy Court may determine.

An exercise of a right or refraining from exercising a right does not waive any other right set forth above or elsewhere in any DIP Facility Document.

9.3 Deposits; Insurance. Each Borrower (a) authorizes DIP Lender to, during the existence of an Event of Default, collect and apply against the DIP Obligations when due any refund of insurance premiums or any insurance proceeds payable on account of the loss or

damage to any DIP Collateral and (b) irrevocably appoints DIP Lender as its attorney-in-fact to endorse any check or draft, or take other action necessary, to obtain such funds.

10. MISCELLANEOUS.

10.1 No Waiver, Remedies Cumulative. No failure or delay on the part of DIP Lender to exercise any right under this Agreement, any other DIP Facility Document, or applicable law shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and are in addition to any other remedies provided by applicable law, any DIP Facility Document, or otherwise.

10.2 Survival of Representations. All representations and warranties made in this Agreement and the other DIP Facility Documents shall survive the making of any extension of credit hereunder and the delivery of any Note and shall continue in full force and effect until the Full Payment of the DIP Obligations.

10.3 Indemnity by Borrowers

(a) Generally. In addition to all other DIP Obligations, the obligations and liabilities described in this Section 10.3 shall constitute DIP Obligations and shall be in addition to, and cumulative of, any other indemnification provisions set forth in any other DIP Facility Document. Subject to Section 10.3(c), Borrowers agree to defend, protect, indemnify, and hold harmless DIP Lender and its Affiliates and all of their respective officers, directors, employees, attorneys, consultants, and agents from and against any and all losses, damages, liabilities, obligations, penalties, fines, fees, costs, and expenses (including, without limitation, reasonable attorneys' and paralegals' fees, costs and expenses, and fees, costs and expenses for investigations and experts) incurred by such indemnities, whether before or from and after the Closing Date, as a result of or arising from or relating to (a) any suit, investigation, action, or proceeding by anyone other than Borrowers (but otherwise including the authorized representative of any Borrower's estate), whether threatened or initiated, asserting a claim for any legal or equitable remedy against anyone under any statute, regulation, or common law principle, arising from or in connection with DIP Lender's making advances or extensions of credit to any Borrower under this Agreement; (b) any liability for payment of any state documentary stamp taxes, intangible taxes, or similar taxes (including interest or penalties, if any) which may now or hereafter be determined to be payable in respect to the execution, delivery, or recording of the DIP Facility Document or the making of the DIP Facility, whether originally thought to be due or not, and regardless of any mistake of fact or law on the part of DIP Lender (or its counsel) or any Borrower or any subsidiaries with respect to the applicability of such tax; and (c) any payment made by DIP Lender or any of its Affiliates with respect to any taxes or other amount payable by any Borrower or any of subsidiary required to be paid by the terms of this Agreement or any other DIP Facility Document, and which may be reasonably necessary to protect or preserve any DIP Collateral or DIP Lender's interests therein.

(b) Collection. Subject to Section 10(c), each Borrower's obligation for indemnification and reimbursement for all of the foregoing a DIP Obligation, shall be secured by the DIP Collateral, shall be due and payable immediately upon demand by DIP Lender, and shall survive termination of this Agreement.

(c) Limitations. Everything else in Section 10 is subject to this Section 10(c). The Borrowers' agreement in this Section 10.3 shall not apply to losses, damages, liabilities, obligations, penalties, fines, fees, costs, or expenses arising out of DIP Lender's gross negligence, intentional misconduct or material breach by DIP Lender under any DIP Facility Document. The provisions of Sections 10(a) and (b) and any other indemnification obligations of Borrowers under the DIP Facility Documents shall cease to have effect upon the release by the authorized estate representative(s) of all Borrowers' estates (whether a debtor in possession, a trustee, the administrator of a Reorganization Plan, or any other estate representative), binding upon all future estate representatives, of all estate claims or potential claims against DIP Lender, or upon expiration of any time period established to any claim being filed or, if a claim has been filed, final resolution of such claim.

10.4 **Notices**. Any notice or other communication hereunder or under the DIP Note to any party hereto or thereto shall be by hand delivery, overnight delivery via nationally recognized overnight delivery service, facsimile with receipt confirmed, or registered or certified United States mail with return receipt and unless otherwise provided herein shall be deemed to have been given or made when delivered, faxed or, if sent via United States mail, when receipt therefor is signed by the receiver, postage prepaid, addressed to the party at its address specified below (or at any other address that the party may hereafter specify to the other parties in writing):

If to DIP Lender:

Bill Rothschild
Ogier, Rothschild, Rosenfeld & Ellis-Monro, P.C.
170 Mitchell Street, S.W.
Atlanta, GA 30303
Telephone: 404 525 4000
Facsimile: 404 526 8855

with a copy (that shall not be effective for notice purposes) to:

Nexsen Pruet, LLC
P.O. Drawer 2426
Columbia, SC 29202-2426
Attn: Julio E. Mendoza, Jr. Esq.
Telephone: 803-540-2026
Facsimile: 803-727-1478

If to a Borrower:

Grisanti, Galef & Goldress
5883 Glenridge Drive NE
Suite #160
Atlanta, GA 30328
Attn: Katie Goodman
Telephone: 404.293.0137
Facsimile: 404.256.4555

with a copy (that shall not be effective for notice purposes) to:

McKenna Long & Aldridge LLP
303 Peachtree Street, NE, Suite 5300
Atlanta, Georgia 30308
Attn: Gary Marsh, Esq.
Telephone: 404.527.4150
Facsimile: 404.527.4198

10.5 Governing Law. This Agreement and the other DIP Facility Documents shall be deemed contracts made under the laws of the State of South Carolina and shall be governed by and construed in accordance with the laws of the State of South Carolina (excluding its conflict of laws provisions if such provisions would require application of the laws of another jurisdiction) except insofar as (a) the terms of a DIP Facility Document states otherwise, (b) the laws of another jurisdiction govern the perfection, priority, or enforcement of security interests in the DIP Collateral, or (c) federal law, including the Bankruptcy Code, supersedes.

10.6 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of each Borrower and DIP Lender and their respective successors and assigns; provided, that (a) no Borrower may assign any of its rights hereunder without the prior written consent of DIP Lender, and any such assignment made without such consent will be void in all respects and (b) neither this Agreement nor any of the other DIP Facility Documents shall inure to the benefit of any trustee appointed in the Chapter 11 Cases or any Chapter 7 case of Borrowers without DIP Lender's express written consent.

10.7 Counterparts; Facsimile Signatures. This Agreement and any amendments, waivers, or consents relating hereto may be executed in any number of counterparts and by different parties hereto or thereto in separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which when taken together shall constitute but one and the same instrument. Any signature delivered by a party hereto or to any amendment, waiver, or consent relating hereto by facsimile transmission or by electronic email in Adobe Corporation's Portable Document Format (or PDF) shall be deemed to be an original signature hereto.

10.8 No Usury. Regardless of any other provision of this Agreement, any Note, or in any other DIP Facility Document, if for any reason the effective rate of interest payable hereunder or thereunder should exceed the maximum lawful rate of interest, the effective rate of

interest shall be deemed reduced to, and shall be, such maximum lawful rate of interest. Any amount paid or collected by DIP Lender as interest which would be in excess of the amount permitted by applicable law shall be deemed applied to the reduction of the principal balance of the DIP Obligations and not to the payment of interest, but if such DIP Obligations have been or are thereby paid in full, the excess shall be returned to the entity paying same, such application to the principal balance of the DIP Obligations or the refunding of excess to be a complete settlement and acquittance thereof.

10.9 Powers. All powers of attorney granted to DIP Lender are coupled with an interest and are irrevocable.

10.10 Approvals; Amendments. If this Agreement calls for DIP Lender's approval or consent, such approval or consent may be given or withheld in the discretion of DIP Lender unless otherwise specified herein. This Agreement and the other DIP Facility Documents may not be modified, altered, or amended, except by an agreement in writing signed by Borrowers and DIP Lender and having the consent of the Indenture Trustee.

10.11 Dealings with Multiple Borrowers. All DIP Obligations, representations, warranties, covenants, and indemnities set forth in the DIP Facility Documents to which a Borrower is a party shall be joint and several. DIP Lender shall have the right to deal with any Senior Officer of any Borrower with regard to all matters concerning the rights and obligations of DIP Lender hereunder and pursuant to applicable law with regard to the transactions contemplated under the DIP Facility Documents. All actions or inactions of the Senior Officers, members, or agents of any Borrower with regard to the transactions contemplated under the DIP Facility Documents shall be deemed with full authority and binding upon all Borrowers. Each Borrower hereby appoints each other Borrower as its true and lawful attorney-in-fact, with full right and power, for purposes of exercising all rights of such Borrower hereunder and under applicable law with regard to the transactions contemplated under the DIP Facility Documents. The provisions of this Section 10.11 and DIP Lender's reliance thereon are material inducements to the agreement of DIP Lender to enter into this Agreement and to consummate the transactions contemplated hereby.

10.12 Additional Terms Relating to Joint and Several Obligations of Borrowers. Each of Borrowers is accepting joint and several liability hereunder in consideration of the financial accommodations to be provided by DIP Lender under this Agreement, for the mutual benefit, directly and indirectly, of each of Borrowers and in consideration of the undertakings of each of Borrowers to accept joint and several liability for the obligations of each of them.

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

(b) If and to the extent that any of Borrowers shall fail to make any payment with respect to any of the DIP Obligations as and when due or to perform any of the DIP

Obligations in accordance with the terms thereof, then in each such event, the other Borrowers will make such payment with respect to, or perform, such DIP Obligations.

(c) The obligations of each Borrower under the provisions of this Section 10.12 constitute full recourse obligations of such Borrower, enforceable against it to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.

(d) Except as otherwise expressly provided herein, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of any Advance made under this Agreement, notice of occurrence of any Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by DIP Lender under or in respect of any of the DIP Obligations, any requirement of diligence and, generally, all demands, notices and other formalities of every kind in connection with this Agreement. Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the DIP Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by DIP Lender at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by DIP Lender in respect of any of the DIP Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the DIP Obligations or in part, at any time or times, of any security for any of the DIP Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of DIP Lender, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with the applicable laws or regulations thereunder which might, but for the provisions of this Section 10.12, afford grounds for terminating, discharging or relieving such Borrower, in whole or in part, from any of its obligations under this Section 10.12, it being the intention of each Borrower that, so long as any of the DIP Obligations remains unsatisfied, the obligations of such Borrower under this Section 10.12 shall not be discharged except by performance and then only to the extent of such performance. The DIP Obligations of each Borrower under this Section 10.12 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower or DIP Lender. The joint and several liability of Borrowers hereunder shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, membership, constitution or place of formation of any Borrower or DIP Lender.

(e) The provisions of this Section 10.12 are made for the benefit of DIP Lender and its successors and assigns, and may be enforced by any such entity from time to time against any of Borrowers as often as occasion therefor may arise and without requirement on the part of such entity first to marshal any of its claims or to exercise any of its rights against any of the other Borrowers or to exhaust any remedies available to it against any of the other Borrowers or to resort to any other source or means of obtaining

payment of any of the DIP Obligations or to elect any other remedy. The provisions of this Section 10.12 shall remain in effect until all the DIP Obligations shall have been paid in full or otherwise fully satisfied and all obligations of DIP Lender to make any extensions of credit have been terminated or expired. If at any time, any payment, or any part thereof, made in respect of any of the DIP Obligations, is rescinded or must otherwise be restored or returned by DIP Lender upon the insolvency, bankruptcy or reorganization of any of Borrowers, or otherwise, the provisions of this Section 10.12 will forthwith be reinstated in effect, as though such payment had not been made.

(f) Notwithstanding any provision to the contrary contained herein or in any other of the DIP Facility Documents, to the extent the joint obligations of a Borrower shall be adjudicated to be invalid or unenforceable for any reason (including, without limitation, because of any applicable state or federal law relating to fraudulent conveyances or transfers) then the obligations of each Borrower hereunder shall be limited to the maximum amount that is permissible under applicable law (whether federal or state and including, without limitation, the federal Bankruptcy Code), after taking into account, among other things, such Borrower's right of contribution and indemnification from each other Borrower or other Obligor under applicable law.

10.13 Contribution. Each Borrower is unconditionally obligated to repay the DIP Obligations as a joint and several obligor under this Agreement. If, as of any date, the aggregate amount of payments made by a Borrower on account of the DIP Obligations and proceeds of such Borrower's DIP Collateral that are applied to the DIP Obligations exceeds the aggregate amount of the DIP Obligations actually used by such Borrower in its business (such excess amount being referred to as an "Accommodation Payment"), then each of the other Borrowers (each such Borrower being referred to as a "Contributing Borrower") shall be obligated to make contribution to such Borrower (the "Paying Borrower") in an amount equal to the difference between (a) the product derived by multiplying the sum of each Accommodation Payment of each Borrower by the Allocable Percentage (as defined below) of the Borrower from whom contribution is sought minus (b) the amount, if any, of the then outstanding Accommodation Payment of such Contributing Borrower (such last mentioned amount which is to be subtracted from the aforesaid product to be increased by any amounts theretofore paid by such Contributing Borrower by way of contribution hereunder, and to be decreased by any amounts theretofore received by such Contributing Borrower by way of contribution hereunder); provided, however, that a Paying Borrower's recovery of contribution hereunder from the other Borrowers shall be limited to that amount paid by the Paying Borrower in excess of its Allocable Percentage of all Accommodation Payments then outstanding of all Borrowers. As used herein, the term "Allocable Percentage" shall mean, on any date of determination thereof, a fraction the denominator of which shall be equal to the number of Borrowers who are parties to this Agreement on such date and the numerator of which shall be 1; provided, however, that such percentages shall be modified in the event that contribution from a Borrower is not possible by reason of insolvency, bankruptcy or otherwise by reducing such Borrower's Allocable Percentage equitably and by adjusting the Allocable Percentage of the other Borrowers proportionately so that the Allocable Percentages of all Borrowers at all times equals 100%.

10.14 Subordination of Intercompany Obligations.

(a) Subordination Generally. Each Borrower covenants and agrees that the payment of all obligations, principal, interest (including interest which accrues after the commencement of any case or proceeding in bankruptcy, or for the reorganization of any Borrower), fees, charges, expenses, attorneys' fees and any other sum, obligation or liability owing by any other Borrower to such Borrower, including any intercompany trade payables or royalty or licensing fees (collectively, the "Intercompany Obligations"), is subordinated, to the extent and in the manner provided in this Section 10.14, to the prior payment in full in cash of all DIP Obligations and that the subordination is for the benefit of DIP Lender and DIP Lender may enforce such provisions directly.

(b) Specific Performance; Waiver of Defenses. Each Borrower executing this Agreement (i) authorizes DIP Lender to demand specific performance of the terms of this Section 10.14 irrespective of whether any other Borrower shall have complied with any of the provisions hereof applicable to it, at any time when such Borrower shall have failed to comply with any provisions of this Section 10.14 that are applicable to it and (ii) to the extent not prohibited by applicable law irrevocably waives any defense based on the adequacy of a remedy at law, which might be asserted as a bar to such remedy of specific performance.

(c) Distributions. Except to the extent otherwise permitted herein, upon any distribution of assets of any Borrower in any dissolution, winding-up, liquidation or reorganization (whether in bankruptcy, insolvency or receivership proceedings or upon an assignment for the benefit of creditors or otherwise):

(i) all DIP Obligations shall be fully and finally paid and performed and all of DIP Lender's obligations to make extensions of credit hereunder shall be terminated before any Borrower is entitled to receive any payment on account of the Intercompany Obligations;

(ii) any payment or distribution of assets of any Borrower of any kind or character, whether in cash, property or securities, to which any other Borrower would be entitled, except for the provisions of this Section 10.14, shall be paid by the liquidating trustee or agent or other entity making such payment or distribution directly to DIP Lender, to the extent necessary to make full and final payment on the DIP Obligations; and

(iii) if any payment or distribution of assets of any Borrower of any kind or character, whether in cash, property or securities, shall be received by any other Borrower on account of the Intercompany Obligations before the Full Payment of the DIP Obligations, such payment or distribution shall be received and held for and shall be paid over to DIP Lender for application to the payment of the DIP Obligations.

10.15 Borrower's Failure to Act. No right of DIP Lender or any other present or future holders of any of the DIP Obligations to enforce the subordination provisions herein shall

at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Borrower or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by any Borrower with the terms hereof, regardless of any knowledge thereof which any such holder may have or be otherwise charged with.

10.16 Waiver of Certain Defenses. To the fullest extent permitted by applicable law and the Bankruptcy Court, while any Event of Default exists, no Borrower nor anyone claiming by or under any Borrower will claim or seek to take advantage of any law requiring DIP Lender to attempt to realize upon any DIP Collateral, or any appraisal, evaluation, stay, extension, homestead, redemption, or exemption laws now or hereafter in force to prevent or hinder the enforcement of this Agreement. Each Borrower, for itself and who at any time claim through or under such Borrower, hereby expressly waives to the fullest extent permitted by applicable law the benefits of such laws. All rights of DIP Lender and all obligations of Borrowers hereunder shall be absolute and unconditional irrespective of (a) any change in the time, manner, or place of payment of, or any other term of, all or any of the DIP Obligations, or any other amendment or waiver of or any consent to any departure from any provision of the DIP Facility Documents, (b) any exchange, release, or non-perfection of any other DIP Collateral given as security for the DIP Obligations, or any release or amendment or waiver of or consent to departure from any guaranty for all or any of the DIP Obligations, or (c) any other circumstance which might otherwise constitute a defense available to, or a discharge of, any Borrower or any third party, other than payment and performance in full of the DIP Obligations.

10.17 Additional Provisions. Time is of the essence of this Agreement and the other DIP Facility Documents. No provision of this Agreement or any of the other DIP Facility Documents shall be construed against or interpreted to the disadvantage of any party hereto by any Governmental Entity by reason of such party having or being deemed to have structured, drafted or dictated such provision.

10.18 Integration; Final Agreement. This Agreement and the other DIP Facility Documents, together with all other instruments, agreements, and certificates executed by the parties in connection therewith or with reference thereto, embody the entire understanding and agreement between the parties hereto and thereto with respect to the subject matter hereof and thereof and supersede all prior agreements, understandings and inducements, whether express or implied, oral or written. There are no unwritten oral agreements between the parties.

10.19 LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES. EACH OF THE PARTIES HERETO, INCLUDING LENDER BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION, OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM (A "DISPUTE") THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE DIP FACILITY DOCUMENTS, OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (a) INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR (b) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE

IN CONNECTION WITH ANY DISPUTE, REGARDLESS OF WHETHER THE DISPUTE IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY, OR OTHERWISE.

10.20 WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH BORROWER, BY EXECUTION HEREOF, AND LENDER, BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE DIP FACILITY DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO ENTER INTO AND ACCEPT THIS AGREEMENT. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY DIP FACILITY DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS AGREEMENT.

10.21 Submission to Jurisdiction; Venue.

(a) Any legal action or proceeding with respect to this Agreement or any other DIP Facility Document shall be brought in the Bankruptcy Court, and, by execution and delivery of this Agreement, each Borrower irrevocably accepts for itself and in respect of its property, generally and unconditionally, the nonexclusive jurisdiction of the Bankruptcy Court, and agrees to be bound by the other provisions set forth in this Section 10.21. Each Borrower further irrevocably consents to the service of process out of any of the Bankruptcy Court in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at the address set out for notices pursuant to Section 10.4, such service to become effective 3 days after such mailing. Nothing herein shall affect the right of DIP Lender to serve process in any other manner permitted by law or to commence legal proceedings or to otherwise proceed against any Borrower in any other jurisdiction,

(b) Each Borrower hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement or any other DIP Facility Document brought in the Bankruptcy Court referred to in subsection (a) above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

(c) Notwithstanding the foregoing, if the Chapter 11 Case is dismissed or DIP Lender obtains relief from the automatic stay or is otherwise authorized to enforce its remedies hereunder or under applicable law while any Event of Default exists, the reference to the term "Bankruptcy Court" as used in this Section 10.21 shall be expanded

to include any state or federal court of competent jurisdiction located in South Carolina as elected by DIP Lender in its discretion.

10.22 Credit Inquiries. Each Borrower hereby authorizes and permits DIP Lender, at its discretion and without any obligation to do so, to respond to credit inquiries from third parties concerning the terms of the DIP Facility.

10.23 Information. Nothing in this Agreement shall prevent DIP Lender from disclosing confidential information provided by anyone from time to time (a) to the Bankruptcy Court, any Committee, the Indenture Trustee, any of DIP Lender's Affiliates, or any of DIP Lender's or any of its Affiliates' officers, directors, employees, agents, or advisors (it being understood that the entities to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (b) to any other entity if reasonably incidental to the administration of the agreements made herein, (c) as required by any law, rule, or regulation, (d) upon the order, request or demand of any Governmental Entity; provided, however, that, to the extent permitted by law, DIP Lender shall provide prior written notice to the affected Borrower of any such request or demand, (e) that is or becomes available to the public or that is or becomes available to DIP Lender other than as a result of a disclosure by DIP Lender prohibited by this Agreement, (f) to the extent required in connection with any litigation to which DIP Lender or any of its Affiliates may be a party, whether to defend itself, reduce its liability, protect or exercise any of its claims, rights, remedies or interests under or in connection with the DIP Facility Documents, or otherwise, (g) to the extent necessary in connection with the exercise of any remedy under this Agreement or any other DIP Facility Document and (h) to any actual or proposed participant or assignee (it being understood that the entities to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential); such information to consist of deal terms and other information customarily found in such publications. Each Borrower Party hereby authorizes DIP Lender to use the name, logos and other insignia and the amount of the credit facility provided hereunder in any "tombstone" or comparable advertising, on its website or in other of DIP Lender's marketing materials.

10.24 No Tax Advice. Borrower hereby acknowledges and agrees that, with respect to all tax and accounting matters relating to this Agreement, the other DIP Facility Documents, or the transactions contemplated herein and therein, it has not relied on any representations made, consultation provided by, or advice given or rendered by DIP Lender or DIP Lender's representatives, agents, or employees, and, instead, each Borrower has sought, and relied upon, the advice of its own tax and accounting professionals with respect to all such matters.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed under seal as of the day and year first above written.

DIP LENDER:

CARLILE DEVELOPMENT COMPANY, LLC

By: _____
Name: _____
Title: _____

BORROWERS:

THE CLIFFS CLUB & HOSPITALITY GROUP,
INC.

By: _____
Timothy P. Cherry, President

CCHG HOLDINGS, INC.

By: _____
Timothy P. Cherry, President

THE CLIFFS AT MOUNTAIN PARK GOLF &
COUNTRY CLUB, LLC

By: The Cliffs Club & Hospitality Group, Inc.,
Its Sole Member

By: _____
Timothy P. Cherry, President

THE CLIFFS AT KEOWEE VINEYARDS GOLF
& COUNTRY CLUB, LLC

By: The Cliffs Club & Hospitality Group, Inc.,
Its Sole Member

By: _____
Timothy P. Cherry, President

THE CLIFFS AT WALNUT COVE GOLF &
COUNTRY CLUB, LLC

By: The Cliffs Club & Hospitality Group, Inc.,
Its Sole Member

By: _____
Timothy P. Cherry, President

THE CLIFFS AT KEOWEE FALLS GOLF &
COUNTRY CLUB, LLC

By: The Cliffs Club & Hospitality Group, Inc.,
Its Sole Member

By: _____
Timothy P. Cherry, President

THE CLIFFS AT KEOWEE SPRINGS GOLF &
COUNTRY CLUB, LLC

By: The Cliffs Club & Hospitality Group, Inc.,
Its Sole Member

By: _____
Timothy P. Cherry, President

THE CLIFFS AT HIGH CAROLINA GOLF &
COUNTRY CLUB, LLC

By: The Cliffs Club & Hospitality Group, Inc.,
Its Sole Member

By: _____
Timothy P. Cherry, President

THE CLIFFS AT GLASSY GOLF & COUNTRY
CLUB, LLC

By: The Cliffs Club & Hospitality Group, Inc.,
Its Sole Member

By: _____
Timothy P. Cherry, President

THE CLIFFS VALLEY GOLF & COUNTRY
CLUB, LLC

By: The Cliffs Club & Hospitality Group, Inc.,
Its Sole Member

By: _____
Timothy P. Cherry, President

CLIFFS CLUB & HOSPITALITY SERVICE
COMPANY, LLC

By: The Cliffs Club & Hospitality Group, Inc.,
Its Sole Member

By: _____
Timothy P. Cherry, President

APPENDIX 1 – Defined Terms

Capitalized Terms in the Debtor in Possession Loan and Security Agreement have the following definitions:

1. “Additional Documents” has the meaning set forth in Section 7.11.
2. “Advance” means any advance made under the DIP Facility.
3. “Advance Request” has the meaning set forth in Section 4.4(a).
4. “Affiliate” means, with respect to any entity, (a) any other entity directly or indirectly owning 10% or more of the Equity Interests of such entity or of which such entity owns 10% or more of such Equity interests; (b) any other entity controlling, controlled by, or under common control with such entity; (c) any officer, director, or employee of such entity; and (d) any family member or Affiliate of such entity.
5. “Agreement” means the document for which this list of definitions comprises Appendix 1, including all its attachments.
6. “All Inclusive Fees” has the meaning set forth at the end of Section 4.3.
7. “Anti-Terrorism and Financial Control Laws” means any Applicable Law addressing or in any way relating to terrorist acts and acts of war or that prohibit, regulate or restrict financial transactions, and any amendments or successors thereto and any applicable regulations promulgated thereunder, including but not limited to the Money Laundering Control Act, 18 U.S.C. Sections 1956, 1957, the Bank Secrecy Act, 31 U.S.C. Sections 5311 *et seq.*, the Foreign Assets Control Regulations, 31 C.F. R. Section 500 *et seq.*, Executive Order 13224, and the USA PATRIOT Act.
8. “Applicable Law” means, in respect of any entity, all statutes, laws, common law, rules, regulations, ordinances, codes or other legal requirements of any Governmental Entity applicable to such entity.
9. “Assignable Actions” has the meaning set forth in Section 3.1(c).
10. “Avoidance and Non-assignable Actions” has the meaning set forth in Section 3.1(c).
11. “Bankruptcy Code” means has the meaning set forth in Section 1.2.
12. “Bankruptcy Court” means the court having jurisdiction and authority over the Borrowers’ Chapter 11 Cases, even if any such case is converted to Chapter 7.
13. “Barred Person” means: (i) any person, group or entity named as a “Specially Designated National and Blocked Person” or as a person who commits, threatens to commit, supports, or is associated with terrorism, in each case, as designated by the United States Department of the Treasury’s Office of Foreign Assets Control (“OFAC”), (ii) any person, group

or entity named in the lists maintained by the United States Department of Commerce (Denied) Persons and Entities, (iii) any government or citizen of any country that is subject to a United States Embargo identified in regulations promulgated by OFAC, and (iv) any person, group or entity named as a denied or blocked person or terrorist in any other list maintained by any agency of the United States government.

14. "Borrowers" has the meaning set forth in the Preamble.

15. "Business Day" means any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of South Carolina or is a day on which banking institutions located in such state are closed.

16. "Carve-Out" has the meaning set forth in Section 3.5(a).

17. "Carve-Out Date" has the meaning set forth in Section 3.5(a)(1).

18. "Carve-Out Expenses" means fees and expenses allowed under Bankruptcy Code §§ 327, 328, 330, 331 or, with respect to the CRO, 363, or under 28 U.S.C. 156(c), to a Committee or professionals of a Borrower or a Committee.

19. "Cash Collateral Agreement" means the agreement entered into among Borrowers and Indenture Trustee related to the cash collateral.

20. "Cash Collateral Order" means the orders of the Bankruptcy Court related to the Cash Collateral Agreement.

21. "Chapter 7" has the meaning set forth in Section 2.6.

22. "Chapter 11 Cases" has the meaning set forth in Recital B.

23. "Claim" has the meaning set forth in Bankruptcy Code § 101(5), including juridical interpretation of that provision.

24. "Closing" has the meaning set forth in Section 5.1.

25. "Closing Date" means the date of the Closing.

26. "Collections Account" means any Deposit Account maintained by a Borrower to which collections, deposits, and other payments on or with respect to Collateral may be made under the Agreement.

27. "Committee" means a committee appointed and approved under Bankruptcy Code § 1102(a)(1).

28. "Compliance Certificate" has the meaning set forth in Section 7.2(d).

29. "Control" means, with respect to any asset, right, or property with respect to which a security interest therein is perfected under Article 9 of the UCC by a secured party's having "control" thereof (whether pursuant to the terms of an agreement or through the existence

of certain facts and circumstances), that DIP Lender has "control" of such asset, right, or property in accordance with the terms of Article 9 of the UCC.

30. "CRO" means Chief Restructuring Officer.
31. "Debt" has the meaning set forth in Bankruptcy Code § 101(12).
32. "Default" means a condition or event that constitutes an Event of Default, or which with the giving of notice or the passage of time or both would, unless cured or waived, constitute an Event of Default.
33. "Deposit Account" has the meaning set forth in the UCC.
34. "DIP Budget" has the meaning set forth in Section 4.2(a).
35. "DIP Collateral" has the meaning set forth in Section 3.1.
36. "DIP Commitment" has the meaning set forth in Section 2.1.
37. "DIP Facility" means the lending facility memorialized by the DIP Facility Documents.
38. "DIP Facility Documents" means this Agreement, including all exhibits, appendices and attachments, and every other now existing or hereafter created document, agreement, or instrument evidencing, describing, guaranteeing, or securing the Obligations or delivered in connection with this Agreement, including without limitation the DIP Note and UCC financing statements.
39. "DIP Lender" has the meaning set forth in the Preamble.
40. "DIP Note" has the meaning set forth in Section 2.2.
41. "DIP Obligations" means all debt, obligations and liabilities at any time incurred by any Borrower to DIP Lender after the Petition Date, arising out of or in connection with the DIP Facility Documents.
42. "DIP Order" means the DIP Interim Order or the DIP Final Order.
43. "Dispute" has the meaning set forth in Section 10.19.
44. "Environmental Laws" means any and all Applicable Laws relating to or imposing liability or standards of conduct concerning environmental protection matters.
45. "Equity Interest" means, with respect to any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interest in (however designated) equity of such Entity, including, without limitation, any common stock, preferred stock, limited or general partnership interests, and limited liability company membership interests, whether voting or non-voting.

46. "ERISA" means the Employee Retirement Income Security Act of 1974.
47. "ERISA Termination Event" means a "reportable event" as defined in Section 4043(b) of ERISA, or the filing of a notice of intent to terminate under Section 4041 of ERISA.
48. "Event of Default" has the meaning set forth in Section 9.1.
49. "Executive Order No. 13224" means the Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001, relating to "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism."
50. "Facility Fee" has the meaning set forth in Section 4.3(b)(i).
51. "Fees" due the Lender or "Fees to Lender" means the Facility Fee and the All Inclusive Fees.
52. "Final DIP Order" means an order authorizing the DIP Facility under 11 U.S.C. § 364 for which a final hearing under F.R.B.P. 4001(c)(2) has been commenced.
53. "Funding Account" means any Deposit Account maintained by a Borrower with any financial institution reasonably approved by DIP Lender, the Indenture Trustee, and the United States Trustee, for the purpose of depositing or disbursing Advances.
54. "F.R.B.P." means the Federal Rules of Bankruptcy Procedure.
55. "Full Payment" means, with respect to the DIP Obligations, the occurrence of all of the following: (a) the full cash payment of all outstanding amounts thereof, including any interest, fees and other charges accruing during the pendency of the Chapter 11 Cases, whether or not converted to Chapter 7; (b) termination, expiration or maturity of the DIP Facility and the DIP Commitment; and (c) termination of all indemnification obligations of the Borrowers in accordance with Section 10.3(c).
56. "Funding Account" means any Deposit Account maintained by a Borrower with DIP Lender or any other financial institution approved by DIP Lender for the purpose of depositing or disbursing Advances under the DIP Facility.
57. "GAAP" means generally accepted accounting principles and practices set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the accounting profession in the United States of America).
58. "Governmental Entity" means any (a) court (whether in law or at equity or trial or appellate), tribunal, or arbitrator or arbitration proceeding and (b) any local, city, state, federal, municipal or quasi-municipal, foreign, or international government or any subdivision, agency, authority, commission, bureau, branch, regulatory body, or other body thereof.

59. "Indenture Trustee" means the indenture trustee then duly appointed and acting under the Trust Indenture, in its capacity as trustee only.

60. "Intercompany Obligations" has the meaning set forth in Section 10.14(a).

61. "Interim Advance" means any Advance made before the Final DIP Order is in effect.

62. "Interim DIP Order" means an order authorizing the DIP Facility under 11 U.S.C. § 364 for which a final hearing under F.R.B.P. 4001(c)(2) has not been commenced.

63. "Lien" means any lien (statutory or otherwise), mortgage, deed of trust, deed to secure debt, pledge, hypothecation, security interest, trust arrangement, security deed, financing lease, collateral assignment, encumbrance, conditional sale or title retention agreement, or any other interest in property designed to secure the repayment or performance of any obligation, whether arising by agreement or under any statute or law or otherwise.

64. "Loss" has the meaning set forth in Section 7.6(b).

65. "Main Case" has the meaning set forth Recital C.

66. "Material Adverse Effect" means any (a) material adverse effect upon the validity, performance, or enforceability of any of the DIP Facility Documents or any of the transactions contemplated therein; (b) material adverse effect upon the properties, business or condition (financial or otherwise) of Borrowers, taken as a whole; (c) material adverse effect upon the ability of Borrowers, taken as a whole, to fulfill any DIP Obligation; or (d) material adverse effect on the DIP Collateral.

67. "Maturity Date" has the meaning set forth in Section 2.6.

68. "Needed Property" has the meaning set forth in Section 5.2(j).

69. "Permitted Debt" has the meaning set forth in Section 8.1.

70. "Permitted Liens" has the meaning set forth in Section 8.2.

72. "Petition Date" has the meaning set forth in Recital B.

73. "Post Carve-Out Date Expenses" has the meaning set forth in Section 3.5(a)(ii).

74. "Post-petition All Inclusive Fee" has the meaning set forth in Section 4.3(b)(iii).

75. "Prepetition All Inclusive Fee" has the meaning set forth in Section 4.3(b)(ii).

76. "Prepetition Bridge Loan" means the loan advanced under the Agreement Relating to the Bridge Loan executed by Wells Fargo Bank, North America, solely in its capacity as indenture trustee, The Cliffs Club & Hospitality Group, Inc., and SP 50, on or about January 31, 2012.

77. "Properly Contested" means, with respect to any Taxes or Liens, that payment of such Taxes or the amount giving rise to such Liens, as the case may be, is being properly contested in good faith by appropriate proceedings promptly instituted and diligently conducted, and the applicable entity has established appropriate reserves as shall be required in conformity with GAAP.

78. "Reorganization Plan" means a plan filed under Bankruptcy Code Chapter 11, Subchapter II.

79. "Restricted Payment" means any distribution, dividend, or payment to any entity on account of any Equity Interests of any Borrower.

80. "SP 50" has the meaning set forth in Section 4.1(b).

81. "Substitute Conditions" has the meaning set forth in Section 8.16(b).

82. "Taxes" means any present or future taxes, levies, imposts, duties, fees, assessments, deductions, withholdings or other charges of whatever nature, including income, receipts, excise, property, sales, use, transfer, license, payroll, withholding, social security and franchise taxes now or hereafter imposed or levied by the United States, or any state, local or foreign government or by any department, agency or other political subdivision or taxing authority thereof or therein and all interest, penalties, additions to tax and similar liabilities with respect thereto, but excluding, in the case of DIP Lender, taxes imposed on or measured by the net income or overall gross receipts of DIP Lender.

83. "Trust Indenture" means the Trust Indenture Agreement dated April 30, 2010 among Borrowers and Wells Fargo, National Bank, as Collateral Trustee and all related Liens.

84. "Trust Indenture Liens" means Liens arising from or securing any obligations referenced in the Trust Indenture and/or Collateral Trust Agreement (as defined in the Trust Indenture).

85. "UCC" means the Uniform Commercial Code as enacted in the state whose law supplies the applicable rule of decision.

86. "USA PATRIOT Act" means the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56).

87. "United States Trustee" means the United States Trustee appointed by the United States Attorney General pursuant to 28 U.S.C. § 581 to oversee the administration of cases before the Bankruptcy Court.

EXHIBIT A

DIP Budget

The Cliffs Club & Hospitality Group, Inc. et al.

DIP BUDGET

	3/9/12	3/16/12	3/23/12	3/30/12	4/6/12	4/13/12	4/20/12	4/27/12	5/4/12	5/11/12	5/18/12	5/25/12	6/1/12	Total
Beginning Cash (DIP Loan) Balance	1,169,021	(474,018)	(1,058,323)	(1,657,586)	(1,494,311)	(2,302,580)	(2,850,463)	(3,374,492)	(2,891,377)	(3,797,259)	(3,709,954)	(4,739,106)	(4,154,941)	1,169,021
Cash Receipts														
Member payments	202,425	360,000	275,000	697,000	300,000	375,000	393,000	750,000	300,000	462,500	437,500	887,500	462,500	5,902,425
Miscellaneous	-	-	47,000	-	-	-	-	69,000	-	-	-	120,000	-	236,000
Membership Notes	-	-	-	-	-	-	-	-	-	-	-	-	-	-
TOTAL CASH RECEIPTS:	202,425	360,000	322,000	697,000	300,000	375,000	393,000	819,000	300,000	462,500	437,500	1,007,500	462,500	6,138,425
NET CASH AVAILABLE BEFORE EXPENDITURE	1,371,446	(114,018)	(736,323)	(970,586)	(1,194,311)	(1,927,580)	(2,457,463)	(2,555,492)	(2,591,377)	(3,334,759)	(3,272,454)	(3,731,606)	(3,692,441)	7,307,446
CASH DISBURSEMENTS														
Taxes	-	(4,475)	(88,000)	-	-	-	(104,475)	-	-	-	(4,475)	(122,000)	-	(323,425)
Cost of Sales	(163,490)	(68,613)	(75,000)	(50,000)	(70,000)	(115,000)	(72,000)	(62,000)	(127,000)	(176,000)	(56,000)	(136,000)	(61,000)	(1,223,102)
Payroll/Benefit Related	(823,000)	(14,136)	(466,000)	(109,000)	(456,000)	(10,000)	(511,136)	(116,000)	(508,000)	(10,000)	(580,136)	(11,000)	(687,000)	(4,061,415)
Insurance	(53,456)	-	-	-	(53,456)	-	-	-	-	-	-	-	-	(160,368)
Communication/Technology/Software	(98,637)	(54,402)	(39,000)	(4,000)	(7,723)	(28,402)	(30,000)	(15,000)	(7,723)	(9,100)	(54,402)	(15,000)	(7,723)	(371,372)
Utilities	(238,000)	(14,000)	(6,800)	(13,800)	(35,800)	(9,800)	(21,800)	(12,800)	(32,800)	(9,800)	(21,800)	(19,800)	(9,800)	(236,800)
Other Operating Expense	(142,000)	(142,000)	(102,000)	(192,000)	(117,000)	(117,000)	(117,000)	(117,000)	(92,000)	(92,000)	(92,000)	(92,000)	(78,000)	(1,452,000)
Leases	(51,329)	(8,200)	(3,667)	(51,329)	-	(8,200)	(3,667)	-	(51,329)	(8,200)	(3,667)	-	(51,329)	(81,329)
Golf Course Operating	(130,353)	(104,211)	(150,796)	(143,596)	(96,656)	(39,481)	(47,949)	(23,085)	(34,970)	(70,095)	(66,170)	(27,535)	(23,870)	(958,767)
Facilities/Rent Expense	-	-	-	-	(10,000)	-	(9,000)	-	(10,000)	-	(9,000)	-	(10,000)	(67,000)
Property & Other Taxes	-	-	-	-	-	(15,000)	-	-	-	-	-	-	-	(15,000)
Total Cash Disbursements from Operations	(1,300,465)	(419,039)	(931,263)	(523,725)	(846,635)	(343,883)	(917,029)	(335,885)	(917,278)	(375,195)	(887,652)	(423,335)	(908,722)	(9,130,106)
Chapter 11 Net Operating Cash Flow	(1,098,040)	(1,157,079)	(1,766,342)	(1,593,067)	(2,139,702)	(2,108,585)	(2,632,614)	(2,149,499)	(2,766,777)	(2,679,472)	(3,129,624)	(2,545,459)	(2,991,681)	(2,991,681)
Deposits	-	(156,266)	-	-	-	-	-	-	-	-	-	-	-	(156,266)
Restructuring Expenses														
Debtors Financial Advisor-GGG	-	(100,000)	-	-	(200,000)	-	-	-	-	-	(200,000)	-	-	(500,000)
Debtors Counsel - McKenna Long	-	(150,000)	-	-	(250,000)	-	-	-	-	-	(250,000)	-	-	(650,000)
Debtors Counsel - Wilkinson (local counsel)	-	(15,000)	-	-	(15,000)	-	-	-	-	-	(15,000)	-	-	(45,000)
Unsecured Creditors Counsel	-	(15,000)	-	-	(15,000)	-	-	-	-	-	(15,000)	-	-	(45,000)
Ordinary Course Professionals	(35,000)	(7,500)	-	-	(12,500)	-	-	-	-	-	(12,500)	-	-	(67,500)
Debtor's Accountants	-	(7,500)	-	-	(7,500)	-	-	-	-	-	(7,500)	-	-	(22,500)
Claims / Noticing Agent - BMC	-	(24,000)	-	-	(24,000)	-	-	-	-	-	(24,000)	-	-	(72,000)
US Trustee Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	(13,000)
Adequate Protection Payments	(235,000)	-	-	-	(235,000)	-	-	-	-	-	-	-	(235,000)	(940,000)
DIP Lenders Monitoring Fees	(125,000)	(50,000)	-	-	(50,000)	-	-	-	-	-	(50,000)	-	-	(275,000)
DIP Interest & Fees	(150,000)	-	-	-	(25,633)	-	-	-	(40,604)	-	-	-	(63,240)	(270,477)
Total Restructuring Expenses	(545,000)	(369,000)	-	-	(261,633)	(579,000)	-	-	(266,604)	-	(579,000)	-	(288,240)	(2,910,477)
Total Disbursements	(1,845,465)	(944,305)	(931,263)	(523,725)	(1,108,268)	(922,883)	(917,029)	(335,885)	(1,205,882)	(375,195)	(1,466,652)	(423,335)	(1,196,962)	(12,196,849)
Net Cash Flow (for the period)	(1,643,040)	(584,305)	(609,263)	(173,275)	(808,268)	(547,883)	(524,029)	(483,115)	(905,882)	87,305	(1,029,152)	584,165	(734,462)	(6,058,424)
Chapter 11 Net Cash Flow	(1,643,040)	(2,227,345)	(2,836,608)	(2,663,333)	(3,471,601)	(4,019,484)	(4,543,513)	(4,060,398)	(4,966,280)	(4,878,975)	(5,908,127)	(5,323,962)	(6,058,424)	(6,058,424)
ENDING CASH (DIP Loan) BALANCE	(474,018)	(1,058,323)	(1,667,586)	(1,494,311)	(2,302,580)	(2,850,463)	(3,374,492)	(2,891,377)	(3,797,259)	(3,709,954)	(4,739,106)	(4,154,941)	(4,889,403)	(4,889,403)

Exhibit B

Form of DIP Note

DEBTOR IN POSSESSION NOTE

\$7,500,000.00

March ____, 2012
Salisbury, Maryland

FOR VALUE RECEIVED, the undersigned (jointly and severally, "Borrowers"), hereby unconditionally promise to pay to the order of **CARLILE DEVELOPMENT COMPANY, LLC**, a Texas limited liability company ("DIP Lender"), the principal amount of SEVEN MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$7,500,000.00) or, if less, the then unpaid principal amount of Advances by DIP Lender to Borrowers pursuant to the Debtor in Possession Loan and Security Agreement dated as of March ____, 2012, among Borrowers and DIP Lender (the "DIP Loan Agreement"). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the DIP Loan Agreement.

Borrowers further unconditionally promise to pay to DIP Lender interest on the unpaid principal amount of the Advances until paid at the rate or rates per annum, from the dates and payable on the dates, set forth in the DIP Loan Agreement.

This Debtor In Possession Note (this "DIP Note") is the promissory note referred to in Section 2.2 of the DIP Loan Agreement. This DIP Note is governed by the DIP Loan Agreement, which, among other things, contains provisions for repayment of all principal hereof and accrued interest on the Maturity Date. In case an Event of Default shall occur and be continuing, the principal of and accrued interest on this DIP Note may be declared to be due and payable in the manner and with the effect provided in the DIP Loan Agreement.

Borrowers hereby waive presentment, demand, protest or notice of any kind in connection with this DIP Note.

This DIP Note shall be governed by, and construed and interpreted in accordance with the law of the State of South Carolina (excluding its conflict of laws provisions if such provisions would require application of the laws of another jurisdiction).

[Signature Page Follows]

IN WITNESS WHEREOF, Borrowers have caused this DIP Note to be duly executed under seal to be effective as of the day and year first above written.

BORROWERS:

THE CLIFFS CLUB & HOSPITALITY GROUP,
INC. (SEAL)

By: _____
Name: Timothy P. Cherry
Title: President

CCHG HOLDINGS, INC. (SEAL)

By: _____
Name: _____
Title: _____

THE CLIFFS AT MOUNTAIN PARK GOLF &
COUNTRY CLUB, LLC (SEAL)

By: The Cliffs Club & Hospitality Group, Inc.
Its: Sole Member

By: _____
Name: Timothy P. Cherry
Title: President

THE CLIFFS AT KEOWEE VINEYARDS GOLF
& COUNTRY CLUB, LLC (SEAL)

By: The Cliffs Club & Hospitality Group, Inc.
Its: Sole Member

By: _____
Name: Timothy P. Cherry
Title: President

THE CLIFFS AT WALNUT COVE GOLF &
COUNTRY CLUB, LLC (SEAL)

By: The Cliffs Club & Hospitality Group, Inc.
Its: Sole Member

By: _____
Name: Timothy P. Cherry
Title: President

THE CLIFFS AT KEOWEE FALLS GOLF &
COUNTRY CLUB, LLC (SEAL)

By: The Cliffs Club & Hospitality Group, Inc.
Its: Sole Member

By: _____
Name: Timothy P. Cherry
Title: President

THE CLIFFS AT KEOWEE SPRINGS GOLF &
COUNTRY CLUB, LLC (SEAL)

By: The Cliffs Club & Hospitality Group, Inc.
Its: Sole Member

By: _____
Name: Timothy P. Cherry
Title: President

THE CLIFFS AT HIGH CAROLINA GOLF &
COUNTRY CLUB, LLC (SEAL)

By: The Cliffs Club & Hospitality Group, Inc.
Its: Sole Member

By: _____
Name: Timothy P. Cherry
Title: President

THE CLIFFS AT GLASSY GOLF & COUNTRY
CLUB, LLC (SEAL)

By: The Cliffs Club & Hospitality Group, Inc.
Its: Sole Member

By: _____
Name: Timothy P. Cherry
Title: President

THE CLIFFS VALLEY GOLF & COUNTRY
CLUB, LLC (SEAL)

By: The Cliffs Club & Hospitality Group, Inc.
Its: Sole Member

By: _____
Name: Timothy P. Cherry
Title: President

CLIFFS CLUB & HOSPITALITY SERVICE
COMPANY, LLC (SEAL)

By: The Cliffs Club & Hospitality Group, Inc.
Its: Sole Member

By: _____
Name: Timothy P. Cherry
Title: President

Exhibit C

Form of Compliance Certificate

COMPLIANCE CERTIFICATE

**(To Be Provided in Conjunction with all Financial Reports Pursuant to
Section 7.2 of Debtor in Possession Loan and Security Agreement)**

TO: Carlile Development Company, LLC ("DIP Lender")

FROM: The Cliffs Club & Hospitality Group, Inc.; CCHG Holdings, Inc.; The Cliffs at Mountain Park Golf & Country Club, LLC; The Cliffs at Keowee Vineyards Golf & Country Club, LLC; The Cliffs at Walnut Cove Golf & Country Club, LLC; The Cliffs at Keowee Falls Golf & Country Club, LLC; The Cliffs at Keowee Springs Golf & Country Club, LLC; The Cliffs at High Carolina Golf & Country Club, LLC; The Cliffs at Glassy Golf & Country Club, LLC; The Cliffs Valley Golf & Country Club, LLC; and Cliffs Club & Hospitality Service Company, LLC (collectively, "Borrowers"),

Date: _____, 2012

Except as disclosed below (the "Exceptions"), in executing this Compliance Certificate, Borrowers expressly certify and confirm that all representations and warranties of Borrowers contained in the Debtor in Possession Loan and Security Agreement, dated as of March _____, 2012, among DIP Lender and Borrowers (the "DIP Loan Agreement") are true, complete and correct in all material respects as of the date of this Compliance Certificate; and no Default or Event of Default (as such terms are defined in the DIP Loan Agreement) exist as of the date of this Compliance Certificate.

Exceptions (if none, so state):

BORROWERS:

By: _____

Name: Katie Goodman

Chief Restructuring Officer for Borrowers

Exhibit D

Form of Advance Request

**DEBTOR IN POSSESSION LOAN AND SECURITY AGREEMENT
ADVANCE REQUEST**

Deadline for Same Day Processing is 1:00PM E.T.

To: Carlile Development Company, LLC ("DIP Lender")

Date: _____, 2012 Time: _____ Fax: _____

From: The entities listed below the signature line of this Advance Request ("Borrowers").

Requested by: _____

Phone Number: _____

To Account # _____ (Attach Wire Instructions if Not on File with DIP Lender)

Requested Transaction Type

Request Dollar Amount

Principal Increase (Advance)

\$ _____

Interest Payment (Only)

\$ _____

Principal and Interest (Payment)

\$ _____

Other Instructions: _____

THE ADVANCE REQUESTED HEREIN IS TO BE APPLIED BY BORROWERS IN ACCORDANCE WITH SCHEDULE I ATTACHED HERETO.

Except as disclosed below (the "Exceptions"), in executing this Advance Request, Borrowers expressly confirm that all representations and warranties of Borrowers contained in the Debtor in Possession Loan and Security Agreement, dated as of March _____, 2012, among DIP Lender and Borrowers (the "DIP Loan Agreement") remain true, correct and complete in all material respects as of the date of the DIP Loan Agreement; such representations and warranties are true, complete and correct in all material respects as of the date of this Advance Request; no Default or Event of Default (as such terms are defined in the DIP Loan Agreement) exist as of the date of this Advance Request; and all conditions precedent to the requested Advance have been satisfied. DIP Lender shall be entitled to rely on the accuracy of the foregoing statements in making the requested Advance.

Exceptions (if none, so state):

If any Exceptions are set forth above, DIP Lender's election to fund the requested Advance in whole or in part shall not constitute a waiver of any rights DIP Lender has under the DIP Loan Agreement with respect to such Exceptions, all of such rights being preserved in their entirety.

BORROWERS:

By: _____

Name: Katie Goodman

Chief Restructuring Officer for the following

Borrowers:

The Cliffs Club & Hospitality Group, Inc.

CCHG Holdings, Inc.

The Cliffs at Mountain Park Golf & Country Club, LLC

The Cliffs at Keowee Vineyards Golf & Country Club, LLC

The Cliffs at Walnut Cove Golf & Country Club, LLC

The Cliffs at Keowee Falls Golf & Country Club, LLC

The Cliffs at Keowee Springs Golf & Country Club, LLC

The Cliffs at High Carolina Golf & Country Club, LLC

The Cliffs at Glassy Golf & Country Club, LLC

The Cliffs Valley Golf & Country Club, LLC

Cliffs Club & Hospitality Service Company, LLC

SCHEDULE I
TO
ADVANCE REQUEST
(with supporting documentation requested by DIP Lender)

<u>Payee</u>	<u>Amount</u>	<u>Description</u>
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
_____	\$ _____	_____
Total	\$ _____	

Attach wiring instructions as Exhibit A.

SCHEDULE 6.5

	Plaintiff	Defendant	Co Defendant	Case No. (where known)	Court (where filed)
1	4 All by Jofit	The Cliffs at Keowee Falls Golf & Country Club, LLC	The Cliffs Golf & Country Club	Demand Letter	
2	Access Circles	The Cliffs Communities, Inc.		11cv05169	NC General Court of Justice_Buncombe Co.
3	Anthony Bergen	Cliffs Real Estate, NBSC, Cliffs at Mountain Park; Todd Jensen		2010-CP-23_00137	Court of Common Pleas_Greenville Co
4	Aquarius II	Cliffs At MP Golf & CC	CMP, Cliffs At MP Golf & CC, wells Fargo	2011-CP-23-7243	Court of Common Pleas_Greenville Co
5	Aquarius II	The Cliffs at Mountain Park Golf & Country Club, LLC, The Cliffs at Mountain Park, LLC, Longview Land Co., LLC, Waterfall Investment Group, LLC	Wells Fargo	2011-CP-23-8082	Court of Common Pleas_Greenville Co
6	Atlas Environmental	Longview Land Co.		Mechanics lien on CHC Golf Course Land	NC General Court of Justice_Buncombe Co.
7	Best Distributing	The Cliffs at Glassy Golf & Country Club, LLC		Demand Letter	
8	Blue Ridge Savings Bank	The Cliffs at Glassy			Court of Common Pleas_Greenville Co
9	Blue Ridge Savings Bank	James B. Anthony		11 SP 0890	NC General Court of Justice_Buncombe Co.
10	Bonitz Flooring Group	The Cliffs Communities, Inc. and The Cliffs at Glassy Golf & Country Club, LLC		Demand Letter	
11	Bunnell-Lammons Eng	The Cliffs Communities, Inc.		2011CV2311100710	SC Magistrate's Court_Greenville Co
12	CAT Financial	The Cliffs Communities		Repossessed Tractor	
13	CCHRB, LLC	The Cliffs at Mountain Park, LLC		Demand Letter	
14	Chris and Julie Hens	The Cliffs Communities, Inc.	Wells Fargo	11-CVS-15091	NC Superior Court_Mecklenburg Co
15	Clive and Carolyn Roberson	The Cliffs Communities, Inc. The Cliffs At Mountain Park, LLC and Cliffs Real Estate Inc.		Arbitration in Greenville Co	Greenville Co. Arbitration
16	Corbin Turf & Ornamental Supply Inc.	Clubco: Glassy, Keowee Vineyards, MP, WC		Demand Letter	
17	County of Buncombe	The Cliffs at Walnut Cove Golf & Country Club, LLC	Lists everybody who has liens in the area	12_CVD-629	NC General Court of Justice_Buncombe Co.
18	County of Buncombe	Longview Land Co, LLC at HC	Lists everybody who has liens in the area	12_CVD_685	NC General Court of Justice_Buncombe Co.
19	County of Buncombe	The Cliffs at High Carolina, LLC	Lists everybody who has liens in the area	12_12_CVD-628	NC General Court of Justice_Buncombe Co.
20	County of Buncombe	The Cliffs at Walnut Cove LLC	Lists everybody who has liens in the area	12_CVD_686	NC General Court of Justice_Buncombe Co.
21	CountyBank	The Cliffs Communities, Inc., Keowee Investment Group, LLC, The Cliffs at Glassy, Inc., James B. Anthony		2011-cp-23-7003	Court of Common Pleas_Greenville Co
22	CT Properties	Cliffs Construction		2012-CP-23-0571	Court of Common Pleas_Greenville Co
23	East Parkins Mills	CKS James B. Anthony		Notice of Default	
24	Emedia Group, Inc.	The Cliffs Communities, Inc.		2011CV2311100775	Magistrate's Court Greenville County
25	Emedia Group, Inc.	The Cliffs Communities, Inc.		2011CV23111007976	Magistrate's Court Greenville County
26	First South Bank	The Cliffs Communities, Inc. James B. Anthony, Keowee Investment Group, LLC Keowee Falls Investment Group, LLC, The Cliffs at Mountain Park, LLC The Cliffs at Keowee Springs, LLC Cliffs Construction, LLC		2012-cp-23-0743	Court of Common Pleas_Greenville Co

Schedule 6.5

27	First South Bank	The Cliffs Communities, Inc. James B. Anthony, Keowee Investment Group, LLC Keowee Falls Investment Group, LLC, The Cliffs at Mountain Park, LLC The Cliffs at Keowee Springs, LLC Cliffs Construction, LLC		2012-cp-39-176	Court of Common Pleas_Pickens Co
28	First South Bank	The Cliffs Communities, Inc. James B. Anthony, Keowee Investment Group, LLC Keowee Falls Investment Group, LLC, The Cliffs at Mountain Park, LLC The Cliffs at Keowee Springs, LLC Cliffs Construction, LLC	Worthington Hyde	2012-CP-37-109	Court of Common Pleas_Oconee Co
29	Gary Hawks	The Cliffs Communities, Inc.		2011CV2311100864	Magistrate's Court Greenville County
30	Georgia Bank and Trust	The Cliffs at Glassy	James B. Anthony, The Cliffs Communities, Inc.	2011-CP-23-6889	Court of Common Pleas_Greenville Co
31	Georgia Bank and Trust	The Cliffs at Glassy	James B. Anthony, The Cliffs Communities, Inc.	2011-CP-23-6888	Court of Common Pleas_Greenville Co
32	Georgia Bank and Trust	Cliffs Commercial Properties	James B. Anthony, The Cliffs Communities, Inc.	2011-CP-23-6891	Court of Common Pleas_Greenville Co
33	Georgia Bank and Trust	Cliffs Commercial Properties	James B. Anthony, The Cliffs Communities, Inc.	2011-CP-23-6890	Court of Common Pleas_Greenville Co
34	Georgia Bridge and Dock	The Cliffs at Mountain Park Golf & Country Club, LLC, The Cliffs at Mountain Park, LLC, Longview Land Co., LLC, Waterfall Investment Group, LLC, The Cliffs At Glassy, Inc.	Wells Fargo	2011-CP 23-8041	Court of Common Pleas_Greenville Co
35	Georgia Pine Straw	The Cliffs Communities, Inc.		Demand Letter	
36	Golf Agronomics Sand & Hauling	The Cliffs Valley Golf & Country Club, LLC	Urbana and Wells Fargo	Mechanics Lien	Court of Common Pleas_Greenville Co
37	Golf Agronomics Sand & Hauling	The Cliffs at Glassy Golf & Country Club, LLC	Wells Fargo	Mechanic's Lien	Court of Common Pleas_Greenville Co
38	Golf Agronomics Sand & Hauling	The Cliffs at Mountain Park Golf & Country Club, LLC, The Cliffs at Mountain Park, LLC, Longview Land Co., LLC, Waterfall Investment Group, LLC, The Cliffs At Glassy, Inc.	Wells Fargo	2011-CP-23-8082	Court of Common Pleas_Greenville Co
39	Golf Agronomics Sand & Hauling	Cliffs at Keowee Falls Golf & Country Club, LLC, Waterfall Investment Group, The Cliffs at Keowee Falls South Golf & Country Club, The Cliffs Golf Course Holding Company		Mechanics Lien	Court of Common Pleas_Oconee Co
40	Golf Agronomics Sand & Hauling	Cliffs at Keowee Vineyards Golf & Country Club, LLC	Wells Fargo	Mechanics Lien	Court of Common Pleas_Pickens Co
41	Golf Agronomics Sand & Hauling	Cliffs at Keowee Springs Golf & Country Club, LLC, Wells Fargo, Waterfall, The Cliffs Golf Course Holding Company	Wells Fargo	Mechanics Lien	Court of Common Pleas_Pickens Co
42	Golf Agronomics Sand & Hauling	The Cliffs at Walnut Cove Golf & Country Club, LLC and Waterfall Investment Group, LLC		12 M 34	NC General Court of Justice_Buncombe Co.
43	Golf Agronomics Sand & Hauling	The Cliffs at Walnut Cove Golf & Country Club, LLC and Waterfall Investment Group, LLC		12 M 35	NC General Court of Justice_Buncombe Co.

44	Golf Agronomics Sand & Hauling	The Cliffs at Walnut Cove Golf & Country Club, LLC and Waterfall Investment Group, LLC		12 M 36	NC General Court of Justice_Buncombe Co.
45	Hawkins Nursery	The Cliffs at Mountain Park Golf & Country Club	Wells Fargo	2011-CP-23-8345	Court of Common Pleas_Greenville Co
46	HD Supply Waterworks LTD	The Cliffs at Mountain Park, LLC, The Cliffs at Mountain Park Golf & Country Club, LLC, The Cliffs Communities, Inc.,	Darrell Whitaker and Wells Fargo	2011_CP-23-7054	Court of Common Pleas_Greenville Co
47	Helena Chemical Company	The Cliffs Club & Hospitality Group, Inc.		2011_CP-23-452	Court of Common Pleas_Greenville Co
48	Hertz Equipment Rental	The Cliffs Club & Hospitality Group, Inc.	Keowee Falls Investment Group, LLC	Demand Letter	
49	Indian Valley Industries	The Cliffs Club & Hospitality Group, Inc.		Demand Letter	
50	Interior Landscapes	The Cliffs at Glassy Golf & Country Club, LLC, The Cliffs Valley Golf & Country Club, LLC		Demand Letter	
51	James Guerrieri	The Cliffs at High Carolina		Demand Letter	
52	Jay B. Levy and Kathryn Levy	Cliffs Management Services, LLC		Demand Letter	
53	Jerry Whitmire Grading	The Cliffs Communities, Inc. Longview Land Co and Longview Land Co II		11 M 1450	NC General Court of Justice_Buncombe Co.
54	Kevin McCarthy	The Cliffs Communities, Inc. Keowee Falls Investment Group, LLC, Cliffs Real Estate, Inc. The Cliffs Golf and Country Club, Inc. and S&M Inc.		2011-cp-23-6376	Court of Common Pleas_Greenville Co
55	Lamar Advertising Co.	Cliffs Management Services		Demand Letter	
56	Land of WNC, LLC Jason Della Vecchia	The Cliffs at Walnut Cove Golf & Country Club, LLC		11-CVS-4503	NC Superior Court_Buncombe Co
57	Leonard Herb, Anne Marie Chen See, Constance M. Glavin, Tom Crain, Kraitain Crain, Dan Hallman, Diane Hallman, Mark McLain, Mary McLain	The Cliffs Communities, Inc. The Cliffs at Glassy Golf & Country Club, LLC, The Cliffs Club & Hospitality Group, Inc. and The Cliffs Golf & Country Club, Inc.		2012-CP-23-761	Court of Common Pleas_Greenville Co
58	Mac Parpers	The Cliffs Communities		Demand Letter	
59	Material Sales	Cliffs Management services		11CVD1213	NC General Court of Justice_Scotland Co.
60	Matt and Joyce Aquiar	The Cliffs at Walnut Cove, LLC		Demand Letter	NC Buncombe Co.
61	Mavis Consulting LTD	CMS		CVF11-964	Defiance Municipal Court Defiance Co. Ohio
62	Medalist Golf, Inc.	The Cliffs at Mountain Park Golf & Country Club, LLC, The Cliffs at Mountain Park, LLC, Longview Land Co., LLC, Waterfall Investment Group, LLC, The Cliffs At Glassy, Inc.	Wells Fargo	2011-CP-238083	Court of Common Pleas_Greenville Co
63	Morgan Concrete Co	CMP, Cliffs At MP Golf & CC, wells Fargo		2011-CP-23-8164	Court of Common Pleas_Greenville Co
64	Mountain View Office Building, LLC Andrew H. Kruegor and Hillary M. Kruegor	The Cliffs at High Carolina	TD Bank	11-CP-37-1132	Court of Common Pleas_Oconee Co
65	Mr. and Mrs. Jack Harrell	Keowee Falls Investment Group, LLC The Cliffs Communities, Inc.	S&ME, Inc.	2011-CP-23-5300	Court of Common Pleas_Greenville Co
66	Multi Bank	Cobb Cheves	The Cliffs Communities, Inc.	11SP1258	NC General Court of Justice_Buncombe Co.

67	NC DOR Tax	The Cliffs at Walnut Cove Golf & Country Club, LLC		Tax Audit Settlement	Buncombe County
68	Neff Rental	Cliffs Commercial Properties, LLC	Medalists Golf	2011-CP-23-7720	Court of Common Pleas, Greenville Co
69	Oakley	The Cliff Golf & Country Club		Demand Letter	
70	Old Town Bank	James B. Anthony	Walnut Cove Should be	11-CVS-975	NC Superior Court Haywood County
71	Pinnacle Care	The Cliffs Communities		2012-CP0-23-674	Court of Common Pleas, Greenville Co
72	Reef	The Cliffs Golf & Country Club Inc.; Cliffs at Keowee Town Market LLC		Demand Letter	
73	Regions	Cobb Cheves	The Cliffs Communities, Inc., The Cliffs at Walnut Cove, LLC and James B. Anthony	11SP1516	NC Superior Court-Buncombe Co.
74	Regions Bank	The Cliffs at Keowee Springs, LLC	James Anthony, The Cliffs Communities, Inc.	2011-CP-39-1479	Court of Common Pleas-Pickens Co.
75	Regions Bank	The Cliffs at Keowee Springs, LLC, James B. Anthony, The Cliffs Communities, Inc., Cliffs Construction, LLC		2011CP391472	Court of Common Pleas-Pickens Co.
76	Robinson Family	Keowee Investment Group LLC; The Cliffs Communities Inc, James B. Anthony		2011 CP 39-1248	Court of Common Pleas-Pickens Co.
77	Ronald Wilson	James B. Anthony		Demand Letter	
78	Shadowhawk	The Cliffs Communities, Inc,		2011-CP-23-6966	Court of Common Pleas, Greenville Co
79	Smoke Oil	The Cliffs at Mountain Park Golf & Country Club	CMP, Cliffs At MP Golf & CC, wells Fargo and Medalist	2011-CP-23-7243	Court of Common Pleas, Greenville Co
80	SRJ Timberlands II, LLC	The Cliffs at Mountain Park, LLC		Demand Letter	
81	SRJ Timberlands, LLC	The Cliff at Walnut Cove, LLC		Demand Letter	
82	SRJ Timberlands, LLC	The Cliffs at Mountain Park, LLC		Demand Letter	
83	Sunbelt rentals	The Cliffs at Mountain Park Golf & Country Club, LLC	Rental Equipment	2011067925	Greenville Co Clerk of Court
84	Sunbelt rentals	The Cliffs at Mountain Park Golf & Country Club	Rental Equipment	2011063816	Greenville Co Clerk of Court
85	Sunbelt rentals	Keowee Falls Golf & Country Club	Rental Equipment	Vol. 7 Page 56 Mechanic's Lien	Register of Deeds Oconee Co
86	TCF Equipment Finance	The Cliffs at Keowee Springs Golf & Country Club, LLC		UCC	SC Secretary of State
87	TCF Equipment Finance	The Cliffs at Walnut Cove Golf & Country Club, LLC		UCC	SC Secretary of State
88	TCF Equipment Finance	The Cliffs at Keowee Vineyards Golf & Country Club, LLC		UCC	SC Secretary of State
89	TCF Equipment Finance	The Cliffs at Glassy Golf & Country Club, LLC		UCC	SC Secretary of State
90	TCF Equipment Finance	The Cliffs Valley Golf & Country Club, LLC		UCC	SC Secretary of State
91	TCF Equipment Finance	The Cliffs at Keowee Falls Golf & Country Club, LLC		UCC	SC Secretary of State
92	TEK Systems	The Cliffs Communities, Inc,		Demand Letter	

93	The Cliffs Communities, Inc. Longview Land Co II, LLC, The Cliffs Golf & Country Club, Inc. The Cliffs at Mountain Park, LLC. The Cliffs at Walnut Cove, LLC. The Cliffs at High Carolina, LLC, Waterfall Investment Group, LLC, Longview Land Company, LLC, Landcare Development Co., Inc. and Cliffs Real Estate, Inc.	Urbana Fund 1, LLC Urbana C3, LLC, Synovous, NBSC, Suntex Capital Partners and Daryl Holland, Esquire		Greenville Co. SC 2011-CP-23-3894	Court of Common Pleas, Greenville Co
94	The Cliffs Investment Group, LLC	The Cliffs Communities, Inc.	James B. Anthony	11SP1497	NC General Court of Justice, Buncombe Co.
95	The Segerdahl Corporation	The Cliffs Communities, Inc., The Cliffs at Keowee Springs, LLC The Cliffs at Keowee Springs Property Owner Association, Inc.		2011_LP-39-84	Court of Common Pleas, Greenville Co
96	Travelers Rest Bank	LaBastide Investment Group, LLC, James B. Anthony, Cliffs Commercial Properties, LLC and Keowee Investment Group, LLC		2011-CP-23-6475	Court of Common Pleas, Greenville Co
97	Travelers Rest Bank	James B. Anthony, Cliffs Commercial Properties, LLC		2011-CP-37-937	Court of Common Pleas, Greenville Co
98	Trilyn LLC and Mark Antoncio	The Cliffs Communities, Inc.		Arbitration in Atlanta	Atlanta Ga Arbitration
99	Wall to Wall Golf	The Cliffs at Mountain Park Golf & Country Club, LLC	The Cliffs at Mountain Park LLC, The Cliffs At Mountain Park Golf & Country Club, LLC, Wells Fargo	2011-CP-23-8165	Court of Common Pleas, Greenville Co
100	WellsFargo	Longview Land Co., LLC	James B. Anthony, the Cliffs Communities, Inc. The Cliffs at Glassy, Inc.	2011-cP-23-6837	Court of Common Pleas, Greenville Co
101	William Marcus	The Cliffs Communities, Inc. The Cliffs at Mountain Park, LLC and JBA		2011-CP-23-6201	Court of Common Pleas, Greenville Co
102	William Marcus	The Cliffs Communities, Inc. The Cliffs at Mountain Park, LLC and JBA		2011-CP-23-1362	Court of Common Pleas, Greenville Co
103	Worthington Hyde	Keowee Falls Investment Group, LLC, Keowee Investment Group, LLC, The Cliffs At Glassy, Inc. The Cliffs Communities, Inc. James B. Anthony	Willima J. Delozier	2011-CP-37-125;	Court of Common Pleas, Oconee Co
104	Worthington Hyde	Keowee Falls Investment Group, LLC, Keowee Investment Group, LLC, The Cliffs At Glassy, Inc. The Cliffs Communities, Inc. James B. Anthony	Willima J. Delozier	2011-CP-23_0791	Court of Common Pleas, Greenville Co
105	Worthington Hyde	Keowee Falls Investment Group, LLC, Keowee Investment Group, LLC, The Cliffs At Glassy, Inc. The Cliffs Communities, Inc. James B. Anthony	Willima J. Delozier	2011-CP-39-156	Court of Common Pleas, Pickens Co
106	WP Law, Inc.	The Cliffs Communities, Inc. The Cliffs Golf & Country Club, Inc. and William Boyd		2012-CP-23-0545	Court of Common Pleas, Greenville Co

Exhibit B

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION**

Case No.: 12-01220

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364,
AND 507 (I) APPROVING POST-PETITION FINANCING, (II) GRANTING
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE
STATUS, (III) GRANTING ADEQUATE PROTECTION, (IV) MODIFYING
THE AUTOMATIC STAY,
AND (V) SCHEDULING A FINAL HEARING**

The relief set forth on the following pages, for a total of 22 pages including this page is hereby **ORDERED**.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

In re:

The Cliffs Club & Hospitality Group, Inc., *et al.*,¹ d/b/a The Cliffs Golf & Country Club,

Debtors.

CHAPTER 11

Case No. 12-01220

Joint Administration Pending

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364,
AND 507 (I) APPROVING POST-PETITION FINANCING, (II) GRANTING
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE
STATUS, (III) GRANTING ADEQUATE PROTECTION, (IV) MODIFYING
THE AUTOMATIC STAY,
AND (V) SCHEDULING A FINAL HEARING

On February 28, 2012, The Cliffs Club & Hospitality Group, Inc. d/b/a The Cliffs Golf & Country Club ("CCHG"), as a debtor-in-possession, filed the Debtors' Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507(b) (I) Approving Post-Petition Financing, (II) Granting Liens and Providing Superpriority Administrative Expense Status, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Scheduling a Final Hearing (the "DIP Loan Motion") [Docket No. __] seeking relief as described below. Joining CCHG as movants in the DIP Loan Motion are affiliated entities identified in footnote 1 (collectively with CCHG, the "Debtors"), each of which filed a chapter 11 case along with the case captioned above (the "Lead Case") (collectively, the "Debtors' Cases").

¹ The Debtors, followed by the last four digits of their respective taxpayer identification numbers, are as follows: The Cliffs Club & Hospitality Group, Inc. (6338); CCHG Holdings, Inc. (1356); The Cliffs at Mountain Park Golf & Country Club, LLC (2842); The Cliffs at Keowee Vineyards Golf & Country Club, LLC (5319); The Cliffs at Walnut Cove Golf & Country Club, LLC (9879); The Cliffs at Keowee Falls Golf & Country Club, LLC (3230); The Cliffs at Keowee Springs Golf & Country Club, LLC (2898); The Cliffs at High Carolina Golf & Country Club, LLC (4293); The Cliffs at Glassy Golf & Country Club, LLC

Among other things, the DIP Loan Motion seeks the following relief under various statutes and rules:²

A. Authority to execute a Debtor-in-Possession Loan and Security Agreement, including all schedules, exhibits, and annexes thereto by and among the Debtors and Carlile Development Company, LLC ("Carlile Development" or the "DIP Lender") in the form attached as Exhibit "A" to the DIP Loan Motion (as it may be amended, supplemented, restated, or otherwise modified from time to time, the "Agreement"), to enter into the "DIP Facility," and to execute further "DIP Facility Documents," all as defined in the Agreement, thereby to pay expenses in accordance with Agreement Section 4 and the DIP Budget (defined below);³

B. Under the terms of the DIP Facility Documents, authority to borrow up to \$7.5 million from DIP Lender, of which \$3 million may be advanced before a final hearing on the DIP Loan Motion, to pay interest on the aggregate amount outstanding at the non-default rate of 12% per annum, and, upon any Event of Default under the DIP Facility Documents, to pay interest at the default rate of 14% per annum;

C. Under the terms of the DIP Facility Documents, authority to grant to the DIP Lender automatically perfected security interests in, liens on and assignments of

(6559); The Cliffs Valley Golf & Country Club, LLC (6486); Cliffs Club & Hospitality Service Debtors, LLC (9665).

²11 U.S.C. §§ 105, 361, 362, 363, 364(c), 364(d), and 507; F.R.B.P. 2002, 4001 and 9014, and SC LBR 4001-4. In this order, the "Bankruptcy Code" means title 11 of the United States Code of Laws, "F.R.B.P." means the Federal Rules of Bankruptcy Procedure, and "SC LBR" means the Local Rules of the United States Bankruptcy Court for the District of South Carolina.

³Capitalized terms not defined in this order have the meanings assigned to them in the Agreement. Lower case terms in this order that are defined in the Bankruptcy Code or F.R.B.P. have the meanings assigned to them there. In the event of any discrepancy between the DIP Facility Documents (including the Agreement) and this order, this order controls.

(collectively, the “DIP Liens”) on all DIP Collateral (which includes substantially all assets of the Debtors’ estates except Avoidance and Nonassignable Actions), which DIP Liens shall be first priority security interests in, liens on and assignments of the DIP Collateral except for (x) mechanic’s and materialman’s liens and other Liens, if any, now prior to the Trust Indenture Liens (as defined below), (y) a Carve Out as described in the Agreement, and (z) by operation of law, the Liens of anyone not given proper notice of the DIP Loan Motion and its hearings;

D. Subject to the Carve Out, the Court’s grant of superpriority administrative claim status in each of the Debtors’ cases to any DIP Obligations, which status shall remain effective after any case conversion to Bankruptcy Code chapter 7 notwithstanding 11 U.S.C. § 726(b), to the extent permitted by law;

E. Under the terms of the DIP Facility Documents, authority to make adequate protection payments to the Indenture Trustee (defined below);

F. Authority to do other things, identified below, that require disclosure under SC BLR 4001-4(b); and

G. At or immediately after the Interim Hearing (defined below), the scheduling of a “final hearing” under F.R.B.P. 4001(c)(2) (the “Final Hearing”), and approval of a form of notice for the Final Hearing.

The Court held an initial hearing on the DIP Loan Motion pursuant to F.R.B.P. 4001(c)(2) (the “Interim Hearing”) on February ____, 2012. Present were counsel for the Debtors, the DIP Lender, the Indenture Trustee, and others, all as identified in the record of the Interim Hearing. This order (the “Interim Financing Order”) sets forth the Court’s ruling after the Interim Hearing.

Based upon the record established at the Interim Hearing, and after due deliberation and consideration, and for good and sufficient cause appearing therefore;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:⁴

Jurisdiction, Authority and Notice

1. The Debtors' Cases were all filed on February 28, 2012 (the "Petition Date"). Each Debtor has remained a debtor-in-possession since the Petition Date.

2. This Court has jurisdiction and authority to hear and determine the DIP Loan Motion as follows:

a. 28 U.S.C. §§ 1334(a) and (e) give the United States District Court for the District of South Carolina (the "District Court") jurisdiction over the Debtors' Cases, over all property of the estate in each Cliffs Case, and over all property of the Debtors as of the commencement of the case, wherever located;

b. Venue is proper under 28 U.S.C. §§ 1408, 1409;

c. 28 U.S.C. § 157(a) permits the District Court to refer matters to bankruptcy judges;

d. Through its Local Civil Rule 83.IX.01, the District Court has referred these matters to this Court;

⁴The findings and conclusions set forth in this order constitute the Court's findings of fact and conclusions of law pursuant to F.R.B.P. 7052, made applicable by F.R.B.P. 9014. All findings of fact and conclusions of law that the Court announced at the Interim Hearing are hereby incorporated to the extent not inconsistent herewith. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

e. 28 U.S.C. § 157(b)(1) provides that this Court “may hear and determine,” and may issue final judgments, on matters that (i) are referred as set forth above, and (ii) are “core proceedings,” and

f. The DIP Loan Motion commences a core proceeding under 28 U.S.C. §§ 157(b)(2)(D) (“orders in respect to obtaining credit”) and (M) (“orders approving the use or lease or property, including the use of cash collateral”).

3. On February __, the Debtors filed a certificate of service [Docket No. __] attesting to the notice that they gave of the DIP Loan Motion and the Interim Hearing.

Background and Stipulations

4. Wells Fargo Bank, N.A. (solely in its capacity as indenture trustee, the “Indenture Trustee”) is the trustee under that certain Indenture (the “Trust Indenture”) dated April 30, 2010 by and among, *inter alia*, CCHG as the Issuer, the other Debtors as Guarantors, James S. Anthony, as a guarantor, and the Indenture Trustee, acting for the benefit of holders (the “Noteholders”) of Series A Notes due 2017 and Series B Notes due 2017 (collectively, the “Series A and B Notes”).

5. Steve and Penny Carlile of Marshall, Texas (the “Carliles”) own a lot in High Carolina, one of the Debtors’ communities, and are holders of a Series A Note and a Series B Note. The Carliles are the principals of Carlile Development.

6. The Debtors stipulate to certain facts. In each case, the words “the Debtors stipulate” mean that what follows constitutes an admission against interest of each Debtor. Subject to paragraph 18 below, the stipulation does not bind any other party in interest who has already appeared, for example, the United States Trustee, or who may later appear, for example, a committee under 11 U.S.C. § 1102(a)(1). Such stipulations

do not constitute this court's findings of fact or conclusions of law. Such stipulations are subject to proof at a final hearing on the DIP Loan Motion.

7. The Debtors stipulate that the Debtors granted first priority consensual liens, *i.e.*, mortgages or security interests, as the case may be (collectively, the "Trust Indenture Liens"), on all personal property of the Debtors and certain real property located in Buncombe County, North Carolina; Greenville County, South Carolina; Oconee County, South Carolina; and Pickens County, South Carolina owned by certain of the Debtors (the "Trust Indenture Collateral") to secure their obligations under the Trust Indenture

8. The Debtors stipulate that the Debtors now owe to the Noteholders no less than \$64,050,000 principal under the Trust Indenture, excluding the Prepetition Bridge Loan (defined below).

9. The Debtors stipulate that CCHG informed the Carliles that it was experiencing a severe liquidity crisis, and that CCHG requested funding in the form of a loan advance of \$1,500,000.

10. The Debtors stipulate that SP 50 Investments, LTD ("SP 50"), an affiliated entity that the Carliles own, supplied the funds for that advance on February 3, 2012 (the "Initial Bridge Loan Advance"), through (i) SP 50's loan in the principal amount of \$1,500,000 to the Indenture Trustee, memorialized by a nonrecourse note, and (ii) the Indenture Trustee's loan of those funds to the Debtors as an "advance" under the Trust Indenture – all with requisite Noteholder approval.

11. The Debtors stipulate that they thereafter received an additional loan advance of \$500,000 on February 21, 2012 through the same mechanism (together with

the \$1,500,000 Initial Bridge Loan Advance, the "Prepetition Bridge Loan"), and that the Prepetition Bridge Loan, along with the Series A and B Notes, is secured by the Trust Indenture Liens.

12. The Debtors stipulate as follows:

a. the Trust Indenture Liens are legal, valid, binding, enforceable, non-avoidable and perfected;

b. as of the Petition Date, the Trust Indenture Liens had priority over any and all other security interests and liens on the Trust Indenture Collateral, subject only to certain security interests and liens otherwise permitted by the Trust Indenture and ancillary documents (to the extent any such permitted liens were then valid, properly perfected, non-avoidable, and senior in priority to the Trust Indenture Liens, the "Permitted Prepetition Prior Liens");

c. the obligations (the "Trust Indenture Obligations") under the Trust Indenture and ancillary documents (the "Trust Indenture Documents"), including those concerning the Prepetition Bridge Loan, constitute legal, valid, binding, and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the Trust Indenture Documents except as 11 U.S.C. § 362(a) dictates otherwise;

d. no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Trust Indenture Liens or the Trust Indenture Obligations exist, and no portion of the Trust Indenture Liens or the Trust Indenture Obligations is subject to any challenge or defense, including, without limitation, avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law;

e. the Debtors and their estates have no offsets, defenses, claims, objections, challenges, causes of action, and/or choses in action against or with respect to the Indenture Trustee, SP 50, Carlile Development, or the Carliles; and

f. the Debtors waive, discharge, and release any right they may have to challenge any of the Trust Indenture Obligations and the security for those obligations, and to assert any offsets, defenses, claims, objections, challenges, causes of action, and/or choses of action against the Indenture Trustee, SP 50, Carlile Development, or the Carliles.

The DIP Facility

13. The Debtors' need for the DIP Facility is manifest. Without it, the Debtors lack the cash to continue operating, and continued operation is essential to a preservation of the value of their assets until those assets can be sold.

14. The Debtors are unable to obtain unsecured credit allowable under 11 U.S.C. § 503(b)(1).

15. The Debtors are unable to obtain credit except through the granting of the DIP Liens on the DIP Collateral.

16. For the purpose of this Interim Order only, based on the terms and conditions of the Interim Cash Collateral Order, and with the Indenture Trustee's consent, there is adequate protection of the interest of the Indenture Trustee on the property for which senior DIP Liens will be granted.

17. The Agreement contains provisions for a budget (the "DIP Budget"). A copy the DIP Budget is attached to the DIP Loan Motion as Exhibit "C". The amounts

set forth to be spent before the Final Hearing are necessary to avoid immediate and irreparable harm to the Debtors' estates.

Disclosures under SC LBR 4001-4(b)

18. The DIP Loan Motion, or a party's counsel at the Interim Hearing, identified the following Agreement provisions to comply with SC LBR 4001-4(b)'s requirement for identification of provisions that the court "does not normally approve." The capital letters indicate subparagraphs of SC LBR 4001-4(b)(1). The Debtors and the DIP Lender seek approval in the Final Order, not in this Interim Order for the provisions set forth below:

(A) The Debtors' stipulations constitute admissions against interest of the Debtors as debtors and debtors in possession, and do not immediately bind anyone else, for example, the United States Trustee, a Committee, a trustee or examiner, or any creditor in any of the Debtors' Cases. Any party with standing other than the Debtors may commence an appropriate adversary proceeding or contested matter objecting to anything contained in the stipulations no later than seventy (70) days after the Petition Date. If no such adversary proceeding or contested matter is timely filed, then the following will occur without further notice, opportunity to be heard, or order of the Bankruptcy Court:

(i) the Debtors' stipulations will be deemed true and binding upon any and all parties in interest, including without limitation any committee or any representative of the estate appointed now or in the future in any of the Debtors' Cases in chapter 11 or in chapter 7 (collectively, "Bound Parties");

(ii) the Trust Indenture Liens will be deemed legal, valid, binding, enforceable, perfected, non-avoidable, and not subject to attack by any Bound Parties;

(iii) the Prepetition Bridge Loan and all other Trust Indenture Obligations shall be conclusive and binding upon all Bound Parties as legal, valid, binding, enforceable claims that are not subject to offset, counterclaim, equitable subordination, recharacterization, or other defense or claim; and

(iv) the Indenture Trustee, SP 50, the Carliles, the DIP Lender, and all their officers, agents, employees, affiliates, and assigns, will be deemed

to be released from any claims or other liability whatsoever arising from or related to the Trust Indenture, the Trust Indenture Liens, the Prepetition Bridge Loan, or any other Trust Indenture Obligations.

(B) The DIP Agreement and Interim DIP Order provide that the DIP Loan is secured by a first priority lien on substantially all assets of the Debtors pursuant to 11 U.S.C. §§ 364(c)(2) and (d)(1), and by a junior lien on assets that are subject to certain permitted prepetition liens (as set forth in the Interim DIP Order) pursuant to 11 U.S.C. § 364(c)(3), and which indebtedness to the DIP Lender shall have superpriority administrative priority status under 11 U.S.C. § 364(c)(1).

(D) Agreement Section 8.16, reproduced in the footnote below,⁵ contains a negative covenant that divests the Debtors, as debtors-in-possession, of some discretion in formulating a chapter 11 plan. The Carliles explain that provision as follows. They are not in the business of lending money to bankrupt estates; rather, they seek to provide the operating capital needed to keep the Debtors alive until the Carliles have sufficient time to purchase the Debtors' assets through a chapter 11 plan. The Carliles explain that Agreement Section 8.16 does not prohibit the Debtors from filing a plan that contains a higher and better offer for the assets than the Carliles' offer; rather, Agreement Section 8.16 ensures the Carliles reasonable and appropriate reimbursement and compensation, given the particular facts of the Debtors' Cases, if the assets are sold to another buyer.

(G) The provisions of this order bind the Debtors with respect to releases of the Indenture Trustee, SP 50, Carlile Development and the Carliles, but

⁵ "8.16. Contents of a Reorganization Plan.

(a) Proscription. No Borrower shall file, otherwise propose, or consent, to any Reorganization Plan in which DIP Lender or an affiliate is not a Reorganization Plan proponent, unless, before that act of filing, proposing, or consenting, either (i) DIP Lender has given its express written consent to that act, (ii) DIP Lender or Carlile Development Group has withdrawn as a Reorganization Plan proponent, or (iii) the Bankruptcy Court has approved 'Substitution Conditions,' defined in Paragraph 8.16(b) below, in full in a final order no longer subject to appeal.

(b) Definition. 'Substitution Conditions' means payment in full of the following, no later than Plan closing: (i) all outstanding obligations of the Prepetition Bridge Loan; (ii) all outstanding obligations of the DIP Facility; and (iii) to the extent earned (as described in the motion to approve bid procedures filed by one or more Borrowers on the Petition Date), a \$1,000,000 break-up fee, plus a \$750,000 expense reimbursement which shall increase by an additional \$100,000 per month for each month after the first six months after the Petition Date until paid in full."

no other parties are deemed to grant releases under this order except as is otherwise set forth in paragraph (A) just above or paragraph (N) just below.

(N) The provisions of this order bind a later appointed trustee to the agreement of the Debtors in two ways. One is set forth in paragraph (A) above. Here is the other:

Other than the Debtors, any party with standing to do so, but only to the extent of that party's standing, may commence an appropriate adversary proceeding or contested matter objecting to anything contained in the DIP Facility Documents or anything concerning the DIP Lender or the Indenture Trustee no later than the earliest of (i) twenty eight (28) days after the Maturity Date, (ii) the payment in full of all outstanding principal and interest under the DIP Facility, or (iii) the entry of an order under Bankruptcy Code § 1129. If no such adversary proceeding or contested matter is timely filed, then the following will occur without further notice, opportunity to be heard, or order of the Bankruptcy Court:

(i) the DIP Liens will be deemed legal, valid, binding, enforceable, perfected, non-avoidable, and not subject to attack by any Bound Parties; and

(ii) All DIP Obligations shall be conclusive and binding upon all Bound Parties as legal, valid, binding, enforceable claims that are not subject to offset, counterclaim, equitable subordination, recharacterization, or other defense or claim;

(iii) the DIP Lender, the Indenture Trustee, the Carliles, all their officers, agents, employees, affiliates, and assigns, will be deemed to be released from any claims or other liability whatsoever arising from or related to the DIP Facility, the DIP Collateral, the DIP Liens, the DIP Facility Documents, the DIP Liens or the DIP Obligations; and

(iv) by operation of DIP Agreement Section 10(c), the Debtors' estates, and the DIP Collateral, will be released from the indemnity obligations set forth in DIP Agreement Sections 10(a) and 10(b) and any other indemnification obligations.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED

THAT:

General Approvals and Directions

19. The relief requested in the DIP Loan Motion is hereby GRANTED, and the Agreement is hereby APPROVED, subject to the terms and conditions set forth in this order.

20. All objections to the DIP Loan Motion made before the entry of this order, and not withdrawn or resolved, are hereby overruled.

21. Subject to paragraph 22 below, the Court hereby authorizes, and approves and directs the following:

a. the Debtors' execution and delivery of the Agreement and all of the other DIP Facility Documents; the Debtors' performance of all acts to make, execute, and deliver to the DIP Lender all DIP Facility Documents; and the Debtors' payment of all filing and recording fees as may be appropriate to give effect to any of the terms and conditions of the DIP Financing Documents, to validate the perfection of the DIP Liens, or as the DIP Financing Documents otherwise contemplate;

b. the Debtors' compliance in full with the terms of the DIP Facility Documents, including representations, warranties, affirmative covenants, negative covenants and any other DIP Obligations (subject to the tolerances for materiality or other variances permitted in the DIP Facility Documents); and

c. the Debtors' obtaining Advances under the DIP Facility from time to time up to an aggregate principal amount outstanding at any time of \$7,500,000 in accordance with the Agreement (not counting interest, fees, and other charges payable in connection therewith).

22. Until entry of a Final Order, the Debtors may obtain Advances under the DIP Facility, and may spend those Advances as provided in the Agreement. In addition, this Order neither approves nor disapproves Agreement § 8.16, see paragraph 18 and footnote 5 above, but reserves the question of its enforceability for the Final Hearing.

23. The DIP Financing Documents may be executed and delivered on behalf of each Debtor by any officer, director, or agent of such Debtor, or by the sole member or manager of such Debtor, as the case may be, who by signing shall be deemed to represent himself or herself to be duly authorized and empowered to execute the DIP Financing Documents for and on behalf of such Debtor.

24. Upon execution and delivery thereof, each DIP Financing Document shall constitute valid and binding obligations of the Debtors and shall be enforceable against the Debtors in accordance with its terms.

25. The Debtors shall be jointly and severally liable to repay the DIP Obligations in accordance with the DIP Financing Documents. All DIP Collateral shall be security for all DIP Obligations without regard to the use of any Advance or the consideration or benefit received by any Debtor.

DIP Facility Liens, Superpriority and Carve Out

26. Except as provided in paragraph 27 below, the DIP Lender shall have, and is hereby granted, valid, binding, enforceable, non-avoidable and automatically and properly perfected DIP Liens upon all DIP Collateral to secure Full Payment of all DIP Obligations, with the following priorities: (a) first priority upon (i) all DIP Collateral⁶

⁶As set forth in Agreement Section 3.1, the DIP Collateral excludes Avoidance and Nonassignable Actions, as defined there, and excludes as well property taken to satisfy the Carve Out, after that property is taken for that purpose.

that, as of the Petition Date, is not subject to valid liens that are perfected and not subject to avoidance, pursuant to 11 U.S.C. § 364(c)(2); (ii) all DIP Collateral that exists or is acquired only after the Petition Date, pursuant to 11 U.S.C. § 364(c)(2); and (iii) the Trust Indenture Collateral, pursuant to 11 U.S.C. § 364(d)(1); and (b) junior priority upon all other DIP Collateral, pursuant to 11 U.S.C. § 364(c)(3).

27. Notwithstanding the provisions of paragraph 26 above, the DIP Liens shall remain subject to the Carve Out provisions of Agreement Section 3.5 and elsewhere within the Agreement.

28. Subject to the provisions of paragraph 29 below: (i) all DIP Obligations shall have administrative priority status in accordance with, and shall constitute an allowed superpriority claim (the "DIP Superpriority Claim") over, all other administrative expenses in the Debtors' Cases; (ii) the DIP Superpriority Claim shall have super-priority administrative expense status under Bankruptcy Code § 364(c)(1), with priority over all other costs and expenses of the kinds specified in, or ordered pursuant to, Sections 105, 326, 328, 330, 331, 503(b), 506(c) (subject to entry of the Final Order), 507(a), 507(b), 726, 1113, 1114, or any other provisions of the Bankruptcy Code, pursuant to 11 U.S.C. § 364(c)(1); and (iii) no costs or administrative expenses that have been or may be incurred in the Debtors' Cases, whether in any matters or proceedings related hereto or in any successor cases, and no priority claims or superpriority claims, are or will be prior to or on a parity with the DIP Superpriority Claim.

29. Notwithstanding the provisions of paragraph 28 above, Carve Out Expenses and other components of the Carve Out are paid from Advances, Cash Collateral, and if insufficient, from other DIP Collateral and have priority over repayment

of the DIP Facility. If all DIP Obligations and the Prepetition Bridge Loan obligations are not paid in full because Carve Out Expenses take priority, then the DIP Lender will obtain a 11 U.S.C. § 503(b) claim for that amount, which claim does not have superpriority status, and is therefore subject to subordination to chapter 7 administrative claims under 11 U.S.C. § 726(b). See Agreement § 3.5(c).

30. It shall be an event of default under the DIP Facility if an order is entered in any of the Debtors' Cases that authorizes the obtaining of credit or the incurrence of indebtedness by any Debtor (or any trustee or examiner) that is (a) secured by a security interest, mortgage, collateral interest or other lien on all or any part of the DIP Collateral that is equal to or senior to the DIP Liens, or (b) entitled to priority administrative status that is equal or senior to the DIP Superpriority Claim granted to the DIP Lender herein; provided, however, that nothing herein shall prevent the entry of an order that specifically conditions the granting of the benefits of clauses (a) or (b) above upon the full payment of all amounts owed under the DIP Facility Documents and the Prepetition Bridge Loan from the first proceeds of such credit or indebtedness.

Particular DIP Lender Protections – Now and Deferred

31. The DIP Lender shall not have any obligation or responsibility to monitor any Debtor's use of the advances under the DIP Facility, but may rely upon any Debtor's representations that the amount of any advances under the DIP Facility requested at any time, and the use thereof, comply with this order, the DIP Facility Documents, the DIP Budget (subject to the variances and carry forwards set forth in the Agreement), and all applicable provisions of the Bankruptcy Code, the F.R.B.P., and the SC LBR.

32. The DIP Lender is authorized to rely upon the person(s) who execute and deliver any of the DIP Financing Documents on behalf of the Debtors as having done so with all requisite power and authority.

33. Notwithstanding any bar order establishing a deadline for the filing of requests for payment or proofs of claims under 11 U.S.C. § 503(b), unless such an order explicitly provides to the contrary, the DIP Lender shall not be required to file any proof of claim, application for allowance of an administrative expense claims, or request for payment with respect to any of the DIP Obligations. The failure to file any such document shall not adversely affect the validity or enforceability of any of the DIP Facility Documents, the DIP Lender's rights, remedies, powers, or privileges under the DIP Facility Documents, or this order.

34. The DIP Motion makes the requests set forth in paragraph 18 above, as required by SCLBR 4001-4(b). The DIP Loan Motion also requests inclusion of a provision that none of SP 50, Carlile Development or the Indenture Trustee shall be deemed in control of the Debtors or their operation or to be acting as a "responsible person," "managing agent" or "owner operator" (as such terms are defined in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar state or federal statute) with respect to the operation or management of any Debtor merely by consenting to this order, making advances under the DIP Facility, or administering the financing relationship with the Debtors pursuant to the DIP Facility Documents. All such provisions shall be addressed by, and subject to, the Final Order.

35. The DIP Liens are legal, valid, binding, enforceable, and perfected upon entry of this order. The DIP Lender is not be required to file any UCC-1 financing statements, mortgages, deeds of trust, security deeds, notices of lien, or any similar document or take any other action (including possession of any of the DIP Collateral) to validate the perfection of any DIP Liens. If in its sole discretion the DIP Lender chooses to file or record any such mortgages, deeds of trust, security deeds, notices of lien, or UCC-1 financing statements, or to take any other action to perfect any part of the DIP Liens under applicable non-bankruptcy law, the Debtors and their respective officers are directed to execute or deliver any documents or instruments as the DIP Lender may reasonably request. The DIP Lender may, in its discretion, file a certified copy of this order in any filing office in any jurisdiction in which any Debtor is organized or has or maintains any DIP Collateral or an office.

36. Without further order, the Debtors and the DIP Lender, with the Indenture Trustee's consent, are hereby authorized to implement any amendments to and modifications of any of the DIP Facility Documents on the following conditions:

a. the amendment or modification must not constitute a "prohibited change" to the terms of the DIP Financing Documents, as defined below; and

b. copies of the amendment or modification must be filed with the Court and served upon counsel for the Committee, the U.S. Trustee, and other interested parties specifically requesting such notice.

The words "prohibited change" above mean a change that does any of the following: shortens the Maturity Date or otherwise shortens term of the DIP Facility; increases DIP Commitment; increases the Agreement's default or nondefault interest rate; adds new

Events of Default or redefines existing Events of Default; adds new remedies upon Default; or redefines existing remedies.

37. The Court hereby approves the following mechanism for modification of the 11 U.S.C. § 362(a) stay without further order of court. This paragraph is without prejudice to the right of DIP Lender or any other party in interest to move for stay relief at any time, or to take any action that does not require stay modification, as if the following mechanism did not exist:

a. If DIP Lender intends to exercise any remedies against any DIP Collateral under applicable nonbankruptcy law upon any Event of Default, and DIP Lender intends to pursue stay relief without further order of this court, DIP Lender shall send written notice (the "Initial Notice") to Borrowers, the CRO, counsel to the Indenture Trustee, any Committee and the United States Trustee of such intent (which notice may be delivered by facsimile), with specific reference to the subject DIP Collateral and remedies;

b. If the alleged Event of Default is not remedied to DIP Lender's satisfaction within seven (7) days after the Initial Notice is sent, and DIP Lender intends to pursue stay relief without further order of this court, then DIP Lender shall promptly file a notice of the alleged Event of Default and DIP Lender's proposed remedies.

c. The Debtors, the CRO, the Indenture Trustee or a Committee may file a motion in the Bankruptcy Court to stop such action no later than fourteen (14) days from the day that DIP Lender sent its Initial Notice;

d. If no motion under clause (c) is timely filed, DIP Lender may take the actions set forth in the notice, and the stay under Bankruptcy Code 362(a) shall be

deemed modified to permit such actions. DIP Lender shall file an affidavit with the Bankruptcy Court no later than three days after its actions to give notice of its actions, and

e. If any motion under clause (c) is timely filed, DIP Lender shall take no action that would otherwise violate the Bankruptcy Code 362(a) stay without further Bankruptcy Court order modifying the stay.

Construction of Order

38. The provisions of this order shall survive the entry of, and shall govern with respect to, any conflict with any order that may be entered confirming any plan of reorganization or liquidation, or converting any of the Debtors' Cases from chapter 11 to chapter 7.

39. Nothing in this order waives the rights of SP 50, Carlile Development, the Carliles, the Indenture Trustee, to whatever extent they otherwise have standing, or any other party in interest, to seek relief from the automatic stay, to seek the appointment of a trustee or examiner, to seek the conversion or dismissal of the Debtors' Cases, or to request any other relief in the Debtors' Cases. Nothing in this order waives the rights of any other party in interest to oppose any such relief.

40. This order does not attempt to restate all rights, remedies, powers, and privileges set forth in the Agreement or elsewhere in the DIP Facility Documents. All such rights, remedies, powers and privileges not restated here have the same force and effect as if they were restated here.

41. Subject to the Final DIP Order, the extension of credit under the DIP Facility and the use of cash collateral hereunder shall be deemed to have been made and

allowed in good faith, and for valid business purposes and uses, within the meaning of 11 U.S.C. § 364(e), and the DIP Lender and the Indenture Trustee are therefore entitled to the protection and benefits of 11 U.S.C. § 364(e) and this order.

42. To any extent that any F.R.B.P., Federal Rule of Civil Procedure, or SC LBR delays otherwise stays the effectiveness of this order unless the Court orders otherwise, the Court hereby orders that such stay shall not be effective as to this order, and this order shall take effect immediately upon entry.

43. [This Court has and shall retain jurisdiction to enforce and interpret this order.

Final Hearing

44. The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility shall be held at _____ o'clock _____.m. on _____, 2011, in the courtroom of Judge _____, courtroom _____, United States Bankruptcy Court for the District of South Carolina, _____.

45. On or before _____, 2012, the Debtor shall serve, by United States mail, first class postage prepaid, notice of the entry of this Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this order and the DIP Loan Motion on (a) the parties given notice of the Interim Hearing, and (b) any party who has filed prior to such date a request for notices with this Court. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of the Court no later than _____, 2012, and shall serve that objection so that it is received on or before such date by: (a) counsel

for the Debtors, McKenna Long & Aldridge LLP, 303 Peachtree Street, Suite 5300, Atlanta, GA 30308, Attention: Gary W. Marsh, (b) counsel for the DIP Lender, Bill Rothschild, Ogier, Rothschild, Rosenfeld & Ellis-Monro, P.C., 170 Mitchell Street, S.W. Atlanta, GA 30303, and Nexsen Pruet, LLC, 1230 Main Street, Suite 700, (29201), P.O. Drawer 2426, Columbia, South Carolina 29202, Attention: Julio E. Mendoza, Jr., Esq., and (c) counsel for the Indenture Trustee.

46. An objecting party that does not appear at the Final Hearing shall be deemed to have waived its objection.