**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	)	Chapter 11
AVAYA INC., *et al.*,[1]	)	Case No. 23-90088 (DRJ)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket Nos. 47, 77, 200, 221**

FINAL ORDER (I) AUTHORIZING THE DEBTORS (A) TO OBTAIN POST-PETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) AND 364(e), AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363, 364, 503, 506(c) AND 507(b) AND (III) GRANTING RELATED RELIEF

Upon the motions (the "DIP Motions") of Avaya Inc. (the "Company" or the "Borrower"), Avaya Holdings Corp. ("HoldCo"), and the subsidiaries of the Company that are debtors and debtors in possession (the "Subsidiary Guarantors," and, collectively, with the Company and HoldCo, the "Loan Parties" or the "Debtors") in the above-captioned cases (the "Chapter 11 Cases"), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c) and 507 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and the local bankruptcy rules for the Southern District of Texas (the

[1] A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://www.kccllc.net/avaya. The location of Debtor Avaya Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 350 Mount Kemble Avenue, Morristown, New Jersey 07960.

"Local Bankruptcy Rules"), seeking entry of the First Interim Order and the Second Interim Order (each as defined herein) and a final order (this "Final Order") [Docket Nos. 47, 200]:[2]

a. authorizing the Borrower to obtain senior secured postpetition asset based financing on a superpriority basis (the "DIP ABL Facility," and all amounts extended under the DIP ABL Facility, the "DIP ABL Loans"), and for HoldCo and the Subsidiary Guarantors (collectively, the "Guarantors") to guarantee the Borrower's obligations in connection with the DIP ABL Facility, consisting of a senior secured postpetition revolving credit facility pursuant to the terms and conditions set forth in that certain *Superpriority Secured Debtor-in-Possession ABL Credit Agreement*, substantially similar to the form attached to the Supplemental DIP Motion as Exhibit A by and among the Borrower, the Guarantors, Citibank, N.A., as administrative agent and collateral agent (in such capacities, the "DIP ABL Agent"), for and on behalf of itself, and the lenders party thereto (collectively, including the DIP ABL Agent, the "DIP ABL Lenders") (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, together with the schedules and exhibits attached thereto, the "DIP ABL Credit Agreement") and the other agreements (including an intercreditor agreement), documents, instruments and/or amendments executed and delivered in connection therewith (collectively with the DIP ABL Credit Agreement and the DIP-to-Exit ABL Commitment Papers (as defined herein), the "DIP ABL Documents");

b. authorizing the Loan Parties to execute and enter into the DIP ABL Documents and to perform all such other and further acts as may be required in connection therewith (including, for the avoidance of doubt, designating cash management obligations or hedging obligations as DIP ABL Obligations in accordance with the terms thereunder);

c. authorizing the Loan Parties to use the proceeds of the DIP ABL Facility in accordance with the terms of the Second Interim Order, this Final Order, the DIP Documents (as defined herein) and the DIP Budget (as defined herein), (i) for working capital and general corporate purposes of the Debtors, (ii) to pay obligations arising from or related to the Carve Out (as defined herein), (iii) to pay Allowed Professional Fees (as defined herein), (iv) to pay Adequate Protection Obligations (as defined herein), and (v) to pay fees and expenses incurred in connection with the transactions contemplated by the DIP Motions;

d. authorizing the Borrower and Holdings to enter into that certain DIP-to-Exit ABL Commitment Letter, and the fee letters executed in connection

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the DIP Motions or the Interim Orders (as defined herein), as applicable.

therewith (collectively, the "DIP-to-Exit ABL Commitment Papers") and to pay, on a final and irrevocable basis, the fees, expenses and other amounts payable under the DIP-to-Exit ABL Commitment Papers as such fees become earned, due and payable, including, without limitation, structuring, commitment, upfront and similar fees and legal fees and expenses;

e. authorizing the Borrower to obtain senior secured postpetition financing on a superpriority basis (the "DIP Term Loan Facility," and, together with the DIP ABL Facility, the "DIP Financing" or the "DIP Facilities") and for the Guarantors to guarantee the Borrower's obligations in connection with the DIP Term Loan Facility, consisting of a non-amortizing term loan facility in an aggregate principal amount of up to $500,000,000 (all amounts extended under the DIP Term Loan Facility, the "DIP Term Loans," and, together with the DIP ABL Loans, the "DIP Loans"; and the commitments in respect of the DIP Loans, the "DIP Commitments"); *provided* that (i) an initial draw in the principal amount of up to $400,000,000 (the "Initial DIP Term Loans") was made available to, and drawn by, the Debtors upon entry of the First Interim Order, and (ii) the remaining undrawn portion of the DIP Term Loan Facility shall be made available to the Debtors upon entry of this Final Order, all on the terms and conditions set forth in the DIP Term Loan Documents (as defined herein);

f. authorizing the Loan Parties to execute and enter into the *Superpriority Secured Debtor in Possession Credit Agreement* dated as of February 15, 2023, among the Borrower, the Guarantors, the lenders party thereto (the "DIP Term Lenders," [3] and, together with the DIP ABL Lenders, the "DIP Lenders") and Wilmington Savings Fund Society, FSB, as administrative agent and collateral agent (in such capacities, the "DIP Term Loan Agent," and, together with the DIP ABL Agent, the "DIP Agents," and, collectively with the DIP Lenders, the "DIP Secured Parties") (as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof and thereof, the "DIP Term Loan Credit Agreement" and, collectively with the schedules and exhibits attached thereto and all agreements, documents, instruments and/or amendments executed and delivered in connection therewith, the "DIP Term Loan Documents," and, together with the DIP ABL Documents including, without limitation, the intercreditor agreement to be entered into by and among the DIP Term Loan Agent and the DIP ABL Agent, the "DIP Documents," and such intercreditor agreement, the "DIP ABL Intercreditor Agreement") and to perform all such other and further acts as may be required in connection with the DIP Term Loan Documents;

g. authorizing the Loan Parties to use proceeds of the DIP Term Loan Facility and Cash Collateral (as defined herein), in accordance with the terms of the

[3] The DIP Term Lenders include the lenders that are party to the DIP Commitment Letter, dated February 14, 2023.

Interim Orders, this Final Order, the DIP Documents and the DIP Budget (as defined herein), (i) to indefeasibly repay in full in cash all of the indebtedness outstanding under the Prepetition ABL Credit Agreement (as defined herein), including to cash collateralize all obligations in respect of letters of credit issued, secured cash management agreements and secured hedging agreements, (ii) to fund certain intercompany loans to non-Debtor affiliates of the Debtors, (iii) for working capital and general corporate purposes of the Debtors, (iv) to pay obligations arising from or related to the Carve Out (as defined herein), (v) to pay Allowed Professional Fees (as defined herein), (vi) to pay Adequate Protection Obligations (as defined herein), and (vii) to pay fees and expenses incurred in connection with the transactions contemplated hereby;

h. authorizing Debtor Sierra Communications International LLC ("Sierra Communications") to use (and Sierra Communications having so used following the entry of the First Interim Order) proceeds of the Initial DIP Term Loans to fund an intercompany loan in an amount not to exceed $50,000,000 to non-Debtor Avaya International Sales Ltd (the "Initial Intercompany Transaction") in accordance with the terms of the Interim Orders and this Final Order, the DIP Documents and the Intercompany Transfer Mechanic (as defined herein);

i. authorizing the Borrower to transfer (and the Borrower having so transferred upon the entry of the First Interim Order) up to $40,000,000 of proceeds of the Initial DIP Term Loans to a segregated account held by Avaya Inc. for purposes of backstopping the liquidity of certain foreign non-Debtor affiliates to the extent necessary to preserve the value of the Debtors' international business operations (the "Foreign Reserve Account");

j. granting adequate protection, subject to the Carve Out, and to the extent set forth herein, to the Prepetition Secured Parties under the Existing Agreements on account of the Primed Liens and for the use of their Cash Collateral and the Prepetition Collateral (all as defined herein) to the extent of any diminution in value of their respective interests in the Prepetition Collateral;

k. authorizing the Debtors to pay, on a final and irrevocable basis, the principal, interest, fees, expenses, and other amounts payable under the DIP Documents as such become earned, due and payable, including, without limitation, the Term Upfront Fee, the Put Option Premium, the Exit Fee (each as defined in the DIP Term Loan Credit Agreement), and all letter of credit, fronting, undrawn commitment and other fees due and payable in respect of the DIP ABL Obligations (as defined herein), including upfront and structuring fees under the DIP-to-Exit ABL Commitment Papers, and any agency, audit fees, appraisal fees, valuation fees, administrative and collateral agents' fees and expenses, and prepetition and postpetition reasonable fees and disbursements of each of the DIP Secured Parties' attorneys, advisors, accountants, appraisers, bankers and other consultants, all to the extent provided in, and in accordance with, the DIP Documents;

l. granting valid, enforceable, non-avoidable, and fully perfected liens and security interests pursuant to Bankruptcy Code section 364(c)(2) and priming liens pursuant to Bankruptcy Code section 364(d)(1) on the DIP Collateral and all proceeds thereof, including any Avoidance Proceeds, subject only to the Carve Out, the Permitted Liens (all as defined herein), if any, and the liens and security interests in favor of DIP Secured Parties and Prepetition Secured Parties, in each case on the terms and conditions set forth herein (including the priorities set forth on **Exhibit 1**[4] hereto) and in the DIP Documents to secure principal of, and accrued interest on, the DIP Loans, and all other fees, costs, expenses, indemnification obligations, reimbursement obligations, charges, premiums, if any, additional interest, and all other obligations of whatever nature owing, including, for the avoidance of doubt, cash management obligations and hedging obligations, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable under the DIP Facilities (the "DIP Obligations");

m. granting superpriority administrative expense claims pursuant to Bankruptcy Code section 364(c)(1) against each of the Debtors' estates to the DIP Secured Parties, with respect to the DIP Obligations with priority over any and all administrative expenses of any kind or nature subject and subordinate only to the Carve Out (and on a *pari passu* basis as between the DIP Superpriority Claims with respect to the DIP Term Loan Obligations and the DIP Superpriority Claims with respect to the DIP ABL Obligations) on the terms and conditions set forth herein and in the DIP Documents;

n. authorizing (i) the waiver of the Debtors' and the estates' ability to surcharge the DIP Collateral pursuant to Bankruptcy Code section 506(c) with respect to the DIP Secured Parties and (ii) immediately upon entry of this Final Order, the waiver of (x) the Debtors' and the estates' ability to surcharge against the Prepetition Collateral pursuant to Bankruptcy Code section 506(c) with respect to the Prepetition Secured Parties, effective as of the Petition Date, (y) the applicability of the "equities of the case" exception under Bankruptcy Code section 552(b) with respect to the proceeds, products, offspring or profits of the Prepetition Collateral, and (z) the doctrine of "marshaling" and any other similar equitable doctrine with respect to any of the Prepetition Collateral and the DIP Collateral;

o. subject to the Remedies Notice Period, granting authorization for the DIP Secured Parties to exercise remedies under the DIP Documents on the terms

[4] For the avoidance of doubt, **Exhibit 1** attached hereto shall supersede Exhibit A attached to the First Interim Order in all respects.

described herein and therein, upon the occurrence and during the continuation of a DIP Termination Date (as defined herein); and

p. waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Final Order.

Notice of the DIP Motions having been served by the Debtors as set forth in the affidavits of service filed at Docket Nos. 152 and 213, and it appearing that such notice was the best available under the circumstances; and the Court having (a) reviewed the DIP Motions, (b) held a hearing with respect to the First DIP Motion on an interim basis on February 15, 2023 (the "First DIP Hearing"), (c) entered the *Interim Order (I) Authorizing the Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, 364, 503, 506(c) and 507(b), (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and (IV) Granting Related Relief* [Docket No. 77] (the "First Interim Order") granting the relief requested in the First DIP Motion, (d) held a hearing with respect to the Supplemental DIP Motion on an interim basis on February 23, 2023 (the "Second DIP Hearing" and, together with the First DIP Hearing, the "DIP Hearings"), and (e) entered the *Second Interim Order (I) Authorizing the Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(b), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e), and (B) to Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, 364, 503, 506(c) and 507(b), (III) Scheduling Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and (IV) Granting Related Relief* [Docket No. 221] (the "Second Interim Order," and, together with the First Interim Order, the "Interim Orders"); and the relief requested in the DIP Motions being in the best interests of the Debtors, their creditors and their estates and all other parties in interest in these Chapter 11 Cases; and the Court having found and determined that the relief granted pursuant to the Interim Orders was necessary to avoid immediate and irreparable loss and damage to the Debtors' estates; and the Court having determined that the legal and factual bases set forth in the DIP Motions establish just cause for the relief granted herein; and upon the record made by the declarations in support of the relief requested by the DIP Motions and the First Day Declaration (collectively, the "Declarations"), and at the DIP Hearings and after due deliberation and sufficient cause appearing therefor;

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

1. *Disposition.* The relief requested in the DIP Motions is granted on a final basis in accordance with the terms of this Final Order. Any objections to the DIP Motions with respect to the entry of this Final Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled on the merits. This Final Order shall become effective immediately upon its entry.

2. *Jurisdiction*. This Court has core jurisdiction over the Chapter 11 Cases, the relief requested in the DIP Motions, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

3. *Relief Is a Proper Exercise of the Debtors' Business Judgment*. The final relief granted herein is a proper exercise of the Debtors' business judgment to incur the DIP Facilities in order to support the orderly continuation of the operation of the Debtors' businesses, to maintain business relationships with vendors, suppliers, and customers, to make capital expenditures, to pay adequate protection, and to satisfy other working capital and operational needs.

4. *Debtors' Stipulations*. Without prejudice to the rights of any party in interest (but subject in all respects to the limitations set forth in Paragraphs 29 and 31 herein) the Debtors admit, stipulate, acknowledge and agree that:

(a) *Prepetition ABL Facility*.

(i) Pursuant to that that certain ABL Credit Agreement, dated as of December 15, 2017, by and among the Company, certain other borrowers party thereto (together with the Company, the "Prepetition ABL Borrowers"), the guarantors thereto, Citibank, N.A., as administrative agent and collateral agent (in such capacities, the "Prepetition ABL Agent"), and each lender from time to time party thereto (the "Prepetition ABL Lenders," and, together with the Prepetition ABL Agent, the "Prepetition ABL Secured Parties") (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Prepetition ABL Credit Agreement," and, together with the security agreements, pledge agreements, mortgages, deeds of trust and other security documents executed by any of the Prepetition ABL Borrowers in favor of the Prepetition ABL Secured Parties, the "Prepetition ABL Credit Documents," and such credit facility thereunder, the "Prepetition ABL Facility"), the Prepetition ABL Secured Parties provided the Prepetition ABL Borrowers with an asset based credit facility. Each of the Prepetition ABL Credit Documents is valid, binding, and enforceable in accordance with its terms.

(ii) As of the date of the filing of the Chapter 11 Cases (the "Petition Date"), the Prepetition ABL Borrowers and the Prepetition Guarantors (as defined herein) were justly and lawfully indebted and liable to the Prepetition ABL Secured Parties, without defense, counterclaim or offset of any kind, in the aggregate principal amount of approximately $56 million in respect of loans made and approximately $40 million in respect of letters of credit issued pursuant to, and in accordance with the terms of, the Prepetition ABL Credit Documents, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees, in each case, that are chargeable or reimbursable under the Prepetition ABL Credit Documents), charges, indemnities and other obligations incurred in connection therewith (whether arising before, on or after the Petition Date) as provided in the Prepetition ABL Credit Agreement (collectively, the "Prepetition ABL Obligations"), which Prepetition ABL Obligations have been guaranteed on a joint and several basis by HoldCo and all of the Subsidiary Guarantors (other than Sierra Communications, KnoahSoft, Inc., and CTIntegrations, LLC) (the "Prepetition Guarantors").

(iii) The Prepetition ABL Obligations constitute the legal, valid and binding obligations of the Prepetition ABL Borrowers and the Prepetition Guarantors, enforceable in accordance with the terms of the Prepetition ABL Credit Documents (other than in respect of the stay of enforcement arising from Bankruptcy Code section 362); and no portion of the Prepetition ABL Obligations or any payments made to the Prepetition ABL Secured Parties or applied to or paid on account of the obligations owing under the Prepetition ABL Credit Documents, prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

(iv) The liens and security interests granted to the Prepetition ABL Secured Parties (the "Prepetition ABL Liens") pursuant to and in connection with the Prepetition ABL Credit Documents are: (i) valid, binding, perfected, enforceable, first-priority liens and security interests in the Prepetition ABL Priority Collateral;[5] (ii) valid, binding, perfected,

[5] "Prepetition ABL Priority Collateral" has the meaning given to "ABL Priority Collateral" in the ABL Intercreditor Agreement.

enforceable, second-priority liens and security interests in the Prepetition Term Priority Collateral[6] (together with the Prepetition ABL Priority Collateral, the "Prepetition Collateral"); (iii) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense or Claim under the Bankruptcy Code or applicable non-bankruptcy law; and (iv) as of the Petition Date, with respect to Prepetition Collateral that is Prepetition Term Priority Collateral, subject and subordinate to the Prepetition First-Priority Liens (as defined herein).

(v) The aggregate value of the Prepetition ABL Priority Collateral substantially exceeded the aggregate amount of the Prepetition ABL Obligations as of the Petition Date and the entry of the First Interim Order.

(vi) None of the Debtors held any claims or causes of action against, or with respect to, the Prepetition ABL Secured Parties as of the Petition Date. Pursuant to the First Interim Order, all Prepetition ABL Obligations were indefeasibly paid in full in cash or cash collateralized on February 15, 2023.

(b) *Prepetition Term Loan Facility*.

(i) Pursuant to that certain Term Loan Credit Agreement, dated as of December 15, 2017, by and among the Company, HoldCo, Goldman Sachs Bank USA, as administrative agent and collateral agent ("Goldman" and, in such capacities, the "Prepetition Term Loan Agent"), the other parties thereto and each lender from time to time party thereto (the "Prepetition Term Loan Lenders," and, together with the Prepetition Term Loan Agent, the "Prepetition Term Loan Secured Parties") (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Prepetition

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[6] "Prepetition Term Priority Collateral" has the meaning given to "Term Priority Collateral" in the ABL Intercreditor Agreement.

Term Loan Credit Agreement," and together with any "Credit Documents," as defined in the Prepetition Term Loan Credit Agreement, and any guarantees, security agreements, pledge agreements, mortgages, deeds of trust and other security documents executed by any of the Debtors in favor of the Prepetition Term Loan Agent, for its benefit and for the benefit of the Prepetition Term Loan Lenders, the "Prepetition Term Loan Credit Documents"), which provided a term loan facility pursuant to which the Prepetition Term Loan Secured Parties made loans to the Borrower comprising the Tranche B-1 Term Loans, the Tranche B-2 Term Loans and the Tranche B-3 Term Loans (each as defined in the Prepetition Term Loan Credit Agreement) (collectively, the "Prepetition Term Loans").[7] Each of the Prepetition Term Loan Credit Documents is valid, binding, and enforceable in accordance with its terms. Proceeds from the issuance of the Tranche B-3 Term Loans in the amount of $220,606,000 (such amount, together with any accrued income, the "Escrow Cash") were deposited in an escrow account maintained by the Escrow Agent, and subsequently invested in money market mutual funds, pursuant to that certain Escrow Agreement (as defined in the RSA) and Amendment No. 4 to the Prepetition Term Loan Credit Agreement dated as of July 12, 2022. As of the Petition Date, the amount of Escrow Cash was approximately $224,634,843.

(ii) As of the Petition Date, the Company and the Prepetition Guarantors were justly and lawfully indebted and liable to the Prepetition Term Loan Secured Parties in respect of the (A) Legacy Term Loans in the aggregate principal amount of no less than $1,543,000,000, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees, in each case, that are chargeable or reimbursable under the Prepetition Term Loan Credit Documents), charges, indemnities and

[7] The Tranche B-1 Term Loans and the Tranche B-2 Term Loans are, together, the "Legacy Term Loans."

other obligations incurred in connection therewith as provided in the Prepetition Term Loan Credit Documents (collectively, the "Prepetition Legacy Term Loan Obligations") and (B) Tranche B-3 Term Loans in the aggregate principal amount of no less than $350,000,000, plus accrued and unpaid interest thereon and fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees, in each case, that are chargeable or reimbursable under the Prepetition Term Loan Credit Documents), charges, indemnities and other obligations incurred in connection therewith as provided in the Prepetition Term Loan Credit Documents (the "Prepetition Tranche B-3 Term Loan Obligations," and together with the Prepetition Legacy Term Loan Obligations, the "Prepetition Term Loan Obligations").

(c) *Prepetition Legacy Notes*.

(i) Pursuant to that certain Indenture, dated as of September 25, 2020, by and among the Company, the guarantors party thereto and Wilmington Trust, National Association, as trustee and as notes collateral agent (the "Prepetition Legacy Notes Trustee") (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Prepetition Legacy Notes Indenture," and, together with any supplements, security agreements, pledge agreements, mortgages, deeds of trust and other security documents executed by any of the Debtors in favor of the Prepetition Legacy Notes Trustee, for its benefit and for the benefit of the noteholders (in such capacities, the "Prepetition Legacy Notes Parties"), the "Prepetition Legacy Notes Documents"), the Company issued those certain 6.125% senior secured first lien notes (the "Prepetition Legacy Notes"). Each of the Prepetition Legacy Notes Documents is valid, binding, and enforceable in accordance with its terms.

(ii) *Prepetition Legacy Notes Obligations*. As of the Petition Date, the Company and the Prepetition Guarantors were justly and lawfully indebted and liable to the

Prepetition Legacy Notes Parties in the aggregate principal amount of no less than $1,000,000,000, plus accrued and unpaid interest thereon and fees, expenses (that are chargeable or reimbursable under the Prepetition Legacy Notes Documents) and the Applicable Premium (as defined in the Prepetition Legacy Notes Indenture) (collectively, the "Prepetition Legacy Notes Obligations").

(d) *Prepetition Secured Exchangeable Notes*.

(i) Pursuant to that certain Indenture, dated as of July 12, 2022, by and among the Company, the Prepetition Guarantors, and Wilmington Trust, National Association as trustee, exchange agent and notes collateral agent (the "Prepetition Secured Exchangeable Notes Trustee," and, together with the Prepetition Legacy Notes Trustee, the Prepetition Term Loan Agent, the "Prepetition First Lien Agents") (as amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Prepetition Secured Exchangeable Notes Indenture," and, together with any supplements, security agreements, pledge agreements, mortgages, deeds of trust and other security documents executed by any of the Debtors in favor of the Prepetition Secured Exchangeable Notes Trustee, for its benefit and for the benefit of the noteholders (in such capacities, the "Prepetition Secured Exchangeable Notes Parties," and, together with the Prepetition Term Loan Secured Parties and the Prepetition Legacy Notes Parties, the "Prepetition Secured Parties"), the "Prepetition Secured Exchangeable Notes Documents"), the Company issued those certain 8.00% senior secured first lien notes (the "Prepetition Secured Exchangeable Notes"). Each of the Prepetition Secured Exchangeable Notes Documents is valid, binding and enforceable in accordance with its terms.

(ii) As of the Petition Date, the Company and the Prepetition Guarantors were justly and lawfully indebted and liable to the Prepetition Secured Exchangeable Notes Parties in the aggregate principal amount of no less than $250,000,000 plus accrued and unpaid interest thereon and fees, expenses (that are chargeable or reimbursable under the Prepetition Secured Exchangeable Notes Documents) and the Notes Special Premium (as defined in the Prepetition Secured Exchangeable Notes Indenture) (collectively, the "Prepetition Secured Exchangeable Notes Obligations," and, together with the Prepetition Term Loan Obligations and the Prepetition Legacy Notes Obligations, the "Prepetition First Lien Obligations").

(e) The Prepetition First Lien Obligations constitute the legal, valid and binding obligations of the Company and the Prepetition Guarantors, as applicable, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from Bankruptcy Code section 362); and, other than as set forth in this Final Order, no portion of the Prepetition First Lien Obligations or any payments made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Term Loan Credit Documents, Prepetition Legacy Notes Documents and the Prepetition Secured Exchangeable Notes Documents (collectively, the "Existing Agreements") prior to the Petition Date is subject to any contest, attack, rejection, recovery, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code or applicable non-bankruptcy law.

(f) The liens and security interests granted to the Prepetition Secured Parties pursuant to and in connection with the Existing Agreements (the "Prepetition First-Priority Liens" or the "Primed Liens") are: (i) valid, binding, perfected, enforceable, first-priority liens and security interests in the Prepetition Term Priority Collateral; (ii) valid, binding, perfected, enforceable, second-priority liens, and security interests in the Prepetition ABL Priority Collateral; (iii) not subject to avoidance, recharacterization, subordination, recovery, attack, effect, counterclaim, defense, or Claim under the Bankruptcy Code or applicable non-bankruptcy law;

and (iv) as of the Petition Date, with respect to Prepetition Collateral that is Prepetition ABL Priority Collateral, subject and subordinate to the liens and security interests in favor of the Prepetition ABL Secured Parties.

(g) As of the Petition Date, the Primed Liens were valid, binding, enforceable, non-avoidance, and properly perfected, and were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain senior liens senior by operation of law or as permitted by the Prepetition ABL Credit Documents and the Existing Agreements (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable, and senior in priority to the Primed Liens as of the Petition Date or were in existence immediately prior to the Petition Date that were perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b)) (such liens, "Permitted Liens").

(h) The First Lien Pari Intercreditor Agreement, dated as of September 25, 2020, by and among the Company, the Prepetition Term Loan Agent, the Prepetition Legacy Notes Trustee, the Prepetition Secured Exchangeable Notes Trustee and certain other parties signatory thereto (as amended, supplemented or otherwise modified prior to the date hereof, the "Intercreditor Agreement") is binding and enforceable against the Company and the applicable Prepetition Guarantors in accordance with their terms, and the Company and the applicable Prepetition Guarantors are not entitled to take any action that would be contrary to the provisions thereof.

(i) All cash, securities, cash equivalents and other property of the Company and the Prepetition Guarantors (and the proceeds therefrom) as of the Petition Date, including, without limitation, all cash proceeds of the Prepetition Collateral (including cash on deposit at the Depository Institutions as of the Petition Date, securities or other property, whether subject to control agreements or otherwise, in each case that constitutes Prepetition Collateral) and all cash securities or other property (and the proceeds therefrom) and other amounts on deposit or maintained by such parties in any account or accounts with any depository institution (collectively, the "Depository Institutions"), were subject to rights of set-off and (i) valid, perfected, enforceable, first priority liens under the Prepetition ABL Credit Documents and applicable law and (ii) valid, perfected, enforceable, second-priority liens under the Existing Agreements and applicable law, as applicable, for the benefit of the Prepetition ABL Secured Parties and the Prepetition Secured Parties, respectively, and are "cash collateral" of the Prepetition ABL Secured Parties and the Prepetition Secured Parties within the meaning of Bankruptcy Code section 363(a) (the "Cash Collateral").

5. *Findings Regarding the DIP Financing and Cash Collateral.*

(a) Good and sufficient cause has been shown for the entry of this Final Order as a proper exercise of the Debtors' business judgment.

(b) The Debtors have an ongoing and critical need to obtain the DIP Financing and continue to use the Prepetition Collateral (including Cash Collateral) in order to, among other things, avoid the liquidation of their estates, and to permit the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, to pay adequate protection and to satisfy other working capital and operational needs.

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

364(c)(1), 364(c)(2) and 364(c)(3) without granting to the DIP Agents and the DIP Lenders, subject to the Carve Out and the Permitted Liens, the DIP Liens and the DIP Superpriority Claims and incurring the Adequate Protection Obligations, in each case, under the terms and conditions set forth in this Final Order and in the DIP Documents.

(d) The Debtors' funding upon entry of the First Interim Order of the Initial Intercompany Transaction and establishment of the Foreign Reserve Account in order to ensure the continuing operation of certain foreign non-Debtor subsidiaries in the ordinary course was and continues to be necessary to preserve the value of the Debtors' interests in the foreign non-Debtor subsidiaries for the overall benefit of the Debtors' estates and creditors.

(e) Based on the DIP Motions, the Declarations, and the record presented to the Court at the DIP Hearings, the terms of the DIP Financing and the terms on which the Debtors may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to the Interim Orders and this Final Order and the DIP Documents are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(f) The Prepetition ABL Repayment, authorized pursuant to the First Interim Order and which has occurred, reflected the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

(g) The Debtors were authorized to enter into the escrow release agreement, the Escrow Agent was authorized to release the Escrow Cash to the Prepetition Term Loan Agent and the Prepetition Term Loan Agent was authorized to disburse the Escrow Cash to the holders of the Tranche B-3 Term Loans, each in accordance with paragraph 8 of the First Interim Order.

(h) The DIP Term Lenders have consented to the Debtors' incurrence of the DIP ABL Facility pursuant to the terms set forth in the DIP-to-Exit ABL Commitment Papers, as previously approved by the Court in the First Interim Order, and the DIP ABL Documents, and the incurrence of the DIP Liens on the DIP Collateral in connection with the DIP ABL Facility and the adjustment of the relative lien priorities as set forth on **Exhibit 1** attached hereto.

(i) The Prepetition Secured Parties have consented or are deemed to have consented to the Debtors' use of Cash Collateral and the other Prepetition Collateral (in accordance with the terms of this Final Order and the DIP Documents), and the Loan Parties' entry into the DIP Documents in accordance with and subject to the terms and conditions set forth in this Final Order and the DIP Documents.

(j) The DIP Financing and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's-length among the Debtors, the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties and all of the Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation: (i) all DIP Loans made to and guarantees issued by the Debtors pursuant to the DIP Documents; (ii) any Cash Management Obligations (as defined in the DIP Documents); (iii) any Hedging Obligations (as defined in the DIP Documents); and (iv) any other DIP Obligations, shall be deemed to have been extended by the DIP Agents and the DIP Lenders in good faith, as that term is used in Bankruptcy Code section 364(e) and in express reliance upon the protections offered by Bankruptcy Code section 364(e), and the DIP Agents and the DIP Lenders (and the successors and assigns thereof) shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(k) The Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Debtors' use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection Obligations), in accordance with the terms hereof, and the Prepetition Secured Parties (and the successors and assigns thereof), shall be entitled to the full protection of Bankruptcy Code section 363(m) in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(l) The Prepetition Secured Parties are entitled to the adequate protection as and to the extent set forth herein pursuant to Bankruptcy Code sections 361, 362, 363 and 364. Based on the DIP Motions, the Declarations and on the record presented to the Court, the terms of the proposed adequate protection arrangements for the use of and diminution of value of the Prepetition Collateral (including the Cash Collateral), if any, are fair and reasonable, and reflect the Debtors' prudent exercise of business judgment; *provided* that, nothing in the Interim Orders, this Final Order or the other DIP Documents shall (w) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral, other than on the terms set forth in the Interim Orders and this Final Order and in the context of the DIP Financing authorized by the Interim Orders and this Final Order, (x) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior), (y) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties, subject to any applicable provisions of the Intercreditor Agreement, to seek new, different, or additional adequate protection or assert the interests of any of the Prepetition Secured Parties, or (z) in the event of any such request for new, different, or additional relief per clause (y) all parties' rights (including the Debtors') to oppose such relief are fully reserved.

6. *Authorization of the DIP Financing and the DIP Documents.*

(a) The Loan Parties were, by the Interim Orders, and hereby are authorized to execute, enter into and perform all obligations under the DIP Documents. The Borrower is hereby authorized pursuant to this Final Order to forthwith borrow the undrawn amounts pursuant to the DIP Documents, obtain letters of credit and designate cash management obligations or hedging obligations as DIP ABL Obligations pursuant to the DIP ABL Credit Agreement, and the Guarantors are hereby authorized to guarantee the Borrower's obligations with respect to such borrowings and letters of credit as described herein, subject to any conditions and limitations under the DIP Documents, which shall be used for all purposes as outlined in Paragraphs c, d and g through k herein and under the DIP Documents, including, without limitation and as applicable, to provide working capital for the Debtors, to pay Adequate Protection Obligations, for general corporate purposes, to pay interest, fees and expenses, to fund the Carve Out and to pay Allowed Professional Fees, in each case in accordance with this Final Order and the DIP Documents.

(b) In furtherance of the foregoing and without further approval of this Court, each Loan Party is authorized to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees required under the DIP Documents or that may otherwise be reasonably necessary for or in connection with the Loan Parties' performance of their obligations under the DIP Documents, including as applicable and, without limitation:

(i) the execution and delivery of, and performance under, each of the DIP Documents;

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the requisite parties under the DIP Documents may agree, it being understood that no further approval of the Court shall be required for authorizations, amendments, waivers, consents, or other modifications to and under the DIP Documents that are either non-material or not adverse to the Debtors (and any fees and other expenses (including any attorneys', accountants', field examiners', appraisers', and financial advisors' fees)), amounts, charges, costs, indemnities, and other obligations paid in accordance and connection therewith, but excluding, for the avoidance of doubt, any amendment, consent, or waiver fee. In the case of material amendments, waivers, consents or other modifications to the DIP Documents, the Debtors shall provide notice (which may be provided through electronic mail or facsimile) to the lead counsel to the Creditors' Committee, respective counsel to the Akin Ad Hoc Group (as defined in the RSA) and the PW Ad Hoc Group (as defined in the RSA), counsel to the DIP ABL Agent, and the U.S. Trustee, which parties shall have ten (10) Business Days from the date of such notice within which to object, in writing, to such material amendment, waiver, consent or other modification. If any such party timely objects to such material amendment, waiver, consent or other modification to the DIP Documents, such material amendment, waiver, consent or other modification shall only be permitted pursuant to an order of the Court. The foregoing shall be without prejudice to the Debtors' right to seek approval from the Court of a material amendment, waiver, consent or other modification on an expedited basis. For the avoidance of doubt, the extension of a Milestone (as defined in the DIP Term Loan Credit Agreement) or a DIP Milestone (as defined in the DIP ABL Credit Agreement) or the delivery of an updated DIP Budget shall not constitute a material amendment, modification, waiver, or supplement to the DIP Documents;

(iii) the non-refundable payment to the DIP Agents or the DIP Lenders, as the case may be, of all fees (which fees shall be, and shall be deemed to have been, approved upon entry of the Interim Orders or this Final Order (as applicable) and, upon payment thereof, in accordance with the terms of the DIP Documents, the Interim Orders and this Final Order (as applicable), shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise), and any amounts due (or that may become due) in respect of the indemnification obligations, in each case referred to in the DIP Documents (and in any separate letter agreements between any or all Debtors, on the one hand, and the DIP Agents and/or DIP Lenders, on the other, in connection with the DIP Financing) and the costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained by the DIP Agents, the DIP Lenders and the Commitment Parties (as defined in the DIP-to-Exit ABL Commitment Papers), in each case, as provided for in the Interim Orders, this Final Order and the DIP Documents, without the need to file retention motions or fee applications or to provide notice to any party;

(iv) the creation of intercompany loans in accordance with the Intercompany Transfer Mechanic; and

(v) the performance of all other acts required under or in connection with the DIP Documents.

(c) Upon execution and delivery thereof, the DIP Documents shall constitute valid, binding and unavoidable obligations of the Loan Parties, enforceable against each Loan Party thereto in accordance with the terms of the DIP Documents, the Interim Orders and this Final Order, as applicable. No obligation, payment, transfer or grant of security under the DIP Documents, the Interim Orders or this Final Order to the DIP Agents and/or the DIP Lenders shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under Bankruptcy Code sections 502(d), 548 or 549), or subject to any defense, reduction, setoff, recoupment, claim or counterclaim.

7. *Indefeasible Payment of the Prepetition ABL Obligations.*

(a) Pursuant to the authorization set forth in the First Interim Order, the Debtors used proceeds of the Initial DIP Term Loans to (i) indefeasibly pay in full in cash Prepetition ABL Obligations other than in respect of letters of credit, secured hedging obligations and secured cash management obligations and (ii) cash collateralize all (A) letters of credit issued pursuant to the Prepetition ABL Credit Documents; (B) obligations in respect of outstanding Secured Hedging Agreements (as defined in the Prepetition ABL Credit Agreement); and (C) obligations in respect of outstanding Secured Cash Management Agreements (as defined in the Prepetition ABL Credit Agreement), in each case on terms satisfactory to the applicable L/C Issuer, Hedge Bank and Cash Management Bank (each as defined in the Prepetition ABL Credit Agreement) (the "Prepetition ABL Repayment").

(b) Pursuant to the authorization set forth in the First Interim Order, in furtherance of the Prepetition ABL Repayment, the Debtors (i) established cash collateral accounts under the respective control of each L/C Issuer, Hedge Bank and Cash Management Bank (the "Cash Collateral Accounts"), (ii) deposited proceeds of the Initial DIP Term Loans into the Cash Collateral Accounts, (iii) entered into cash collateral agreements with each L/C Issuer, Hedge Bank and Cash Management Bank governing the terms pursuant to which the applicable Prepetition ABL Obligations will be cash collateralized (the "Cash Collateral Agreements") and (iv) began performing all acts and paying all fees that may be reasonably necessary for or in connection with the Debtors' performance of their obligations under the Cash Collateral Agreements.

(c) Upon the occurrence of the Prepetition ABL Repayment, and pursuant to the authorization set forth in the First Interim Order,

(i) the liens and security interests granted to the Prepetition ABL Secured Parties pursuant to and in connection with the Prepetition ABL Security Documents were automatically released and terminated;

(ii) the Cash Collateral Agreements constituted valid, binding and enforceable postpetition agreements of the Debtors party thereto;

(iii) pursuant to Bankruptcy Code section 364(c)(2), each of the L/C Issuers, Hedge Banks and Cash Management Banks obtained an exclusive, valid, binding, continuing, enforceable, fully-perfected, first priority security interest in and lien upon each Cash Collateral Account subject to its control, including: (A) all funds held in each Cash Collateral Account or credited thereto, all rights to renew or withdraw the same, and all certificates and instruments, if any, from time to time representing or evidencing the Cash Collateral Account; (B) any notes, certificates of deposit, instruments, financial assets (as defined in Section 8-102(9) of the Uniform Commercial Code) or investment property evidencing or arising out of investment of any funds held in or credited to the Cash Collateral Account pursuant to the applicable Cash Collateral Agreement or otherwise held in the Cash Collateral Account; (C) any interest, dividends, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the then existing collateral described in the foregoing clauses (A) and (B); and (D) all proceeds of any and all of the foregoing, which liens secure the relevant L/C Obligations (as defined in the Prepetition ABL Credit Agreement) and Secured Hedging Agreements (such liens, the "Cash Collateral Liens").

(d) The automatic stay of Bankruptcy Code section 362(a) was and shall continue to be modified to the extent necessary to permit each Hedge Bank, L/C Issuer and Cash Management Bank to direct the transfer, redemption, disposition or setoff of deposits or other assets in the Cash Collateral Accounts to the extent permitted by the applicable Cash Collateral Agreement, including to (i) reimburse the L/C Issuer for amounts drawn pursuant to any of the letters of credit secured by such Cash Collateral Agreement, (ii) pay amounts due and owing to any Hedge Bank in connection with any foreign exchange transaction, (iii) pay amounts due and owing to any Cash Management Bank in respect of Cash Management Obligations (as defined in the Prepetition ABL Credit Agreement) under a Secured Cash Management Agreement and (iv) pay fees or other amounts owed to the L/C Issuer, Hedge Bank or Cash Management Bank from time to time.

(e) Except as set forth in each applicable Cash Collateral Agreement, the Debtors shall not be authorized to use Cash Collateral in the Cash Collateral Accounts. The Cash Collateral Accounts shall constitute Excluded Assets and shall not be subject to the DIP Liens; *provided* that any proceeds released from the Cash Collateral Accounts shall be subject to the DIP Liens. Notwithstanding anything to the contrary in the Interim Orders or this Final Order, the Cash Collateral Accounts shall not be subject to the Carve Out and shall not be used to fund the Carve Out Reserves.

(f) Pursuant to the Second Interim Order (including paragraph 7(f) therein), effective immediately upon the Closing Date under the DIP ABL Credit Agreement (x) the Existing Citi L/Cs were deemed to be issued under the DIP ABL Credit Agreement and to constitute DIP ABL Obligations and (y) the Existing Citi Hedging Obligations were deemed to be Secured Hedging Obligations under the DIP ABL Credit Agreement and to constitute DIP ABL

Obligations. Upon the deemed issuance of the Existing Citi L/Cs into DIP ABL Obligations and the deemed designation of the Existing Citi Hedging Obligations as DIP ABL Obligations as described in paragraph 7(f) of the Second Interim Order, the Debtors were, by the Second Interim Order, and hereby are authorized to release the cash held in the Cash Collateral Accounts securing the applicable Existing Citi L/Cs and Existing Citi Hedging Obligations in accordance with the DIP Documents, the Second Interim Order and this Final Order. For the avoidance of doubt, the DIP ABL Agent may establish Hedging Reserves in respect of the Existing Citi Hedging Obligations in accordance with the terms of the DIP ABL Credit Agreement.

8. *B-3 Escrow Claims*. Pursuant to the authorizations set forth in and in accordance with the terms of the First Interim Order, the Escrow Cash was released and the Prepetition Term Loan Agent disbursed the Escrow Cash in the amount of $224,634,843.65 to holders of the Tranche B-3 Term Loans (the "Escrow Release"). To the extent there is a successful Challenge to the validity of the Escrow Release, the Court shall fashion an appropriate equitable remedy with respect to such Escrow Release. Notwithstanding anything to the contrary in the Interim Orders (including paragraph 30 of the Interim Orders) or this Final Order (including paragraph 30), (i) the Escrow Agent and the Prepetition Term Loan Agent, solely in their capacities as such, shall not have any liability in connection with the Escrow Release; (ii) the indemnification, expense reimbursement, and other similar provisions in the Escrow Agreement shall be fully enforceable by the Escrow Agent against each of the Debtors and survive termination of the Escrow Agreement; (iii) any claims of the Escrow Agent or the Prepetition Term Loan Agent against the Debtors under the indemnification, expense reimbursement, and other similar provisions in the Escrow Agreement or the other Prepetition Term Loan Credit Documents, in each case solely in connection with the Escrow Release, shall constitute allowed administrative expense claims against each of

the Debtors under sections 503(b) and 507 of the Bankruptcy Code; and (iv) the indemnification, expense reimbursement, and other similar provisions in the Escrow Agreement and the other Prepetition Term Loan Credit Documents shall apply to any action taken by the Escrow Agent or the Prepetition Term Loan Agent in connection with the Escrow Release.

9. *DIP Superpriority Claims.* Subject in all respects to the Carve Out, pursuant to Bankruptcy Code section 364(c)(1), all of the DIP Obligations shall continue to be allowed superpriority administrative expense claims against the Loan Parties in each of the Chapter 11 Cases (without the need to file any proof of claim) with priority over any and all claims against the Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in Bankruptcy Code sections 503(b) and 507(b) and any and all administrative expenses or other claims arising under Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "DIP Superpriority Claims") shall for purposes of Bankruptcy Code section 1129(a)(9)(A) be considered administrative expenses allowed under Bankruptcy Code section 503(b), and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Loan Parties and all proceeds thereof (excluding Avoidance Actions but including, in respect of DIP Superpriority Claims on account DIP Obligations only, Avoidance Proceeds; provided that, upon entry of this Final Order, the DIP Superpriority Claims may be collected out of Avoidance Proceeds only after the holder of such DIP Superpriority Claims has made commercially reasonable efforts to exhaust all other sources of recovery for such claims), subject only to the Carve Out. The DIP Superpriority Claims shall be entitled to the full protection of

Bankruptcy Code section 364(e) in the event that this Final Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

10. *DIP Liens*. As security for the DIP Obligations, subject and subordinate in all respects to the Carve Out, effective and perfected immediately upon the entry of each Interim Order and as ratified by this Final Order, and without the necessity of the execution, recordation or filing by the Loan Parties, the DIP Agents or any DIP Lender of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Agents of, or over, any DIP Collateral, the following security interests and liens are hereby granted to the DIP Agents for their own respective benefit and the benefit of the DIP Lenders, subject only to the Carve Out and the Permitted Liens (all such liens and security interests granted to the DIP Agents, for their respective benefit and for the benefit of the respective DIP Lenders, pursuant to the Interim Orders, this Final Order and the DIP Documents, the "DIP Liens"):

(a) First Lien on Unencumbered Property. Pursuant to Bankruptcy Code section 364(c)(2), and subject and subordinate in all respects to the Carve Out, valid, binding, continuing, enforceable, fully-perfected first priority senior security interests in and liens upon all DIP Collateral, to the extent such DIP Collateral is not subject to valid, perfected and non-avoidable liens as of the Petition Date or valid and non-avoidable liens in favor of third parties that were in existence immediately prior to the Petition Date that are perfected as permitted by Bankruptcy Code section 546(b) ("Unencumbered Property"), with the relative priorities among the DIP Obligations as set forth on **Exhibit 1** attached hereto;

(b) Liens Junior to Certain Other Liens. Pursuant to Bankruptcy Code section 364(c)(3), and subject and subordinate in all respects to the Carve Out, valid, binding, continuing, enforceable, fully-perfected junior security interests in and liens on the DIP Collateral, to the extent such DIP Collateral is subject to (i) valid, perfected and non-avoidable liens as of the Petition Date or (ii) valid and unavoidable liens in favor of third parties that were in existence immediately prior to the Petition Date that are perfected as permitted by Bankruptcy Code section 546(b), in each case other than the Prepetition First-Priority Liens, with the relative priorities among the DIP Liens as set forth on **Exhibit 1** attached hereto; and

(c) Priming Liens. Pursuant to Bankruptcy Code section 364(d)(1), and subject and subordinate in all respects to the Carve Out, a valid, binding, continuing, enforceable, fully-perfected priming senior security interests in and liens upon the Prepetition Collateral, which security interests and liens shall prime the Primed Liens to the extent and in accordance with the priorities shown on **Exhibit 1** attached hereto.

11. *Relative Priority of DIP Liens*. The DIP Liens securing the DIP Obligations are valid, automatically perfected, non-avoidable, senior in priority, and superior to any security, mortgage, collateral interest, lien, or claim to any of the DIP Collateral, except that the DIP Liens shall be subject to the Carve Out in all respects and shall otherwise be junior only to the Permitted Liens. In the event of an enforcement of remedies in respect of the DIP Facilities and the application of the DIP Collateral, such DIP Collateral shall be applied as specified on **Exhibit 1** attached hereto.

12. *DIP Collateral*. For purposes of this Final Order, "DIP Collateral" shall mean all owned or hereafter acquired, whether first arising prior to, on, or following the Petition Date, assets and property of the Loan Parties (including, without limitation, inventory, accounts receivable, equipment, property, plant, equipment, owned real property, investment property, insurance proceeds, deposit accounts (other than payroll, trust, tax accounts and the Cash Collateral

Accounts), rights under leases and other contracts, patents, copyrights, trademarks, tradenames, and other intellectual property, and capital stock of subsidiaries) and the proceeds thereof, including, upon entry of this Final Order, the Avoidance Proceeds (as defined herein), but not including the Excluded Assets (as defined herein) or, with respect to the DIP ABL Obligations only, Excluded Buildings (as defined in the DIP ABL Credit Agreement). For the purposes of this Final Order, DIP Collateral shall comprise DIP ABL Priority Collateral and DIP Term Priority Collateral. For the avoidance of doubt, DIP Collateral shall include a pledge of 100% of equity interests of the direct foreign subsidiaries held by any Loan Party; provided that, for the avoidance of doubt, no foreign subsidiaries shall provide a guarantee or pledge collateral with respect to the DIP Facilities.

13. *Excluded Assets*. Notwithstanding anything to the contrary in this Final Order or the DIP Documents, the DIP Collateral shall not include (the "Excluded Assets") (a) any claims and causes of action under Bankruptcy Code sections 502(d), 544, 545, 547, 548, 549, and 550 (collectively, the "Avoidance Actions") and, prior to entry of this Final Order, the proceeds of Avoidance Actions (it being understood that subject only to and effective upon entry of this Final Order, with respect to the DIP Obligations only, the DIP Collateral shall include any proceeds or property recovered, unencumbered or otherwise from successful Avoidance Actions, whether by judgment, settlement or otherwise ("Avoidance Proceeds"); provided that, once such liens are granted pursuant to this Final Order, the DIP Obligations may be collected out of the DIP Liens on the Avoidance Proceeds only after the holder of such DIP Liens has made commercially reasonable efforts to exhaust all other sources of recovery for such claims); (b) leased (not owned) real property; (c) intent-to-use trademarks, assets subject to enforceable contractual restrictions or statutory prohibitions (subject to customary UCC overrides) and certain other exceptions to be

agreed; (d) any Excluded Stock and Stock Equivalents (each defined in the DIP Term Loan Credit Agreement and DIP ABL Credit Agreement); (e) any margin stock; (f) any assets with respect to which granting a security interest in such assets is prohibited by or would violate law, treaty, rule, or regulation or determination of an arbitrator or a court or other Governmental Authority or which would require obtaining the consent, approval, license or authorization of any Governmental Authority (as defined in the DIP Term Loan Credit Agreement and DIP ABL Credit Agreement) (unless such consent, approval, license or authorization has been received; *provided* that there shall be no obligation to obtain such consent) or create a right of termination in favor of any governmental or regulatory third party, in each case after giving effect to Sections 9-406, 9-407, 9-408 or 9-409 of the Uniform Commercial Code of any relevant jurisdiction or other Applicable Law (as defined in the DIP Term Loan Credit Agreement and DIP ABL Credit Agreement), and (g) any payroll, tax and trust account and any Cash Collateral Account; excluding, in each case of clauses (b) through (g), the proceeds and receivables thereof (to the extent not otherwise constituting Excluded Assets); *provided* that with respect to clause (f), such property shall be Excluded Assets only to the extent and for so long as such prohibition, violation, invalidation or consent right, as applicable, is in effect and in the case of any such agreement or consent, was not created in contemplation thereof or of the creation of a security interest therein.

14. *Carve Out.*

(a) Carve Out. As used in the Interim Orders and this Final Order, the "Carve Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to $100,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the "Debtor Professionals") and the Creditors' Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day following delivery by the DIP ABL Agent or the DIP Term Loan Agent of a Carve Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed $10,000,000 incurred after the first business day following delivery by the DIP ABL Agent or the DIP Term Loan Agent of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the "Post-Carve Out Trigger Notice Cap"). For purposes of the foregoing, "Carve Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP ABL Agent or the DIP Term Loan Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, respective counsel to the Akin Ad Hoc Group (as defined in the RSA) and the PW Ad Hoc Group (as defined in the RSA), and counsel to the Creditors' Committee (if any), which notice may be delivered following the occurrence and during the continuation of an Event of Default (as defined in the DIP Term Loan Credit Agreement or DIP ABL Credit Agreement) and acceleration of the DIP Obligations in respect of either of the DIP Facilities, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Fee Estimates.

(i) *Delivery of Weekly Fee Estimates.* Not later than 6:00 p.m. Prevailing Central Time on the third business day of each week starting with the first full calendar week following the Closing Date (as defined in the DIP ABL Credit Agreement), each Professional Person shall deliver to the Debtors a statement setting forth a good-faith estimate of the amount of fees and expenses (collectively, "Estimated Fees and Expenses") incurred during the preceding week by such Professional Person (through Saturday of such week, the "Calculation Date"), along with a good-faith estimate of the cumulative total amount of unreimbursed fees and expenses incurred through the applicable Calculation Date and a statement of the amount of such fees and expenses that have been paid to date by the Debtors (each such statement, a "Weekly Statement"); *provided* that within one business day of the occurrence of the Termination Declaration Date (as defined herein), each Professional Person shall deliver one additional statement (the "Final Statement") setting forth a good-faith estimate of the amount of fees and expenses incurred during the period commencing on the calendar day after the most recent Calculation Date for which a Weekly Statement has been delivered and concluding on the Termination Declaration Date.

(ii) *Failure to Deliver Weekly Fee Estimates.* If any Professional Person fails to deliver a Weekly Statement within three calendar days after such Weekly Statement is due then, prior to the indefeasible payment of all DIP ABL Obligations in full in cash[8] and the termination of all remaining DIP Commitments under the DIP ABL Facility, such Professional Person's entitlement (if any) to any funds in the Carve-Out Accounts (as defined herein) with respect to the aggregate unpaid amount of Allowed Professional Fees for the applicable period(s)

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8 Each reference in this Final Order to the indefeasible payment of all DIP ABL Obligations in full in cash shall include the cancellation of all letters of credit (or the cash collateralization or backstopping of all such letters of credit to the satisfaction of the applicable issuers of letters of credit under the DIP ABL Facility) and the cash collateralization or backstopping of all hedging obligations and cash management obligations secured thereunder.

for which such Professional Person failed to deliver a Weekly Statement covering such period shall be limited to the aggregate unpaid amount of Allowed Professional Fees included in the DIP Budget for such period for such Professional Person; *provided* that such Professional Person shall be entitled to be paid any unpaid amount of Allowed Professional Fees in excess of Allowed Professional Fees included in the DIP Budget for such period for such Professional Person from a reserve to be funded by the Debtors from all cash on hand as of such date and any available cash thereafter held by any Debtor pursuant to paragraph 14(c) below. Solely as it relates to the DIP ABL Agent and the DIP ABL Lenders, any deemed draw and borrowing pursuant to paragraph 14(c)(i) for amounts under paragraph 14(a)(iii) above shall be limited to the greater of (x) the sum of (I) the aggregate unpaid amount of Estimated Fees and Expenses included in such Weekly Statements timely received by the Debtors prior to the Termination Declaration Date *plus*, without duplication, (II) the lesser of (1) the aggregate unpaid amount of Estimated Fees and Expenses included in the Final Statements timely received by the Debtors pertaining to the period through and including the Termination Declaration Date and (2) the Budgeted Cushion Amount (as defined below), and (y) the aggregate unpaid amount of Allowed Professional Fees included in the DIP Budget for the period prior to the Termination Declaration Date (such amount, the "DIP Pre-Trigger Notice Professional Fee Carve Out Cap").

(iii) *ABL Carve Out Reserve.* For the avoidance of doubt, the DIP ABL Agent shall be entitled to maintain at all times a reserve (the "ABL Carve Out Reserve") in an amount (the "ABL Carve Out Reserve Amount") equal to the sum of (i) the greater of (x) the aggregate unpaid amount of Estimated Fees and Expenses included in all Weekly Statements timely received by the Debtors, and (y) the aggregate amount of Allowed Professional Fees contemplated to be unpaid in the DIP Budget at the applicable time, *plus* (ii) the Post-Carve Out

Trigger Notice Cap, *plus* (iii) the amounts contemplated under paragraph 14(a)(i) and 14(a)(ii) above, *plus* (iv) an amount equal to the amount of Allowed Professional Fees set forth in the DIP Budget for the then current week occurring after the most recent Calculation Date and the two weeks succeeding such current week (such amount set forth in (iv), regardless of whether such reserve is maintained, the "Budgeted Cushion Amount"). Not later than 6:00 p.m. Prevailing Central Time on the fourth business day of each week starting with the first full calendar week following the Closing Date, the Debtors shall deliver to the DIP ABL Agent a report setting forth the ABL Carve Out Reserve Amount as of such time, and, in setting the ABL Carve Out Reserve, the DIP ABL Agent shall be entitled to rely upon such reports in accordance with section 12.4 of the DIP ABL Credit Agreement. Prior to the delivery of the first report setting forth the ABL Carve Out Reserve Amount, the DIP ABL Agent shall calculate the ABL Carve Out Reserve Amount by reference to the DIP Budget for subsection (i) of the ABL Carve Out Reserve Amount.

(c) *Carve Out Reserves*. On the day on which a Carve Out Trigger Notice is given by the DIP ABL Agent or the DIP Term Loan Agent to the Debtors and their lead restructuring counsel, with a copy to the U.S. Trustee, counsel to the Creditors' Committee, and the respective counsel to the Akin Ad Hoc Group and the PW Ad Hoc Group (the "Termination Declaration Date"), the Carve Out Trigger Notice shall (i) be deemed a draw request and notice of borrowing by the Debtors for undrawn DIP ABL Loans and DIP Term Loans committed under the DIP Facilities (on a pro rata basis based on the then-outstanding DIP Commitments), in an amount equal to the sum of (1) the amounts set forth in paragraphs 14(a)(i) and 14(a)(ii) above, and (2) the lesser of (a) the then unpaid amounts of the Allowed Professional Fees and (b) the DIP Pre-Trigger Notice Professional Fee Carve Out Cap (any such amounts actually advanced shall constitute DIP ABL Loans or DIP Term Loans, as applicable), (ii) be deemed a draw request and notice of borrowing by the Debtors for DIP Term Loans in an amount equal to the unpaid amounts of the Allowed Professional Fees in excess of the DIP Pre-Trigger Notice Professional Fee Carve Out Cap, if any, (any such amounts actually advanced shall constitute DIP Term Loans); and (iii) subject to the foregoing, also constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund an account in an amount equal to the sum of the amounts set forth in paragraph 14(a)(i)–(iii), provided that the Debtors shall, to the extent reasonably practicable, first utilize cash held in the DIP Proceeds Account, prior to utilizing other cash on hand or cash thereafter held, for purposes of funding such account described in this clause (iii).

(d) The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then unpaid Allowed Professional Fees (the "Pre-Carve Out Trigger Notice Account") prior to any and all other claims. On the Termination Declaration Date, the Carve Out Trigger Notice shall also (i) be deemed a request by the Debtors for undrawn DIP ABL Loans and DIP Term Loans committed under the DIP Facilities (on a pro rata basis based on the then-outstanding DIP Commitments), in an amount equal to the Post-Carve Out Trigger Notice Cap (any such amounts actually advanced shall constitute DIP ABL Loans or DIP Term Loans, as applicable); and (ii) constitute a demand to the Debtors to utilize all cash on hand (including cash collateral) as of such date and any available cash thereafter held by any Debtor, after funding the Pre-Carve Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap.

(e) The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such Allowed Professional Fees benefiting from the Post-Carve Out Trigger Notice Cap (the "Post-Carve Out Trigger Notice Account" and, together with the Pre-Carve Out Trigger

Notice Account, the "Carve Out Accounts") prior to any and all other claims. On the first business day after the DIP ABL Agent or the DIP Term Loan Agent gives such notice to such DIP Lenders, notwithstanding anything in the DIP Documents to the contrary, including with respect to the existence of a Default or Event of Default (each as defined in the applicable DIP Documents), the failure of the Debtors to satisfy any or all of the conditions precedent for DIP ABL Loans or DIP Term Loans under the DIP Facilities, any termination of the DIP Commitments following an Event of Default, as applicable, or the occurrence of the DIP Termination Date, each DIP Lender with outstanding DIP Commitments (on a pro rata basis based on the then-outstanding DIP Commitments) shall make available to the applicable DIP Agent such DIP Lender's pro rata share with respect to such borrowing set forth in the preceding clauses (d)(i) and (ii) in accordance with the DIP Facilities; *provided* that in no event shall the DIP Agents or the DIP Lenders be required to (x) extend DIP Loans to fund the Carve Out other than pursuant to this paragraph 14, or (y) extend DIP ABL Loans pursuant to a deemed draw and borrowing pursuant to paragraphs 14(c)(i) or 14(d)(i) in an aggregate amount exceeding the ABL Carve Out Reserve Amount. All funds in the Pre-Carve Out Trigger Notice Account shall be used first to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the "Pre-Carve Out Amounts"), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Account has not been reduced to zero, (x) the funds funded by the DIP ABL Lenders and remaining in the account shall be distributed first to the DIP ABL Agent on account of the DIP ABL Obligations until indefeasibly paid in full, in cash and all commitments under the DIP ABL Credit Agreement have been terminated, and (y) the funds funded by the DIP Term Lenders and remaining in the account shall be distributed to the DIP Term Loan Agent which shall apply such funds to the DIP Term Loan

Obligations in accordance with the DIP Term Loan Credit Agreement until indefeasibly paid in full, in cash, and all DIP Commitments have been terminated, and thereafter, any such excess funds shall be paid to the Prepetition Secured Parties in accordance with the priorities set forth on **Exhibit 1** hereto and the Existing Agreements. All funds in the Post-Carve Out Trigger Notice Account shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the "Post-Carve Out Amounts"), and then, to the extent the Post-Carve Out Trigger Notice Account has not been reduced to zero, (x) the funds funded by the DIP ABL Lenders and remaining in the account shall be distributed first to the DIP ABL Agent on account of the DIP ABL Obligations until indefeasibly paid in full, in cash and all commitments under the DIP ABL Credit Agreement have been terminated, and (y) the funds funded by the DIP Term Lenders and remaining in the account shall be distributed to the DIP Term Loan Agent which shall apply such funds to the DIP Term Loan obligations in accordance with the DIP Term Loan Credit Agreement until indefeasibly paid in full, in cash, and all commitments under the DIP Term Loan Credit Agreement have been terminated, and thereafter, such excess funds shall be paid to the Prepetition Secured Parties in accordance with the priorities set forth on **Exhibit 1** hereto and the Existing Agreements. Notwithstanding anything to the contrary in the DIP Documents, the Interim Orders and this Final Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this Paragraph 14, then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in this Paragraph 14, prior to making any payments to the DIP Agents or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Final Order, following delivery of a Carve Out Trigger Notice, the DIP Agents and the Prepetition First Lien

Agents shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the applicable DIP Agent for application in accordance with the DIP Documents. Further, notwithstanding anything to the contrary in the Interim Orders or this Final Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute DIP Loans or increase or reduce the DIP Obligations, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Initial DIP Budget, DIP Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in the Interim Orders, this Final Order, the DIP Facilities, or in any Existing Agreements, the Carve Out shall be senior to all DIP Liens, DIP Superpriority Claims, the Prepetition First Lien Adequate Protection Liens, and the Prepetition First Lien 507(b) Claims (as defined herein), and any and all other forms of adequate protection, claims or liens securing the Prepetition First Lien Obligations.

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

(g) No Direct Obligation to Pay Allowed Professional Fees. None of the DIP Agents, DIP Lenders, or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy

Code. Nothing in the Interim Orders or this Final Order or otherwise shall be construed to obligate the DIP Agents, the DIP Lenders, or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(h) Payment of Carve Out on or After the Termination Declaration Date. Any payment or reimbursement made on or after the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis. Any funding of the Carve Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall be otherwise entitled to the protections granted under the Interim Orders, this Final Order, the DIP Documents, the Bankruptcy Code, and applicable law.

(i) Notwithstanding anything to the contrary in the Interim Orders and this Final Order, the Debtors' obligations to the DIP Secured Parties and Prepetition Secured Parties and the liens, security interests, and superpriority claims granted herein, under the DIP Documents, and/or under the Existing Agreements, including, without limitation, the DIP Liens, the DIP Superpriority Claims, the Prepetition First Lien Adequate Protection Liens, the Primed Liens, the Adequate Protection Claims, and the Prepetition First Lien Obligations, shall be subject in all respects and subordinate to the Carve Out.

15. *Protection of DIP Lenders' Rights.*

(a) Until the indefeasible Payment in Full (as defined in the DIP Documents) of all DIP Obligations and the termination of all remaining DIP Commitments under the DIP Facilities, the Prepetition Secured Parties shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Existing

Agreements, the Interim Orders or this Final Order, or otherwise seek to exercise or enforce any rights or remedies against DIP Collateral, including in connection with the Prepetition First Lien Adequate Protection Liens except to the extent authorized by an order of this Court; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, any DIP Collateral, to the extent such transfer, disposition, sale or release is authorized under the DIP Documents; and (iii) deliver or cause to be delivered, at the Loan Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Agents or the DIP Lenders or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of such DIP Collateral subject to any sale or disposition; provided that nothing herein shall affect the priorities set forth herein including those set forth on **Exhibit 1** hereto.

(b) To the extent the Prepetition First Lien Agents or any other Prepetition Secured Parties have possession of any Prepetition Collateral or DIP Collateral or have control with respect to any Prepetition Collateral or DIP Collateral, then such Prepetition Secured Party shall be deemed, subject to the applicable priorities set forth herein including those set forth on **Exhibit 1** hereto, to maintain such possession or exercise such control as gratuitous bailee and/or gratuitous agent for perfection for the benefit of the DIP Agents and the DIP Lenders and shall comply with the instructions of the DIP Agents with respect to the exercise of such control, to the extent the applicable DIP Liens are senior to those of Prepetition First-Priority Liens, and the DIP Agents agree, that such Prepetition Secured Parties shall be deemed, without incurring any liability or duty to any party, to maintain possession or control of any Prepetition Collateral or DIP Collateral in its possession or control as gratuitous bailee and/or gratuitous agent for perfection for the benefit of the Prepetition Secured Parties with respect to bank accounts.

(c) No rights, protections or remedies of the DIP Agents or the DIP Lenders granted by the provisions of the Interim Orders, this Final Order or the DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Debtors' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Debtors' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral or the provision of adequate protection to any party.

16. *Marshaling.* Upon the entry of this Final Order, none of the DIP Collateral, the DIP Lenders, the DIP Agents, the Prepetition Collateral, the Prepetition First Lien Adequate Protection Liens or the Prepetition Secured Parties shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine, and all proceeds thereof shall be received and used in accordance with this Final Order. Further, upon entry of this Final Order, in no event shall the "equities of the case" exception in Bankruptcy Code section 552(b) apply to the secured claims of the Prepetition Secured Parties.

17. *Limitation on Charging Expenses*. Except to the extent of the Carve Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral pursuant to Bankruptcy Code section 506(c) or any similar principle of law, as such pertains to the DIP Secured Parties or the DIP Obligations without the prior written consent of the DIP Agents and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agents or the DIP Lenders, and nothing contained in this Final Order shall be deemed to be a consent by the DIP Agents or the DIP Lenders, or the Prepetition ABL Secured Parties or the Prepetition Secured Parties, to any

charge, lien, assessment or claim against the DIP Collateral under Bankruptcy Code section 506(c) or otherwise. Effective upon entry of this Final Order, except to the extent of the Carve Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Prepetition Collateral (including Cash Collateral) pursuant to Bankruptcy Code section 506(c) or any similar principle of law, without the prior written consent of the Prepetition First Lien Agents, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the Prepetition Secured Parties, and nothing contained in this Final Order shall be deemed to be a consent by the Prepetition Secured Parties to any charge, lien, assessment or claim against the Prepetition Collateral under Bankruptcy Code section 506(c) or otherwise.

18. *Payments Free and Clear*. Subject in all respects to the Carve Out, any and all payments or proceeds remitted to the DIP Agents on behalf of the DIP Lenders, or Prepetition First Lien Agents on behalf of the Prepetition Secured Parties pursuant to the provisions of the Interim Orders, this Final Order or the DIP Documents shall be received free and clear of any claim, charge, assessment or other liability.

19. *Use of Cash Collateral*. Subject to the terms and conditions of the Interim Orders, this Final Order and the DIP Documents, and in accordance with the DIP Budget (subject to the Permitted Variances (as defined in the DIP Documents)), the Debtors are authorized to use Cash Collateral (excluding the Cash Collateral Accounts) until a Termination Declaration Date and, solely to pay necessary expenses set forth in the DIP Budget to avoid immediate and irreparable harm to the Debtors' estates, the expiration of the Remedies Notice Period (as defined herein) following the DIP Termination Date (as defined herein); *provided* that the Prepetition Secured

Parties are granted adequate protection as hereinafter set forth. Nothing in the Interim Orders or this Final Order shall authorize the disposition of any assets of the Debtors outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting therefrom, except as permitted by the Interim Orders, this Final Order and the DIP Documents, and in accordance with the DIP Budget (subject to the Permitted Variances), as applicable.

20. *Adequate Protection for the Prepetition Secured Parties.* The Prepetition Secured Parties are entitled, pursuant to Bankruptcy Code sections 361, 362, 363(e) and 364(d)(1), to adequate protection against the diminution in value, if any, of their interests in the Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition Secured Parties' respective interests in the Prepetition Collateral from and after the Petition Date, if any, resulting from the sale, lease or use by the Debtors of the Prepetition Collateral, the priming of the Primed Liens by the DIP Liens pursuant to the DIP Documents, the Interim Orders and this Final Order and the imposition of the automatic stay pursuant to Bankruptcy Code section 362 (the "<u>First Lien Adequate Protection Claim</u>"). In consideration of the foregoing, the Prepetition Secured Parties shall continue to be granted the following (collectively, the "<u>Adequate Protection Obligations</u>"), in each case, subject in all respects to the Carve Out:

(a) <u>Prepetition First Lien 507(b) Claims</u>. Each of the Prepetition Term Loan Secured Parties, the Prepetition Legacy Notes Parties and the Prepetition Secured Exchangeable Notes Parties are hereby granted allowed superpriority administrative expense claims as provided for in Bankruptcy Code section 507(b) in the amount of the First Lien Adequate Protection Claim (the "<u>Prepetition First Lien 507(b) Claims</u>"), which Prepetition First Lien 507(b) Claims shall have recourse to and be payable from all of the DIP Collateral, including, without limitation, the

Avoidance Proceeds (provided that, following entry of this Final Order, the Prepetition First Lien 507(b) Claims may be collected out of Avoidance Proceeds only after the holder of such Prepetition First Lien 507(b) Claims has made commercially reasonable efforts to exhaust all other sources of recovery for such claims). The Prepetition First Lien 507(b) Claims shall be subject and subordinate to the Carve Out and the DIP Superpriority Claims;

(b) Prepetition First Lien Adequate Protection Liens. The Prepetition First Lien Agents (for the benefit of the applicable Prepetition Secured Parties) are hereby granted valid, perfected replacement security interests in and liens (the "Prepetition First Lien Adequate Protection Liens") upon all of the DIP Collateral including, without limitation, the Avoidance Proceeds (provided that, once such liens are granted pursuant to this Final Order, the Adequate Protection Claims may be collected out of the Prepetition First Lien Adequate Protection Liens on the Avoidance Proceeds only after the holder of such Prepetition First Lien Adequate Protection Liens has made commercially reasonable efforts to exhaust all other sources of recovery for such claims), in each case, (i) junior to the Carve Out and the Permitted Liens, (ii) with respect to the DIP ABL Priority Collateral, junior to the DIP Liens and senior to the Prepetition First-Priority Liens and (iii) with respect to the DIP Term Priority Collateral, junior to the DIP Term Loan Liens and senior to the Prepetition First-Priority Liens and the DIP ABL Liens, and in each case consistent with the relative priorities as set forth on **Exhibit 1** attached hereto;

(c) Reporting. The Prepetition Secured Parties shall be entitled to delivery of all reports and notices deliverable to the DIP Term Loan Agent and the DIP Term Lenders pursuant to section 9.1 of the DIP Term Loan Credit Agreement; and

(d) Adequate Protection Fees and Expenses. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with Paragraph 33 of this Final

Order, the reasonable and documented prepetition and postpetition fees and expenses (the "Adequate Protection Fees and Expenses") of the Prepetition Secured Parties as follows: (1) the Prepetition Term Loan Agent and the Escrow Agent, including the reasonable and documented fees and disbursements of Davis Polk & Wardwell LLP and Porter Hedges LLP; (2) the Prepetition Legacy Notes Trustee, including the reasonable and documented fees and disbursements of (x) one primary counsel and (y) one local counsel; (3) the Prepetition Secured Exchangeable Notes Trustee, including the reasonable and documented fees and disbursements of (x) one primary counsel and (y) one local counsel; (4) the Akin Ad Hoc Group (including, without limitation, Akin Gump Strauss Hauer & Feld LLP, Centerview Partners LP and Alvarez & Marsal North America, LLC, plus one local counsel in each applicable jurisdiction and, in the event of any actual conflict of interest, one additional counsel to the affected parties) (in each case in accordance with the terms of the engagement letters between such professionals and the Company); (5) the PW Ad Hoc Group (including, without limitation, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Glenn Agre Bergman & Fuentes LLP, FTI Consulting, Inc., plus one local counsel in each applicable jurisdiction and, in the event of any actual conflict of interest, one additional counsel to the affected parties) (in each case in accordance with the terms of the engagement letters between such professionals and the Company, if applicable, or the terms and conditions of the DIP Term Loan Credit Agreement); (6) Debevoise & Plimpton LLP and one local bankruptcy counsel (if necessary), as counsel to certain holders of the Prepetition Secured Exchangeable Notes; and (7) a board search firm jointly retained by the Akin Ad Hoc Group and the PW Ad Hoc Group.

21. *Reservation of Rights of Prepetition Secured Parties*. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is

reasonable and sufficient to protect the interests of the Prepetition Secured Parties; *provided* that, the Prepetition Secured Parties may request further or different adequate protection; *provided*, *further*, that all parties' rights (including the Debtors') to contest such adequate protection requests are fully preserved.

22. *Perfection of DIP Liens and the Prepetition First Lien Adequate Protection Liens.*

(a) This Final Order shall be sufficient and conclusive evidence of the creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Prepetition First Lien Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, notice, or other instrument or document which may otherwise be required under the law or regulation of any jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement or mortgage with respect to any ship or vessel) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens or the Prepetition First Lien Adequate Protection Liens or to entitle the DIP Agents, the other DIP Secured Parties, and the Prepetition Secured Parties to the priorities granted herein.

(b) The DIP Agents, on behalf of the DIP Lenders, and the Prepetition First Lien Agents, on behalf of, or at the direction of, the applicable Prepetition Secured Parties are hereby authorized (unless otherwise agreed between the Debtors and the DIP Lenders or the Prepetition Secured Parties in the applicable DIP Documents or Existing Agreements), but not required, to file or record (and to execute in the name of the Debtors, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agents, on behalf of the DIP Lenders, or the Prepetition First Lien Agents, on behalf of, or at the direction of, the Prepetition Secured Parties, shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, notices of lien or similar instruments, or take possession of or control over any cash or securities, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination. Upon the request of the DIP Agents, each of the Prepetition Secured Parties and the Loan Parties, without any further consent of any party, is authorized (in the case of the Prepetition Secured Parties) (unless otherwise agreed between the Debtors and the DIP Lenders or the Prepetition Secured Parties in the applicable DIP Documents or Existing Agreements) and directed (in the case of the Loan Parties) to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Agents to further validate, perfect, preserve and enforce the DIP Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(c) A certified copy of this Final Order may, in the discretion of the DIP Agents or the Prepetition First Lien Agents, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept such certified copy of this Final Order for filing and/or recording, as applicable. The automatic stay of Bankruptcy Code section 362(a) shall be modified to the extent necessary to permit the DIP Agents or the Prepetition First Lien Agents to take all actions, as applicable, referenced in this subparagraph (c) and the immediately preceding subparagraph (b).

23. *DIP Budget*. The Initial DIP Budget, as attached to the First Interim Order as **Exhibit B**, remains in full force and effect. The Initial DIP Budget may be modified, amended, extended, and updated from time to time in accordance with the DIP Documents and once approved by the Required DIP Lenders in accordance with the DIP Documents, shall modify, replace, supplement or supersede, as applicable, the Initial DIP Budget for the periods covered thereby (the Initial DIP Budget, and each subsequent approved budget shall constitute, without duplication, a "DIP Budget"). The Initial DIP Budget has been thoroughly reviewed by the Debtors, their management, and their advisors. The Debtors, their management, and their advisors believe the Initial DIP Budget and the estimate of administrative expenses due or accruing during the period covered by the Initial DIP Budget were developed using reasonable assumptions, and based on those assumptions, the Debtors believe there should be sufficient available assets to pay all administrative expenses due or accruing during the period covered by the Initial DIP Budget. The Initial DIP Budget is an integral part of this Final Order, and the DIP Secured Parties and the Prepetition Secured Parties have relied and are continuing to rely, in part, upon the Debtors' agreement to comply with the Initial DIP Budget (subject to permitted variances), in determining to enter into the DIP Facilities and to allow the Debtors' use of Cash Collateral in accordance with the terms of the Interim Orders, this Final Order and the DIP Documents.

24. *DIP Termination Date*. For the purposes of the Interim Orders and this Final Order, the "DIP Termination Date" shall be earliest to occur of (a) the date that is six (6) months after the Closing Date (as defined in the DIP Term Loan Credit Agreement); (b) the substantial consummation (as defined in section 1101 of the Bankruptcy Code and which for purposes hereof shall be no later than the "effective date" thereof) of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the Bankruptcy Court; (c) the

acceleration of the DIP Loans and the termination of the DIP Commitments with respect to either of the DIP Facilities in accordance with the DIP ABL Credit Agreement or the DIP Term Loan Credit Agreement, as applicable; (d) the consummation of a sale of all or substantially all of the assets of the Borrower (or the Borrower and the Guarantors) pursuant to section 363 of the Bankruptcy Code; and (e) the termination of the Restructuring Support Agreement.

25. *Remedies upon Event of Default*. The Debtors shall promptly provide notice to the DIP Agents and the Prepetition First Lien Agents and their respective advisors (with a copy to counsel of the Akin Ad Hoc Group and counsel to the PW Ad Hoc Group) of the occurrence of any DIP Termination Date or of any Event of Default under the DIP Documents. Upon the occurrence and during the continuation of any DIP Termination Date or Event of Default under the DIP Documents, the DIP Agents (at the direction of the Required DIP Lenders in accordance with the applicable DIP Documents) shall be required to provide five (5) business days' written notice (such period, the "Remedies Notice Period" and such notice, a "Termination Declaration") to the Debtors, counsel to any Creditors' Committee (if appointed), counsel to the Prepetition First Lien Agents, counsel of the Akin Ad Hoc Group, counsel to the PW Ad Hoc Group, counsel to any other DIP Agent and the U.S. Trustee of the applicable DIP Agent's intent to exercise its rights and remedies, prior to the exercise of any of the following rights: (1) declaring all DIP Obligations, including any and all accrued interest, premiums, fees and expenses constituting the DIP Obligations owing under the DIP Documents, to be immediately due and payable; (2) declaring the commitment of each DIP Lender to make DIP Loans to be terminated, whereupon such commitments and obligation shall be terminated to the extent any such commitment remains under the applicable DIP Facility; (3) the termination of the applicable DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Secured Parties, but without affecting

any of the DIP Liens or the DIP Obligations; (4) termination and/or revocation of the Debtors' right, if any, under this Final Order and the DIP Documents to use any Cash Collateral of the DIP Secured Parties; (5) charging of interest at the default rate under the DIP Facilities; (6) freezing of monies or balances in the DIP Proceeds Account;[9] (7) enforcing any and all rights against the DIP Collateral in possession of the applicable DIP Agent, including, without limitation, disposition of the DIP Collateral, solely for the application towards the Carve Out and the DIP Obligations in accordance with their respective priorities; and (8) taking any other actions or exercise any other rights or remedies permitted under this Final Order, the DIP Documents, or applicable law; *provided* that the DIP Lenders shall not be obligated to make any DIP Loans or advances under the applicable DIP Facility following the occurrence of an Event of Default thereunder or the occurrence of the DIP Termination Date. A DIP Agent may provide a Termination Declaration, notwithstanding the provisions of Bankruptcy Code section 362, without any application, motion or notice to, hearing before, or order from the Court.

26. *Emergency Hearing.* Upon delivery of a Termination Declaration, each of the DIP Agents, the DIP Lenders, the Debtors, the Creditors' Committee, and the applicable Prepetition Secured Parties consents to a hearing on an expedited basis to consider (a) whether a DIP Termination Date or Event of Default has occurred and (b) any appropriate relief (including, without limitation, the Debtors' non-consensual use of Cash Collateral). During the Remedies Notice Period, notwithstanding anything to the contrary set forth in Paragraph 25, the Debtors shall continue to have the right to use Cash Collateral in accordance with the terms of this Final Order,

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[9] "DIP Proceeds Account" has the meaning ascribed to it in the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Using the Cash Management System, (B) Maintain Existing Bank Accounts and Business Forms and Books and Records, and (C) Continue Using the Investment Account and the Investment Policy, (II) Authorizing Continued Intercompany Transactions, (III) Granting Administrative Expenses Status to Postpetition Intercompany Transactions, and (IV) Granting Related Relief* (the "Cash Management Motion") filed contemporaneously herewith.

solely to pay necessary expenses set forth in the DIP Budget to avoid immediate and irreparable harm to the Debtors' estates. At the end of the Remedies Notice Period, unless the Court has entered an order to the contrary or otherwise fashioned an appropriate remedy, including whether DIP Termination Date or Event of Default has occurred, the Debtors' right to use Cash Collateral shall immediately cease, unless otherwise provided herein, and the DIP Agents and DIP Lenders shall have the rights set forth immediately below, and the DIP ABL Agent shall have the right to, without the necessity of seeking relief from the automatic stay, but subject in all respects to the Carve Out, immediately (a) freeze monies or balances in the Debtors' accounts that are subject to the control of the DIP ABL Agent or any of the DIP ABL Secured Parties, (b) set off any and all amounts in accounts maintained by the Debtors with, or that are subject to the control of, the DIP ABL Agent or any of the DIP ABL Secured Parties against the DIP ABL Obligations solely to the extent such amounts are DIP ABL Priority Collateral and (c) apply proceeds received into a lockbox, collection or other account maintained by such DIP ABL Secured Party to repay the DIP ABL Obligations solely to the extent such amounts are DIP ABL Priority Collateral.

27. *Certain Rights and Remedies Following DIP Termination Date*. During the Remedies Notice Period, prior to the exercise or enforcement of any rights against the DIP Collateral (other than as set forth in Paragraph 26 hereof), the applicable DIP Agent (at the direction of the Required DIP Lenders in accordance with the DIP Documents) shall be required to file an emergency motion with the Court or file the appropriate written notice in accordance with the applicable Court procedures on five (5) Business Days' notice (the "Stay Relief Hearing") to determine whether a DIP Termination Event or Event of Default has occurred (and the Loan Parties and the Creditors' Committee, if any, shall not object to the shortened notice with respect to such Stay Relief Hearing). In the event the Court determines during a Stay Relief Hearing that

a DIP Termination Date or Event of Default has occurred, the Court may fashion an appropriate remedy, which may include, inter alia, the exercise of any and all rights or remedies available to the DIP Secured Parties under the Interim Orders and this Final Order, the DIP Documents or applicable law against the DIP Collateral; *provided* that the rights of the Debtors to contest such relief are expressly preserved; *provided*, *further*, that in the event that a party challenges the applicable DIP Agent's assertion that a DIP Termination Event or Event of Default has occurred or has occurred and is continuing and the Court is unavailable for a hearing during the Remedies Notice Period, the automatic stay pursuant to Bankruptcy Code section 362 shall remain in effect as to all actions other than those expressly identified in Paragraph 26 until the Court has an opportunity to rule on such challenge.

28. *Preservation of Rights Granted Under This Final Order.* Subject in all respects to Paragraph 28(d) hereof:

(a) Other than the Carve Out, the Permitted Liens, and other claims and liens expressly granted by the Interim Orders and this Final Order or as permitted pursuant to the DIP Documents, no claim or lien having a priority superior to or *pari passu* with those granted by the Interim Orders and this Final Order to the DIP Agents and the DIP Lenders, or the Prepetition Secured Parties, respectively, shall be granted or allowed while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding. Except as otherwise expressly provided in the DIP Documents, the Interim Orders and this Final Order and set forth in **Exhibit 1** hereto, and subject to the Carve Out in all respects, the DIP Liens and the Prepetition First Lien Adequate Protection Liens shall not be: (i) subject or subordinate to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under Bankruptcy Code section 551; (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under

Bankruptcy Code section 364(d) or otherwise; (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors; and (iv) subject or subordinate to any intercompany or affiliate liens or security interests against the Debtors.

(b) Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under Bankruptcy Code section 1112 or otherwise is at any time entered: (i) the DIP Superpriority Claims, the Prepetition First Lien 507(b) Claims, the DIP Liens, the Prepetition First Lien Adequate Protection Liens and the Cash Collateral Liens shall continue in full force and effect and shall maintain their priorities as provided in this Final Order (and that such DIP Superpriority Claims, Prepetition First Lien 507(b) Claims, DIP Liens, Prepetition First Lien Adequate Protection Liens and Cash Collateral Liens shall, notwithstanding such dismissal, remain binding on all parties in interest) until all DIP Obligations, Adequate Protection Obligations, L/C Obligations, Cash Management Obligations and Hedging Obligations shall have been (x) indefeasibly paid in full in cash, (y) with respect to L/C Obligations, deemed reissued under the DIP ABL Facility pursuant to paragraph 7(f) of the Second Interim Order or (z) with respect to Cash Management Obligations and Hedging Obligations, secured under the DIP ABL Facility in accordance with the terms thereof pursuant to paragraph 7(f) of the Second Interim Order; (ii) the other rights granted by this Final Order shall not be affected; and (iii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this Paragraph 28 and otherwise in the Interim Orders and this Final Order.

(c) If any or all of the provisions of the Interim Orders or this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect: (i) the validity, priority or enforceability of the Carve Out, any DIP Obligations, or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agents, the Prepetition First Lien Agents, the Akin Ad Hoc Group and the PW Ad Hoc Group, as applicable, of the effective date of such reversal, modification, vacation or stay; (ii) the validity, priority or enforceability of the DIP Liens, the Prepetition First Lien Adequate Protection Liens or the Cash Collateral Liens; or (iii) the Prepetition ABL Repayment. Notwithstanding any such reversal, modification, vacation or stay of any use of Cash Collateral, any DIP Obligations or any Adequate Protection Obligations incurred by the Debtors to the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agents, the Hedge Banks, the L/C Issuers, the Cash Management Banks, the Prepetition First Lien Agents, the Akin Ad Hoc Group and the PW Ad Hoc Group, as applicable, of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of the Interim Orders and this Final Order, and the DIP Agents, the DIP Lenders, the Prepetition ABL Secured Parties and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in Bankruptcy Code section 364(e), the Interim Orders, this Final Order and the DIP Documents.

(d) Except as expressly provided in this Final Order or in the DIP Documents, the Carve Out, the DIP Liens, the DIP Superpriority Claims, the Cash Collateral Liens, the Prepetition First Lien Adequate Protection Liens, the Prepetition First Lien 507(b) Claims and the other Adequate Protection Obligations and all other rights and remedies of the DIP Agents, the DIP Lenders, the Prepetition ABL Secured Parties and the Prepetition Secured Parties granted by the provisions of the Interim Orders and this Final Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of these Chapter 11 Cases or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to Bankruptcy Code section 363(b) (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to Bankruptcy Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of the Interim Orders and this Final Order and the DIP Documents shall continue in these Chapter 11 Cases, in any successor cases if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the Carve Out, the DIP Liens, the DIP Superpriority Claims, the Prepetition First Lien Adequate Protection Liens, the Prepetition First Lien 507(b) Claims, all of the other Adequate Protection Obligations, the Cash Collateral Liens and all other rights and remedies of the DIP Agents, the DIP Lenders and the Prepetition Secured Parties granted by the provisions of the Interim Orders, this Final Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full in cash, as set forth herein and in the DIP Documents, and the commitments under the DIP Facilities have been terminated. Any successor to the Debtors (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors or any other estate representative appointed in the Chapter 11 Cases or any successor cases) shall be bound by the terms of the Interim Orders and this Final Order to the same extent as the Debtors, including with respect to the Stipulations.

29. *Releases*. Subject to the rights and limitations set forth in Paragraph 31, each of the Debtors, and the Debtors' estates, on their own behalf and on behalf of each of their predecessors, their successors, and assigns shall, to the maximum extent permitted by applicable law, unconditionally, irrevocably and fully forever release, remise, acquit, relinquish, irrevocably waive and discharge each of the DIP Lenders, the DIP Agents, the Prepetition ABL Secured Parties, the Prepetition Secured Parties (with the exception of the Preserved Claims), the Escrow Agent, and each of their respective former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, predecessors and predecessors in interest, each solely in their capacities as such, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract (under U.S. laws), of every nature and description that exist on the date hereof arising out of, relating to, or in connection with any of the (a) the Prepetition ABL Credit Documents, the Existing Agreements or the transactions contemplated under such documents, and (b) the DIP Documents or the transactions contemplated under such documents, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority,

perfection, or availability of the liens of the Prepetition Secured Parties (including Avoidance Actions).

30. *Preserved Claims*. Notwithstanding anything herein to the contrary, including the Stipulations (as defined herein), the Debtors reserve all rights with respect to (i) any potential claims and causes of action with respect to: (i) the Tranche B-3 Term Loans, including but not limited to, the obligations, guarantees, and security interests granted in connection with the same (the "Preserved Tranche B-3 Claims"), which are proposed to be settled under the RSA Plan[10] including, but not limited to, in respect of the Escrow Release provided for in Paragraph 8 hereof, in the event the RSA Plan (subject to any amendments thereto) is not confirmed or substantially consummated; *provided*, that any such claim, challenge, or cause of action with respect to any Preserved Tranche B-3 Claims shall be tolled while (a) the RSA remains in effect or (b) the Debtors are prosecuting any other chapter 11 plan that provides for the unimpairment of all general unsecured claims at the Debtors (other than at HoldCo) (the "Unimpairing Plan") (together, the "Tolling Conditions"), *provided*, *further*, that the Preserved Tranche B-3 Claims shall be released pursuant to Paragraph 29 hereof upon the substantial consummation of an RSA Plan or an Unimpairing Plan; and (ii) claims against any entity (including any Prepetition Secured Party) that was the beneficiary of the repurchase, redemption or other satisfaction by any Debtor entity of HoldCo Convertible Notes[11] prior to the Petition Date (together with the Preserved Tranche B-3 Claims, the "Preserved Claims").

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[10] The "RSA Plan" shall mean the plan filed pursuant to the Restructuring Support Agreement, dated as of February 14, 2023, by and among the Company and its direct and indirect subsidiaries and the other parties signatory thereto (the "RSA").

[11] "HoldCo Convertible Notes" means the unsecured notes issued under the indenture dated as of June 11, 2018, between HoldCo and the Bank of New York Mellon Trust Company, N.A., as trustee, as amended, restated amended and restated, supplemented, or otherwise modified from time to time.

31. *Effect of Stipulations on Third Parties*.

(a) Except as set forth in Paragraph 30 of this Final Order, the Debtors' acknowledgments, stipulations, and releases set forth in Paragraphs 4 and 29 of this Final Order (collectively, the "Stipulations") shall be binding on the Debtors, the Debtors' estates, and their respective representatives, successors, and assigns in all circumstances. The Stipulations contained in this Final Order, shall be binding upon all other parties in interest and all of their respective successors and assigns, including any chapter 7 or chapter 11 trustee (a "Trustee") and any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, including the Creditors' Committee (if any) and any other person or entity acting or seeking to act on behalf of the Debtors' estates in all circumstances and for all purposes, unless (a) the Creditors' Committee, if any, or any other party in interest (including any Trustee), in each case, with requisite standing (in each case to the extent requisite standing is obtained pursuant to an order of this Court entered prior to the Challenge Deadline and subject in all respects to any agreement or applicable law that may limit or affect such entity's right to ability to commence such proceeding), has duly and timely filed an adversary proceeding or contested matter (each, a "Challenge") challenging the validity, perfection, enforceability, allowability, priority or extent of the obligations in respect of the Prepetition First Lien Obligations or the Prepetition First-Priority Liens or otherwise asserting or prosecuting any Avoidance Actions or any other claims, counterclaims or causes of action, objections, contests or defenses against the Prepetition Secured Parties in connection with any matter related to the Prepetition First Lien Obligations or the Existing Agreements (collectively, the "Claims and Defenses") by no later than the earlier of (w) the commencement of a hearing to consider confirmation of a chapter 11 plan and (x) April 17, 2023 (the "Challenge Period"); *provided* that any Trustee appointed prior to the expiration of the Challenge Period will have the longer of (y) the remaining Challenge Period or (z) forty-five (45) days from the date of the Trustee's appointment to commence a Challenge; *provided*, *further*, that so long as the Tolling Conditions are met, the Challenge Period shall be tolled with respect to the Creditors' Committee and, upon the failure of the Tolling Conditions, the Creditors' Committee will have sixty (60) days from the date of such failure to bring any Challenge, and (b) there is entered a final, non-appealable order in favor of the plaintiff in any such timely filed Challenge sustaining such Challenge. Any pleadings filed in any Challenge Proceeding shall set forth with specificity the basis for such Challenge (and any Challenge not so specified prior to the Challenge Deadline shall be deemed forever waived, released and barred). The Court may fashion any appropriate remedy following a successful Challenge.

(b) If no Challenge is timely and properly filed prior to the expiration of the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding, then without further order of this Court (x) the obligations in respect of the Prepetition First Lien Obligations shall constitute allowed claims, not subject to any Claims and Defenses (whether characterized as a counterclaim, setoff, subordination, recharacterization, defense, avoidance, contest, attack, objection, recoupment, reclassification, reduction, disallowance, recovery, disgorgement, attachment, "claim" (as defined by Bankruptcy Code section 101(5)), impairment, subordination (whether equitable, contractual or otherwise), or other challenge of any kind pursuant to the Bankruptcy Code or applicable nonbankruptcy law), for all purposes in these Chapter 11 Cases and any subsequent chapter 7 case; (y) the Prepetition First-Priority Liens shall not be subject to any other or further Challenge, including, without limitation, any Claims and Defenses, which shall be deemed to be forever waived and barred, and all parties in interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including any successor thereto (including any estate representative or a Trustee, whether such Trustee is appointed or elected prior to or following the expiration of the Challenge Period); and (z) the Stipulations shall be of full force and effect and forever binding upon the applicable Debtor's estate and all creditors, interest holders, and other parties in interest in these Chapter 11 Cases and any successor cases.

(c) If any Challenge is timely filed prior to the expiration of the Challenge Period, (i) the Stipulations contained in this Final Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on the Creditors' Committee, if any, any other statutory or non-statutory committees appointed or formed in the Chapter 11 Cases, any other person or party in these cases, including any Trustee and any other person or entity acting or seeking to act on behalf of the Debtors' estates, except as to any such findings and admissions that were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction, and (ii) any Claims and Defenses not brought in a timely filed Challenge shall be forever barred; *provided* that, if and to the extent any Challenges to a particular Stipulation or admission are withdrawn, denied or overruled by a final non-appealable order, such Stipulation also shall be binding on the Debtors' estates and all parties in interest. Nothing in this Final Order vests or confers on any person, including a Creditors' Committee (if any), standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Stipulations, and all rights to object to such standing are expressly reserved.

32. *Expenses and Indemnification of DIP Agents and the DIP Lenders*.

(a) All reasonable and documented out-of-pocket expenses and administrative fees and "seasoning fees," to the extent applicable, for each of the DIP Agents and the DIP Lenders (as set forth below), in connection with (i) the preparation, negotiation, and execution of the DIP

Documents, whether or not the DIP Facilities are successfully consummated; (ii) the syndication and funding of the DIP Loans; (iii) the creation, perfection or protection of the liens under the DIP Documents (including all search, filing, and recording fees), if any; and (iv) the on-going administration of the DIP Documents (including the preparation, negotiation, and execution of any amendments, consents, waivers, assignments, restatements or supplements thereto and the conduct of field examinations and appraisals as provided in the DIP ABL Credit Agreement), are to be paid by the Loan Parties in accordance with Paragraph 33, including, for the avoidance of doubt, all reasonable documented fees, costs and expenses of (1) counsel to the DIP Term Loan Agent, Ropes & Gray LLP and one local counsel, (2) counsel to the DIP Term Lenders, Akin Gump Strauss Hauer & Feld LLP, Paul, Weiss, Rifkind, Wharton & Garrison LLP, and Glenn Agre Bergman & Fuentes LLP and their respective local counsel, (3) the financial advisors to the DIP Term Lenders, Centerview Partners LP, Alvarez & Marsal North America, LLC and FTI Consulting, Inc, and (4) counsel to the DIP ABL Agent and the DIP ABL Lenders, Davis Polk & Wardwell LLP, and one local counsel in each appropriate jurisdiction (and, in the case of an actual or perceived conflict of interest where the person affected by such conflict informs the Borrower of such conflict and thereafter retains its own counsel, of another firm or counsel for all such affected persons (taken as a whole)) (including, without limitation, fees, costs and expenses incurred after entry of the First Interim Order by such counsel in the preparation and release of pledges and collateral documents under the Prepetition ABL Facility or otherwise in connection with the Prepetition ABL Repayment).

(b) In addition, the Loan Parties will indemnify the DIP Lenders, the DIP Agents and their respective affiliates, and hold them harmless from and against all reasonable and documented out-of-pocket costs, expenses (with respect to legal fees and expenses, limited to the reasonable and documented out-of-pocket legal fees and expenses of one primary counsel and local counsel for each of the DIP Term Loan Agent and the DIP ABL Agent) and liabilities arising out of or relating to the transactions contemplated hereby and any actual or proposed use of the proceeds of any loans made under the DIP Facilities in accordance with, and subject to the limitations of, the DIP Documents.

33. *Payment of Fees and Expenses*. The payment of the fees, expenses and disbursements pursuant to this Final Order (to the extent incurred after the Petition Date) shall be made within ten (10) business days (the "Review Period") (which time period may be extended by the applicable professional) after the receipt by: (i) the Debtors, (ii) counsel for the Debtors, (iii) counsel for the Akin Ad Hoc Group, (iv) counsel to the PW Ad Hoc Group, (v) the Creditors' Committee, if any, (vi) the U.S. Trustee, (vii) counsel for the DIP Agents and (viii) counsel to the Prepetition Term Loan Agent and Escrow Agent (collectively, the "Fee Notice Parties") of invoices therefor (the "Invoiced Fees") and without the necessity of filing formal fee applications with the Court, including such amounts arising before, on or after the Petition Date. The invoices for such Invoiced Fees shall include the number of hours billed (except for financial advisors compensated on other than an hourly basis) and the expenses incurred by the applicable professional; *provided*, however, that any such invoice: (i) may be redacted to protect privileged, confidential or proprietary information and (ii) shall not be required to contain individual time detail (provided, that such invoice shall contain (except for financial advisors compensated on other than an hourly basis), summary data regarding hours worked by each timekeeper for the applicable professional and such timekeepers' hourly rates). The Fee Notice Parties may object to any portion of the Invoiced Fees (the "Disputed Invoiced Fees") within the Review Period by filing with the Court a motion or other pleading, on at least ten (10) days' prior written notice of any

hearing on such motion or other pleading, setting forth the specific objections to the Disputed Invoiced Fees in reasonable narrative detail and the bases for such objections; *provided* that only the Disputed Invoiced Fees shall not be paid until the objection is resolved by the applicable parties in good faith or by order of the Court; *provided*, *further*, that payment of any undisputed portion of Invoiced Fees shall be promptly paid within five (5) business days following the expiration of the Review Period. If no objection is filed to the Invoiced Fees is filed with the Review period, then such Invoiced Fees shall be promptly paid, without further of, or application to, the Court or notice to any other party, and, in any case, within five (5) business days following the expiration of the Review Period and shall not be subject any further review, challenge, or disgorgement. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors (i) to the DIP Agents or the other DIP Secured Parties, (ii) to the Prepetition Secured Parties, or (iii) to the Prepetition ABL Secured Parties, in each case, in connection with the Chapter 11 Cases are hereby approved in full.

34. *Limitation on Use of the DIP Facilities, the DIP Collateral, and the Prepetition Collateral (Including the Cash Collateral)*.

(a) Notwithstanding anything herein or in any other order of this Court to the contrary, none of the DIP Facilities (including any disbursements set forth in the DIP Budget or obligations benefitting from the Carve Out), the DIP Collateral, the Prepetition Collateral, any Cash Collateral or the Carve Out (other than the Investigation Budget (as defined herein)) may be used to (a) investigate, analyze, commence, prosecute, threaten, litigate, object to, contest, or challenge in any manner or raise any defenses to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents, the Prepetition ABL Credit Documents or the Existing Agreements or the liens or claims granted under the Interim Orders, this Final Order, the DIP Documents or the Existing Agreements, including the Primed Liens, the Cash Collateral Liens and the DIP Liens, or any mortgage, security interest, or lien with respect thereto, or any other rights or interests or replacement liens with respect thereto or any other rights or interests of any of the DIP Agents, the other DIP Secured Parties, the Prepetition Term Loan Agent, the Prepetition ABL Secured Parties, or the Prepetition Secured Parties, (b) assert any Claims and Defenses, including any Avoidance Actions, or any other causes of action against the DIP Agent, the DIP Lenders, the Prepetition ABL Secured Parties, the Prepetition Secured Parties or, in each case, their respective agents, affiliates, subsidiaries, directors, officers, representatives, attorneys or advisors, (c) prevent, hinder, or otherwise delay the DIP Agents' or the Prepetition First Lien Agents' assertion, enforcement, or realization on the Prepetition Collateral or the DIP Collateral, in accordance with the DIP Documents, the Existing Agreements, the Interim Orders, this Final Order, the exercise of rights by the DIP Agents or the Prepetition Secured Parties once an Event of Default has occurred and is continuing, or any other rights or interest of any of the DIP Agents, the DIP Lenders, the Prepetition ABL Secured Parties or the Prepetition Secured Parties following the occurrence of a DIP Termination Date and after the Remedies Notice Period, (d) seek to subordinate (other than to the Carve Out or as set forth in this Final Order) or recharacterize the DIP Obligations or any of the Prepetition First Lien Obligations, or to disallow or avoid any claim, mortgage, security interest, lien, or replacement lien or payment thereunder, (e) seek to modify any of the rights granted to the DIP Agents, the DIP Lenders, or any of the Prepetition First Lien Agents hereunder or under the DIP Documents or the Existing Agreements, in the case of each of the foregoing clauses (a) through (d), without such party's prior written consent, (f) pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved by an order of this Court or otherwise permitted under the DIP Documents,

(g) file any motion seeking approval of a sale of any DIP Collateral without the consent of the Required DIP Lenders, other than a sale that indefeasibly satisfies the DIP Obligations in full in cash, (h) challenge the Escrow Release or the Escrow Payment or seek to transfer any portion of the Escrow Cash to the Debtors' estates, or (i) pay Allowed Professional Fees, disbursements, costs or expenses incurred by any person, including, without limitation, the Creditors' Committee (if any), in connection with any of the foregoing; *provided*, that this paragraph (including, for the avoidance of doubt, the Investigation Budget) shall not limit (or be deemed to limit) the Loan Parties' rights to challenge the claims of any creditor who received payment pursuant to such repurchase, redemption or other satisfaction by any Debtor entity of the HoldCo Convertible Notes with the proceeds of the Tranche B-3 Term Loans or otherwise prior to the Petition Date. The "Investigation Budget" means a cap of $125,000 with respect to Allowed Professional Fees to be incurred by the Creditors' Committee under the investigation budget.

(b) For the avoidance of doubt and notwithstanding anything to the contrary herein or in the Interim Orders, this Final Order or in the DIP Documents, the Debtors shall not be authorized to use the DIP Facilities or the DIP Collateral to pay fees or expenses for the Creditors' Committee, if any, in excess of the Investigation Budget to investigate Claims and Defenses against the Prepetition ABL Secured Parties or the Prepetition Secured Parties or to initiate or prosecute proceedings or actions on account of any Claims and Defenses against the Prepetition ABL Secured Parties or the Prepetition Secured Parties, including for the avoidance of doubt, the Preserved Claims; *provided*, *further*, that nothing contained in this Paragraph 34 shall prohibit the Debtors from responding or objecting to or complying with discovery requests of any Creditors' Committee, in whatever form, made in connection with such investigation or the payment from the DIP Collateral of professional fees of Debtor Professionals related thereto or from contesting or challenging whether a DIP Termination Event has in fact occurred. Except to the extent expressly permitted by the terms of the DIP Documents, the Interim Orders or this Final Order, none of the Debtors, any Creditors' Committee (if appointed), or any trustee or other estate representative appointed in the Chapter 11 Cases or in any other proceedings superseding or relating to any of the foregoing and/or upon the dismissal of any of the Chapter 11 Cases or any such successor cases (collectively, the "Successor Cases") or any other person or entity may use or seek to use Cash Collateral or, to sell, or otherwise dispose of DIP Collateral or Prepetition Collateral, in each case, without the consent of the Required Lenders (as defined in the DIP Term Loan Credit Agreement or the DIP ABL Credit Agreement, as applicable) (collectively the, "Required DIP Lenders").

35. *Foreign Reserve Protocol.* Any intercompany loans using funds from the Foreign Reserve Account (each, a "Foreign Reserve Account Withdrawal") in accordance with the DIP Documents shall be subject to the following procedures (the "Foreign Reserve Protocol") in addition to the Intercompany Transfer Mechanic: (i) the Debtors shall submit in writing to the DIP Term Loan Agent, with a copy to the DIP ABL Agent and its advisors and the advisors to the Akin Ad Hoc Group and the PW Ad Hoc Group a withdrawal request (the "Foreign Reserve Account Withdrawal Notice"), which Foreign Reserve Account Withdrawal Notice shall specify (a) the proposed foreign non-Debtor recipient of the transfer; (b) the proposed transfer amount; and (c) the proposed use of funds; and (ii) the DIP Term Loan Agent shall, within three (3) business days from receipt of the Foreign Reserve Account Withdrawal Notice, advise the Debtors if the Required DIP Lenders under the DIP Term Loan Credit Agreement consent to any such Foreign Reserve Account Withdrawal, which consent shall not be unreasonably withheld. All Foreign

Reserve Account Withdrawals must be made in accordance with the Intercompany Transfer Mechanic (as defined herein).

36. *Intercompany Transfer Mechanic*. No DIP Proceeds, DIP Collateral or any Cash Collateral may be transferred or otherwise provided by any Debtor, directly or indirectly, to or for the benefit of any non-Debtor subsidiary or subsequently by any non-Debtor subsidiary to any other non-Debtor subsidiary (either in the form of restricted payments, investments, intercompany advances, guarantee of obligations or otherwise (except for repayment of account payables for goods delivered or services rendered postpetition in accordance with the order approving the relief sought in the Cash Management Motion, including pursuant to shared services or other intercompany service agreements, in the ordinary course of business, consistent with past practice and subject to the DIP Budget)), other than the Initial Intercompany Transaction and, subject to the Foreign Reserve Protocol, any Foreign Reserve Account Withdrawal ("Non-Debtor Subsidiary Transfer"), which, in each case, shall be, (i) first, lent to Sierra Communications; (ii) second lent by Sierra Communications to Avaya International Sales Ltd (the "Initial Intercompany Borrower"), evidenced by an intercompany unsecured note or intercompany ledger entry, in each case as is reasonably satisfactory to the Required DIP Lenders under the DIP Term Loan Credit Agreement and the Debtors and (iii) further lent by the Initial Intercompany Borrower, in one or more steps, to the applicable non-Debtor subsidiary; each step of such transfer set forth in clause (iii) shall be evidenced by an intercompany unsecured note or intercompany ledger entry in each case as is reasonably satisfactory to the Required DIP Lenders under the DIP Term Loan Credit Agreement and the Debtors (the transfers, intercompany notes or intercompany ledger entry referenced in clauses (ii) and (iii), collectively, the "Non-Debtor Subsidiary Notes/Receivable"). All Non-Debtor Subsidiary Notes/Receivables held by Sierra Communications shall accrue interest at the

same rate as the DIP Term Loan Obligations and be pledged to secure the DIP Term Loan Obligations. Notwithstanding the fact that the Non-Debtor Subsidiary Notes/Receivables shall be unsecured obligations of the applicable non-Debtor subsidiaries, for all purposes in connection with the Chapter 11 Cases, the Non-Debtor Subsidiary Notes/Receivables shall be deemed to be secured obligations of the applicable non-Debtor subsidiaries for purposes of allocation of value in the Chapter 11 Cases. The provisions in this paragraph are hereinafter referred to as the "Intercompany Transfer Mechanic."

37. *Loss or Damage to Collateral*. Nothing in the Interim Orders, this Final Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Agents, any DIP Lender, the Prepetition ABL Secured Parties, or Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their business, or in connection with their restructuring efforts. So long as the DIP Agents, the DIP Lenders and the Prepetition Secured Parties comply with their obligations under the DIP Documents, the Interim Orders and this Final Order and their obligations, if any, under applicable law (including the Bankruptcy Code), (a) the DIP Agents, the DIP Lenders and the Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person and (b) all risk of loss, damage or destruction of the DIP Collateral shall be borne by the Debtors.

38. *Reservation of Rights Under the First Lien Pari Intercreditor Agreement*. Pursuant to Bankruptcy Code section 510, the First Lien Pari Intercreditor Agreement and any other

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

39. *Final Order Governs*. In the event of any inconsistency between the provisions of the Interim Orders, this Final Order and the DIP Documents, the provisions of the Interim Orders and this Final Order shall govern. In the event of any inconsistency between the provisions of the Interim Orders and this Final Order, the provisions of this Final Order shall govern.

40. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Agents, the DIP Lenders, the Prepetition Secured Parties, the Creditors' Committee (if any), any non-statutory committees appointed or formed in these Chapter 11 Cases, the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agents, the DIP Lenders, the Prepetition ABL Secured Parties, the Prepetition Secured Parties and the Debtors and their respective successors and assigns; *provided, however*, that the DIP Agents, the DIP

Lenders and the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral (including Cash Collateral) or to extend any financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors).

41. *Limitation of Liability*. In determining to make any loan or other extension of credit under the DIP Documents, to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to the Interim Orders, this Final Order or the DIP Documents, none of the DIP Agents, the DIP Lenders and the Prepetition Secured Parties shall (i) be deemed to be in "control" of the operations or participating in the management of the Debtors; (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; and (iii) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" with respect to the operation or management of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, et seq., as amended, or any similar federal or state statute).

42. *Master Proof of Claim*.

(a) Each of the Prepetition Term Loan Agent, Prepetition Legacy Notes Trustee and Prepetition Secured Exchangeable Notes Trustee will not be required to file proofs of claim in any of the Chapter 11 Cases or any successor cases for any claim allowed herein, including claims arising under the Existing Agreements. The Stipulations shall be deemed to constitute a timely filed proof of claim for each of the Prepetition Term Loan Agent, Prepetition Legacy Notes Trustee and Prepetition Secured Exchangeable Notes Trustee, and such parties shall be treated under section 502(a) of the Bankruptcy Code as if they had timely filed a proof of claim. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Chapter 11 Cases or any successor cases shall not apply to (i) the DIP Agents or the DIP Secured Parties, or (ii) the Prepetition Secured Parties with respect to the Prepetition First Lien Obligations or any claims arising under the Existing Agreements.

(b) In order to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, each of the Prepetition Term Loan Agent, Prepetition Legacy Notes Trustee and Prepetition Secured Exchangeable Notes Trustee is authorized, but not directed, in their sole discretion, to file in the Debtors' lead chapter 11 case *In re Avaya Inc., et al.,* Case No. 23-90088 (DRJ), a single, master proof of claim on behalf of the Prepetition Term Loan Secured Parties, Prepetition Legacy Notes Parties and Prepetition Secured Exchangeable Notes Parties**,** as applicable, on account of any and all of their respective claims arising under the applicable Existing Agreements and hereunder (each, a "Master Proof of Claim") against each applicable Debtor. Upon the filing of a Master Proof of Claim against each of the Debtors, the (i) Prepetition Secured Term Loan Agent and Prepetition Term Loan Secured Parties, (ii) Prepetition Legacy Notes Trustee and Prepetition Legacy Notes Parties, and (iii) Prepetition Secured Exchangeable Notes Trustee and Prepetition Secured Exchangeable Notes Secured Parties, as applicable, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable Existing Agreements, and the claim of each Prepetition Secured Party (and each of its respective successors and assigns), named in a Master Proof of Claim shall be treated as if such entity had filed a separate proof of claim in each of these Chapter 11 Cases. The Master Proofs of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or to be amend to reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this Paragraph 42 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in these Chapter 11 Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the Prepetition First Lien Agents, as applicable.

43. *Information and Other Covenants*. The Loan Parties shall comply in all material respects with the reporting requirements set forth in the DIP Documents. The Debtors shall maintain their cash management arrangements in a manner consistent with that described in the Cash Management Motion and any successor or final orders with respect thereto.

44. *Insurance*. To the extent that any of the Prepetition ABL Agent, the Prepetition Term Loan Agent, the Prepetition Legacy Notes Trustee and the Prepetition Secured Exchangeable Notes Trustee is listed as loss payee under the Borrower's or Guarantors' insurance policies, the DIP Agents are also deemed to be the loss payee under such insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies, <u>first</u>, to the payment in full of the DIP Obligations subject to the priority set forth on **<u>Exhibit 1</u>** hereto (other than contingent indemnification obligations as to which no claim has been asserted), and <u>second</u>, to the payment of the Prepetition First Lien Obligations.

45. *Effectiveness*. This Final Order shall constitute findings of fact and conclusions of law and shall be immediately effective and enforceable *nunc pro tunc* to the Petition Date upon its

entry, notwithstanding any Bankruptcy Rule, Local Bankruptcy Rule or Federal Rules of Civil Procedure, including Bankruptcy Rules 4001(a)(3), 6004(h), 7062, or 9014 or any Local Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure.

46. *Headings*. Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Final Order.

47. *Payments Held in Trust*. Except as expressly permitted in this Final Order or the DIP Documents and subject to the Carve Out in all respects, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source prior to indefeasible payment in full in cash of all DIP Obligations under the DIP Documents, and termination of the commitments in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Agents and the DIP Lenders based on the priorities set forth on **Exhibit 1** hereto and shall immediately turn over such proceeds to the applicable DIP Agent, or as otherwise instructed by this Court, for application in accordance with the DIP Documents and this Final Order based on the priorities set forth on **Exhibit 1** hereto.

48. *Credit Bidding*. Upon entry of this Final Order, subject to the terms of the DIP Documents and the lien priorities set forth herein: (i) the DIP Agents and the DIP Lenders shall have the right to credit bid as part of any asset sale process and shall have the right to credit bid up to the full amount of the DIP Obligations during any sale of the Loan Parties' assets (in whole or in part), including without limitation, sales occurring pursuant to Bankruptcy Code section 363 or included as part of any restructuring plan subject to confirmation under Bankruptcy Code section 1129(b)(2)(A)(ii)-(iii); and (ii) the Prepetition Secured Parties shall have the right to credit bid as

part of any asset sale process and shall have the right to credit bid the full amount of their respective claims, including, for the avoidance of doubt, Adequate Protection Claims, if any, during any sale of the Debtors' assets (in whole or in part) with respect to any asset subject to a duly perfected lien in favor of the Prepetition Secured Parties as of the Petition Date, including without limitation, sales occurring pursuant to Bankruptcy Code section 363 or included as part of any restructuring plan subject to confirmation under Bankruptcy Code section 1129(b)(2)(A)(ii), and shall each automatically be deemed a "qualified bidder" with respect to any disposition of DIP Collateral or Prepetition Collateral (as applicable) under or pursuant to (a) Bankruptcy Code section 363, (b) a plan of reorganization or plan of liquidation under Bankruptcy Code section 1129, or (c) a sale or disposition by a chapter 7 trustee for any of the Debtors under Bankruptcy Code section 725; *provided* that no DIP Term Loan Obligations or Prepetition First Lien Obligations may be credit bid in any disposition of any DIP ABL Priority Collateral unless such sale provides for indefeasible payment in full in cash to the DIP ABL Agent and the DIP ABL Lenders of all DIP ABL Obligations upon the consummation thereof and no DIP ABL Obligations may be credit bid in any disposition of DIP Term Loan Priority Collateral unless such sale provides for the indefeasible payment in full in cash to the DIP Term Loan Agent and Prepetition First Lien Agents, as applicable, of all DIP Term Loan Obligations and Prepetition First-Lien Obligations upon the consummation thereof, in each case subject to the priorities set forth herein including at set forth on **Exhibit 1** hereto. The DIP Agents (at the direction of the Required DIP Lenders) and the Prepetition First Lien Agents (at the direction of the requisite lenders or holders under the applicable Existing Agreements), shall each have the absolute right to assign, transfer, sell, or otherwise dispose of its rights to credit bid, except as may be set forth in the DIP Documents.

49. Notwithstanding any other provisions included in the Interim Orders or Final Order, or any agreements validated by such orders, the ad valorem tax liens, including business personal property tax liens (the "Texas Tax Liens"), currently held by the Texas Taxing Authorities (City of Allen, Allen Independent School District, Bexar County, Cameron County, Dallas County, City of El Paso, Ellis County, City of Frisco, Grayson County, Harris County, Hidalgo County, Jefferson County, City of McAllen, McLennan County, Nueces County, Smith County, Tarrant County, Victoria County, Lubbock Central Appraisal District, Richardson ISD, Eagle Mountain-Saginaw ISD, Carrollton-Farmers Branch ISD, Plano ISD, Frisco ISD, and Williamson County), or which shall arise during the course of this case pursuant to applicable non-bankruptcy law and under applicable non-bankruptcy law are granted priority over a prior perfected security interest or lien, shall not be primed by nor subordinated to any liens granted to any party hereby to the extent such Texas Tax Liens are valid, senior to the Prepetition First-Priority Liens, perfected, and unavoidable, and all parties' rights to object to the priority, validity, amount, and extent of the claims and liens asserted by the Texas Taxing Authorities are fully preserved.

50. *Resolution of Limited Objection of Element Fleet Corporation ("Element").* Notwithstanding anything to the contrary in the Supplemental DIP Motion, the Interim Orders, or this Final Order, in no event shall the liens granted to the DIP Lenders attach to, and the DIP Collateral securing the Borrower's and Guarantors' respective obligations to the DIP Lenders shall not include: (i) the Master Lease Agreement and all amendments thereto (the "Vehicle Lease"), a true copy of which is attached as Exhibit 1 to the Limited Objection filed by Element at Docket No. 256 (the "Element Objection"), and the Debtors' rights thereunder, in each case solely to the extent that the restriction on liens and encumbrances set forth in section 18 of the Vehicle Lease is not rendered ineffective pursuant to section 9-408 of the Uniform

Commercial Code of the relevant jurisdiction; and (ii) any vehicles leased from Element by Debtors under the Vehicle Lease (or proceeds thereof) except to the extent such vehicles (or proceeds thereof) constitute property of the estate; provided, (a) that in the event the Vehicle Lease is recharacterized as a secured financing, any liens granted to the DIP Lenders with respect to vehicles subject to the Vehicle Lease shall be junior to the liens of Element to the extent that the liens of Element were valid, perfected, and non-avoidable as of the Petition Date and Element reserves all rights with respect to the validity, perfection and priority of its liens in the event of such recharacterization; and (b) Element reserves all rights and remedies that it may have under the Vehicle Lease and any related agreement, including in the event that the Debtors seek to assume or reinstate the Vehicle Lease and/or any related agreement.

51. *No Waiver by Failure to Seek Relief.* The failure of the DIP Agents, DIP Lenders, or Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under the Interim Orders, this Final Order, the DIP Documents, the Existing Agreements, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Agents, DIP Lenders, or Prepetition Secured Parties.

52. *Necessary Action.* The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Final Order.

53. *Retention of Jurisdiction.* The Court shall retain jurisdiction to enforce the provisions of this Final Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

54. *Notice of Entry of this Final Order*. The Debtors shall promptly serve copies of this Final Order to the parties having been given notice of Interim Orders, to any party that has filed a request for notices with this Court and to the Creditors' Committee (if any).

Signed: March 07, 2023.

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Lien Priorities on DIP Collateral

Rank	DIP ABL Priority Collateral that is subject to Prepetition First-Priority Liens	DIP ABL Priority Collateral that is not subject to Prepetition First-Priority Liens	DIP Term Priority Collateral that is subject to Prepetition First-Priority Liens	DIP Term Priority Collateral that is not subject to Prepetition First-Priority Liens
1	Carve-Out	Carve-Out	Carve-Out	Carve-Out
2	Permitted Liens	Permitted Liens	Permitted Liens	Permitted Liens
3	DIP ABL Liens	DIP ABL Liens	DIP Term Loan Liens	DIP Term Loan Liens
4	DIP Term Loan Liens	DIP Term Loan Liens	Prepetition First Lien Adequate Protection Liens	Prepetition First Lien Adequate Protection Liens
5	Prepetition First Lien Adequate Protection Liens	Prepetition First Lien Adequate Protection Liens	Prepetition First-Priority Liens	DIP ABL Liens
6	Prepetition First-Priority Liens		DIP ABL Liens	