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*Attorneys for Debtor and Debtor in Possession*

**UNITED STATES BANKRUPTCY COURT**

**NORTHERN DISTRICT OF CALIFORNIA**

**SANTA ROSA DIVISION**

In re  
LEFEVER MATTSON, a California  
corporation, et al.  
Debtors.<sup>1</sup>

Case No. 24-10545 CN (Lead Case)  
(Jointly Administered)  
Chapter 11

In re  
KS MATTSON PARTNERS, LP,  
Debtor.

**NOTICE OF FILING OF PROPOSED  
FINAL ORDER ON DIP FINANCING  
MOTION AND DEBTOR-IN-POSSESSION  
LOAN AND SECURITY AGREEMENT**

<sup>1</sup> The last four digits of LeFever Mattson's tax identification number are 7537. The last four digits of the tax identification number for KS Mattson Partners, LP ("KSMP") are 5060. KSMP's address for service is c/o Stapleton Group, 514 Via de la Valle, Solana Beach, CA 92075. The address for service on LeFever Mattson and all other Debtors is 6359 Auburn Blvd., Suite B, Citrus Heights, CA 9562. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://veritaglobal.net/LM>.

1  
2 **PLEASE TAKE NOTICE** that, on November 22, 2024, an involuntary petition for relief  
3 under chapter 11 of title 11 of the United States Code was filed against KS Mattson Partners, LP (the  
4 “Debtor”) with the United States Bankruptcy Court for the Northern District of California (Santa  
Rosa Division) (the “Bankruptcy Court”).

5 **PLEASE TAKE FURTHER NOTICE** that, on June 9, 2025, the Bankruptcy Court entered  
6 the Stipulated Order for Relief in an Involuntary Case [Case No. 24-10715, Docket No. 131].

7 **PLEASE TAKE FURTHER NOTICE** that on July 29, 2025, the Debtor filed the *Motion*  
8 *of Debtor for Interim and Final Orders (I) Authorizing the Debtor to Obtain Post-Petition Secured*  
9 *Financing Pursuant to Section 364 of the Bankruptcy Code; (II) Authorizing the Use of the DIP*  
10 *Lender’s Cash Collateral; (III) Granting Superpriority Administrative Expense Claims; (IV)*  
11 *Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief*  
12 [Docket No. 1892] (the “DIP Financing Motion”).

13 **PLEASE TAKE FURTHER NOTICE** that the Bankruptcy Court held a hearing on the DIP  
14 Financing Motion on August 5, 2025, pursuant to an order shortening time [Docket No. 1898], (the  
15 “Interim Hearing”) and subsequently issued the *Interim Order (I) Authorizing Debtor to Obtain Post-*  
16 *petition Secured Financing Pursuant to Section 364 of the Bankruptcy Code; (II) Authorizing the Use*  
17 *of the DIP Lender’s Cash Collateral; (III) Granting Superpriority Administrative Expense Claims;*  
18 *(IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief*  
19 (the “Interim Order”), entered on August 6, 2025 [Docket No. 1966], granting certain relief requested  
20 in the DIP Financing Motion on an interim basis and setting a final hearing (the “Final Hearing”).

21 **PLEASE TAKE FURTHER NOTICE** that, the Final Hearing has been continued to  
22 **September 19, 2025, at 11:00 a.m. (Pacific Time)**, before the Honorable Charles Novack, United  
23 States Bankruptcy Judge.

24 **PLEASE TAKE FURTHER NOTICE** that any objections to granting the DIP Financing  
25 Motion on a final basis must be filed with the Bankruptcy Court and served no later than **September**  
26 **12, 2025**.

27 **PLEASE TAKE FURTHER NOTICE** attached hereto as **Exhibit A** is the proposed order,  
28 without exhibits, granting the relief requested in the DIP Financing Motion on a final basis.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit B** is the *Debtor-in-*  
*Possession Loan and Security Agreement*, in the form agreed as between the Debtor and Serene  
Investment Management, LLC, without exhibits.

**PLEASE TAKE FURTHER NOTICE** that counsel, parties, and other interested parties  
may attend in person in Courtroom 215 in Oakland, by Zoom video, or by Zoom telephone.  
Additional information is available on Judge Novack’s Procedures page on the Bankruptcy Court’s  
website, and information on how to attend the hearing by Zoom will be included with each calendar  
posted under Judge Novack’s Calendar on the Bankruptcy Court’s website. If you have questions  
about how to participate in a video or telephonic hearing, you may contact the court by calling 888-  
821-7606 or by using the Live Chat feature on the Bankruptcy Court’s website at  
www.canb.uscourts.gov

**PLEASE TAKE FURTHER NOTICE** that a copy of the DIP Financing Motion and its supporting documents can be viewed and/or obtained by: (i) accessing the Bankruptcy Court's website at <http://www.canb.uscourts.gov>, (ii) contacting the Office of the Clerk of the Court at 450 Golden Gate Avenue, San Francisco, CA 94102, or (iii) from the Debtors' claims and noticing agent, KCC dba Verita Global, at the following web address: <https://www.veritaglobal.net/LM>, or by calling (877) 709-4751 (toll free) for U.S. and Canada-based parties; or (424) 236-7231 for International parties or by e-mail at: [www.veritaglobal.net/lm/inquiry](http://www.veritaglobal.net/lm/inquiry). Note that a PACER password is needed to access documents on the Bankruptcy Court's website.

Dated: September 5, 2025

/S/ RICHARD L. WYNNE

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**EXHIBIT A**  
**(Proposed Final Order)**

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**UNITED STATES BANKRUPTCY COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SANTA ROSA DIVISION**

In re  
LEFEVER MATTSON, a California  
corporation, et al.  
Debtors.<sup>1</sup>

Case No. 24-10545 CN (Lead Case)  
(Jointly Administered)  
Chapter 11

In re  
KS MATTSON PARTNERS, LP,  
Debtor.

**[PROPOSED] FINAL ORDER (I)  
AUTHORIZING THE DEBTOR TO  
OBTAIN POST-PETITION SECURED  
FINANCING PURSUANT TO SECTION 364  
OF THE BANKRUPTCY CODE; (II)  
AUTHORIZING THE USE OF THE DIP**

<sup>1</sup> The last four digits of LeFever Mattson's tax identification number are 7537. The last four digits of the tax identification number for KS Mattson Partners, LP ("KSMP") are 5060. KSMP's address for service is c/o Stapleton Group, 514 Via de la Valle, Solana Beach, CA 92075. The address for service on LeFever Mattson and all other Debtors is 6359 Auburn Blvd., Suite B, Citrus Heights, CA 9562. Due to the large number of debtor entities in these Chapter 11 Cases, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://veritaglobal.net/LM>.

**LENDER'S CASH COLLATERAL; (III)  
GRANTING SUPERPRIORITY  
ADMINISTRATIVE EXPENSE CLAIMS;  
(IV) MODIFYING THE AUTOMATIC  
STAY; (V) SCHEDULING A FINAL  
HEARING; AND (VI) GRANTING  
RELATED RELIEF**

Date: September 19, 2025

Time: 11:00 a.m.

Place: (In Person or Via Zoom)

United States Bankruptcy Court  
1300 Clay Street, Courtroom 215  
Oakland, CA 94612

1 Upon the motion (the “Motion”),<sup>2</sup> of the above-captioned debtor and debtor in possession (the  
2 “Debtor” or the “Borrower”), in chapter 11 Case No. 24-10715 (the “Case” or “KSMP Case”),  
3 pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), section 364(c)(3) and 364(e) of Title  
4 11 of the United States Code, 11 U.S.C. §§101, et seq. (the “Bankruptcy Code”), and Rules 2002,  
5 4001(c), and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the  
6 corresponding local rules of the District Court (the “Local Rules”), and the *Guidelines for Cash*  
7 *Collateral & Financing Motions & Stipulations* (the “Guidelines”), seeking an order, among other  
8 things:

- 9
- 10 i. authorizing the Debtor to obtain post-petition loans, advances and other financial  
11 accommodations (the “DIP Loans”) in an amount up to \$1 million on an interim basis for  
12 a period (the “Interim Period”) through and including the earlier of (a) the Termination  
13 Date (as defined in the Term Sheet), and (b) the date of the Final Hearing (as defined  
14 below) from Serene Investment Management LLC (in such capacity, the “DIP Lender”),  
15 in accordance with all of the terms and conditions set forth in the Credit Agreement (as  
16 defined below), and in accordance with the prior order by the Bankruptcy Court approving  
17 the Motion on an interim basis entered on August 6, 2025 (the “Interim Order”), secured  
18 by first priority security interests in and liens upon all of the currently unencumbered  
19 (both pre- and post-petition) DIP Collateral (as defined below) pursuant to section  
20 364(c)(2) of the Bankruptcy Code;
- 21 ii. authorizing the Debtor to enter into, be bound by, and perform under a debtor in  
22 possession credit facility (the “DIP Facility”), pursuant to a Debtor-in-Possession  
23 Loan and Security Agreement dated as of September [•], 2025, by and among the  
24 Borrower and the DIP Lender, which agreement is attached hereto as **Exhibit 1** (the  
25 “Credit Agreement”);
- 26 iii. modifying the automatic stay to the extent hereinafter set forth;
- 27 iv. granting to the DIP Lender first priority DIP Liens (as defined below) on the DIP  
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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings set forth in the Motion

Collateral (as defined below) that is currently unencumbered (both pre- and post-petition) to secure the DIP Facility and all obligations owing and outstanding thereunder and under the Credit Agreement, as applicable, and the Interim Order, and this Order (the “Final Order”), as applicable (collectively, the “DIP Obligations”), subject only to prior payment of the Carve-Out (as defined below), pursuant to section 364(c)(2) of the Bankruptcy Code;

- v. granting the DIP Lender second priority DIP Liens (as defined below) on the DIP Collateral (as defined below) that is currently encumbered (both pre- and post-petition) by first priority liens to secure the DIP Facility and the DIP Obligations, subject only to said first priority liens and prior payment of the loans secured by said first priority liens and the Carve-Out (as defined below), pursuant to section 364(c)(3) of the Bankruptcy Code.
- vi. granting the DIP Lender third priority DIP Liens (as defined below) on the DIP Collateral (as defined below) that is currently encumbered (both pre- and post-petition) by first and second priority liens to secure the DIP Facility and the DIP Obligations, subject only to said first and second priority liens and prior payment of the loans secured by said first and second priority liens and the Carve-Out (as defined below), pursuant to section 364(c)(3) of the Bankruptcy Code.
- vii. granting the DIP Lender fourth priority DIP Liens (as defined below) on the DIP Collateral (as defined below) that is currently encumbered (both pre- and post-petition) by first, second, and third priority liens to secure the DIP Facility and the DIP Obligations, subject only to said first, second, and third priority liens and prior payment of the loans secured by said first, second, and third priority liens and the Carve-Out (as defined below), pursuant to section 364(c)(3) of the Bankruptcy Code.
- viii. granting the DIP Lender allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code in respect of all amounts advanced under the Credit Agreement;



- ix. authorizing the Debtor to pledge the DIP Collateral and the Debtor to use the proceeds of the DIP Loans (collectively, the “Cash Collateral”) in accordance with the Approved Budget (as defined below);
- x. authorizing the Debtor to use the proceeds of DIP Loans, subject to the terms, restrictions, and other conditions of the Credit Agreement and this Final Order, to fund working capital in the ordinary course of the business of the Borrower and the Carve-Out Account (as defined below), and for other general corporate purposes, in each case, to the extent set forth in the Approved Budget and permitted under the Credit Agreement; and
- xi. waiving, to the extent applicable, any stay of the immediate effectiveness of this Final Order imposed by the Bankruptcy Code or the Bankruptcy Rules, such that this Final Order shall be immediately effective upon its entry on the Court’s docket.

The initial hearing on the Motion was held by this Court on August 5, 2025 (the “Interim Hearing”); and it appearing that due and appropriate notice of the Motion, the relief requested therein, the hearing on this Final Order (the “Final Hearing”) and the Interim Hearing (the “Notice”) was served by the Debtor in accordance with Bankruptcy Rule 4001(c) on (i) the United States Trustee, (ii) the DIP Lender, (iii) the Secured Lenders, (iv) the parties listed on the *Debtor’s List of Creditors Who Have the 30 Largest Unsecured Claims and Are Not Insiders*, (v) taxing authorities for those counties in which the Debtor owns real property, (vi) the Committee, and (vii) those persons who have formally appeared in this KSMP case and requested service pursuant to Bankruptcy Rule 2002 (collectively, the “Notice Parties”); and

This Court having reviewed the Motion and any responses and objections thereto, the *Declaration of Robbin Itkin in Support of the Debtor’s Motion to Obtain Post-Petition Financing* (the “Itkin Declaration”), the other filings made by the Debtor, and the evidence and testimony presented at the Interim Hearing and the Final Hearing; and it appearing that granting the relief requested in the Motion on a final basis is necessary to avoid immediate and irreparable harm to the Debtor, and is otherwise fair and reasonable and in the best interests of the Debtor, its Estate and its creditors, and is essential for the preservation of the value of the Debtor's property; and all objections, if any, to the

entry of this Final Order having been withdrawn, resolved or overruled by the Court; and after due deliberation and consideration and good and sufficient cause appearing therefor,

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

A. Relief Date. On November 22, 2024 (the “Petition Date”), the Debtor became subject to an involuntary petition for relief under chapter 11 of the Bankruptcy Code. On June 9, 2025 (the “Relief Date”), the Court entered the *Stipulated Order for Relief in an Involuntary Case* (Docket No. 131). The Debtor continues as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. Jurisdiction and Venue. The Court has jurisdiction over this Case and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue in this Court over the Cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. Notice. Under the circumstances, the notice given by the Debtor of the Motion, the Interim Hearing and the relief granted under this Order constitutes due and sufficient notice thereof and complies with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001(c).

D. Findings Regarding the Post-Petition Financing. Without prejudice to the rights of any other non-Debtor party in interest, the Debtor admits, stipulates, acknowledges and agrees, and the Court hereby finds, that:

i. The Debtor has requested from the DIP Lender, and the DIP Lender is willing to extend, the DIP Loans to the Borrower on the terms and conditions set forth in this Final Order and the Credit Agreement.

ii. Need for Post-petition Financing. The Debtor does not have sufficient available sources of working capital, including cash collateral, to pay administrative expenses, including professional fees, and conclude a sale of its assets without the financing requested under the Motion. The ability of the Debtor to obtain sufficient working capital and liquidity through the proposed post-petition financing

1 arrangements with the DIP Lender as set forth in this Final Order and the Credit  
2 Agreement is vital to the Debtor's ability to maximize the value of the assets of its  
3 bankruptcy Estate (as defined under section 541 of the Bankruptcy Code, the  
4 "Estate") through an orderly process, including to maintain the Properties by  
5 paying for utilities and insurance. Accordingly, the Debtor has an immediate need  
6 to obtain the post-petition financing in order to, among other things, preserve and  
7 maximize the value of the assets of its Estate and conduct an orderly sales process.

8  
9 iii. No Credit Available on More Favorable Terms. The Debtor is unable to procure  
10 financing in the form of unsecured credit allowable under section 503(b)(1) of the  
11 Bankruptcy Code, as an administrative expense under section 364(a) or (b) of the  
12 Bankruptcy Code, or solely based on the grant of an administrative expense priority  
13 pursuant to section 364(c)(1) of the Bankruptcy Code. The Debtor is also unable to  
14 obtain secured credit allowable solely under section 364(c)(2) and 364(c)(3) of the  
15 Bankruptcy Code. The Debtor has been unable to procure the necessary financing  
16 on terms more favorable than the financing offered by the DIP Lender pursuant to  
17 the Credit Agreement.

18 iv. Budget. The Debtor has prepared and delivered to the DIP Lender an itemized  
19 cash-flow forecast that is acceptable to the DIP Lender (as may be modified from  
20 time to time in accordance with this Final Order and the written consent of the DIP  
21 Lender, the "Approved Budget"). The Approved Budget was attached to the  
22 Motion and is attached hereto as **Exhibit 2**. The Approved Budget sets forth,  
23 among other things, projections for the periods covered thereby. The DIP Lender  
24 is relying upon the Borrower's compliance with the Approved Budget (as further  
25 described in Section 2.4.1 of this Final Order) in accordance with the terms of the  
26 Credit Agreement and this Final Order in determining to enter into the post-  
27 petition financing arrangements and consent to the use of Cash Collateral provided  
28 for herein, subject to the restrictions set forth herein.

- 1 v. No Additional Post-Petition Borrowing. Until such time as all DIP Obligations are  
2 indefeasibly paid in full in cash, the Debtor shall not, without the DIP Lender's  
3 consent, in any way or at any time seek allowance of any administrative expense  
4 claims in this Case that are senior to or *pari passu* with the DIP Lender, including,  
5 without limitation, claims for any administrative expenses of the kind specified in, or  
6 arising or ordered under sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c),  
7 507(a), 507(b), 546(c), 546(d), 552(b), 726, 1113 and 1114 of the Bankruptcy Code  
8 that is superior to or *pari passu* with the Superpriority Claim (as defined below)  
9 provided herein, except with respect to the Carve-Out.
- 10  
11 vi. Business Judgment and Good Faith Pursuant to Section 364(e). The terms of the Credit  
12 Agreement and this Final Order reflect the Debtor's exercise of its prudent business  
13 judgment and are supported by reasonably equivalent value and fair consideration. The  
14 terms and conditions of the Credit Agreement and this Final Order have been  
15 negotiated in good faith and at arms' length by and among the Debtor and the DIP  
16 Lender, with all parties being represented by counsel. Any credit extended under the  
17 terms of this Order shall be deemed to have been extended in good faith by the DIP  
18 Lender, as that term is used in section 364(e) of the Bankruptcy Code.
- 19 vii. Good Cause. The relief requested in the Motion and granted pursuant to the terms  
20 of this Final Order is necessary, essential, and appropriate, and is in the best interest  
21 of and will benefit the Debtor, its creditors, and its estates, as its implementation  
22 will, among other things, provide the Debtor with the necessary liquidity to  
23 preserve and maximize the value of the Estate for the benefit of all the Debtor's  
24 creditors, and avoid immediate and irreparable harm to the Debtor, its creditors,  
25 and its assets.
- 26 viii. Immediate Entry. Sufficient cause exists for immediate entry of this Final Order  
27 pursuant to Bankruptcy Rule 4001(c)(2). No party appearing in the Case has filed  
28 or made an objection to the relief sought in the Motion or the entry of this Final

Order, or any objections that were made (to the extent such objections have not been withdrawn or resolved) are hereby overruled.

Based on the foregoing, it is hereby **ORDERED, ADJUDGED, AND DECREED, THAT:**

**Section 1. Authorization and Conditions to Financing.**

1.1 Motion Granted. The Motion is GRANTED in accordance with Bankruptcy Rule 4001(c)(2) to the extent provided in this Final Order. Any objections to the Motion with respect to entry of this Final Order to the extent not withdrawn, waived or otherwise resolved, and all reservations of rights included therein, are hereby denied and overruled on the merits.

1.2 Authorization to Borrow and Use Loan Proceeds. The Borrower is hereby authorized to enter into, be bound by, and perform under the Credit Agreement and to immediately borrow an aggregate principal amount not to exceed \$4 million, provided that disbursements of such amount are in accordance with the Approved Budget, the Credit Agreement, and this Final Order. Upon the entry of this Final Order, the Borrower shall be authorized to use the DIP Collateral (as defined below), including Cash Collateral (subject to, among other things, satisfaction of the conditions, covenants and terms set forth in this Final Order), to execute and deliver all instruments and documents which may be required or necessary for the performance by the Debtor under the DIP Facility and the creation and perfection of the DIP Liens described in and provided for by this Final Order and the DIP Facility, and to draw on the DIP Facility to make any disbursement as specifically provided in the Approved Budget (subject to the variances as set forth in the Credit Agreement and this Final Order), but solely in accordance with the terms and conditions set forth in this Final Order and the Credit Agreement.

1.3 Credit Agreement.

1.3.1 Approval. The Credit Agreement and each term, condition, and covenant set forth therein are approved. All of such terms, conditions, and covenants shall be sufficient and conclusive evidence of the borrowing arrangements by and among the Borrower and the DIP Lender, and of the Debtor's assumption and adoption of all of the terms, conditions, and covenants of the Credit Agreement for all purposes, including, without limitation, to the extent applicable, the payment when due of all DIP Obligations arising thereunder, including, without limitation, all principal, interest, and

1 such fees and expenses, including, without limitation, all of the DIP Lender's consultant fees and  
2 professional fees (including attorney fees and expenses) as more fully set forth in (and limited by) the  
3 Credit Agreement and further provided below, are hereby approved.

4 1.3.2. Amendment. Subject to the terms and conditions of the Credit  
5 Agreement, the Debtor and the DIP Lender may amend, modify, supplement, or waive any provision of  
6 the Credit Agreement (an "Amendment") without further approval or order of the Court, provided that  
7 any material Amendment shall require advance notice and opportunity to object of no less than five (5)  
8 business days to the U.S. Trustee, and the Committee, and, if any such party objects to the Amendment  
9 within the five (5) day notice period, the Debtor may not agree to the Amendment without further order  
10 of the Court.

11 **Section 2. Authorization and Conditions to Financing.** The DIP Lender shall have no  
12 obligation to make any loans under the Credit Agreement unless the conditions precedent to making  
13 such loans under the Credit Agreement have been satisfied in full or waived by the DIP Lender in its  
14 sole discretion.

15 2.1 Priority and Liens.

16 2.1.1. Lien Grant. To secure the prompt payment and performance of any and  
17 all obligations of the Borrower to the DIP Lender of whatever kind, nature or description, absolute or  
18 contingent, now existing or hereafter arising, the DIP Lender shall have and is hereby granted,  
19 effective as of the Effective Date (as defined below), (A) valid and perfected first priority security  
20 interests and liens, superior to all other liens, claims or security interests that any creditor of the Debtor  
21 may have (but subject to the Carve-Out (as defined below)) in and upon the Unencumbered DIP  
22 Collateral (as defined below) (the "First Priority DIP Liens"); (B) valid and perfected second priority  
23 security interests and liens (subject to the Carve-Out (as defined below)) in and upon certain of the  
24 Encumbered DIP Collateral (as defined below) (the "Second Priority DIP Liens"); (C) valid and  
25 perfected third priority security interests and liens (subject to the Carve-Out (as defined below)) in and  
26 upon certain of the Encumbered DIP Collateral (as defined below) (the "Third Priority DIP Liens");  
27 and (D) valid and perfected fourth priority security interests and liens (subject to the Carve-Out (as  
28

defined below)) in and upon the certain of the Encumbered DIP Collateral (as defined below) (the “Fourth Priority DIP Liens” and, collectively with the First Priority DIP Liens, the Second Priority DIP Liens, and the Third Priority DIP Liens, the “DIP Liens”).

2.1.2. DIP Collateral. For purposes of this Final Order, the term “DIP Collateral” shall have the meaning ascribed to it in the Credit Agreement and encompasses both the Unencumbered DIP Collateral, and the Encumbered DIP Collateral. The “Unencumbered DIP Collateral” means the real property assets of the Debtor located at:

- 1 2500 Castle Rd, Sonoma, CA 95476
- 2 3200 Castle Rd, Sonoma, CA 95476
- 3 443 Casabonne Lane, Sonoma, CA 95476
- 4 62 Farragut Ave. B, Piedmont, CA 94610
- 5 904 Highway 121, Sonoma, CA 95476
- 6 23105 Millerick Rd, Sonoma, CA 95476

The “Encumbered DIP Collateral” means the real property assets of the Debtor located at:

- 1 454 15<sup>th</sup> St, Del Mar, CA 92014
- 2 405 London Way, Sonoma, CA 95476
- 3 415 Pacific Ave, Piedmont, CA 94611
- 4 3003 Castle Rd, Sonoma, CA 95476
- 5 1014 1<sup>st</sup> St W, Sonoma, CA 95476
- 6 22 Boyes Blvd, Boyes Hot Springs, CA 95476
- 7 856 4<sup>th</sup> St E, Sonoma, CA 95476
- 8 969 Rachael Rd, Sonoma, CA 95476
- 9 62 Farragut Ave. A, Piedmont, CA 94610
- 10 1834-1836 Ocean Front, Del Mar, CA 92014
- 11 531-533 Camino Del Mar, CA 92014

2.1.3 Liens. The DIP Lender shall receive a first priority lien on all Unencumbered DIP Collateral, subject only to the Carve-Out. The DIP Lender shall receive a second,

1 third, or fourth priority lien on the Encumbered DIP Collateral, including the Ocean Front Note,  
2 subject to the Carve-Out and pre-existing (pre- or post-petition) first, second, or third priority liens on  
3 the Encumbered DIP Collateral, and repayment of the loans secured by such first, second, or third  
4 priority liens, as applicable. The Encumbered DIP Collateral is subject to the following priority  
5 scheme: (a) the Fourth Priority DIP Liens shall encumber only the Encumbered DIP Collateral with  
6 an address at 1834 Ocean Front, Del Mar, CA 92014; (b) the Third Priority DIP Liens shall encumber  
7 only the Encumbered DIP Collateral with an address at 22 Boyes Blvd, Boyes Hot Springs, CA  
8 95476 and 969 Rachael Rd, Sonoma, CA 95476; and (c) the Second Priority DIP Liens shall  
9 encumber the remaining Encumbered DIP Collateral, including the Ocean Front Note.  
10

11 2.1.4. Lien Priority. The First Priority DIP Liens on the Unencumbered DIP  
12 Collateral shall be first and senior in priority to all other interests and liens of every kind, nature and  
13 description, whether created consensually, by an order of the Court or otherwise, including, without  
14 limitation, liens or interests granted in favor of third parties in conjunction with sections 363, 364 or any  
15 other section of the Bankruptcy Code or other applicable law. The Second Priority DIP Liens, the Third  
16 Priority DIP Liens, and the Fourth Priority DIP Liens shall be junior in priority to the secured claims  
17 encumbering the Encumbered DIP Collateral, and senior in priority to all other interests and liens not  
18 currently in existence of every kind, nature and description, whether created consensually, by an order of the  
19 Court or otherwise, including, without limitation, liens or interests granted in favor of third parties in  
20 conjunction with sections 363, 364 or any other section of the Bankruptcy Code or other applicable law;  
21 provided, however, that the DIP Liens shall be subject to the Carve-Out to the extent provided for in Section  
22 2.3 of this Final Order. The DIP Liens, and the Superpriority Claim (as defined below) (a) shall not be  
23 subject to sections 510, 542, 549, 550, or 551 of the Bankruptcy Code or the “equities of the case” exception  
24 of section 552 of the Bankruptcy Code, or, section 506(c) of the Bankruptcy Code, (b) shall be senior in  
25 priority to (y) any lien that is avoided and preserved for the benefit of the Borrower and its Estate under  
26 section 551 of the Bankruptcy Code or otherwise and (z) any intercompany or affiliate liens or claims  
27 against the Debtor, and (c) shall be valid and enforceable against any trustee or any other estate  
28 representative appointed or elected in the Case, whether upon the conversion of the Case to a case under



chapter 7 of the Bankruptcy Code or appointed in this Case prior to conversion, or in any other proceedings related to any of the foregoing (each, a “Successor Case”), and/or upon the dismissal of this Case or any Successor Case.

2.1.5. Enforceable Obligations. The Credit Agreement shall constitute and evidence the valid and binding DIP Obligations of the Borrower, which DIP Obligations shall be enforceable against the Debtor, its Estate, and any successors thereto (including, without limitation, any trustee or other Estate representative in any Successor Case), and their creditors, in accordance with their terms. No obligation, payment, transfer, or grant of security under the Credit Agreement or this Final Order shall be stayed, restrained, voidable, avoidable, disallowable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under section 502(d) or based on any Avoidance Actions), or subject to any avoidance, disallowance, impairment, reduction, setoff, offset, recoupment, recharacterization, disgorgement, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, surcharge, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity. All interest, fees paid or payable, and all reasonable costs and expenses reimbursed or reimbursable (including, without limitation, all fees, costs and expenses referred to in the Credit Agreement and the DIP Lender’s reasonable attorneys’ fees and expenses), by the Debtor to the DIP Lender are hereby approved.

2.1.6. Post-Petition Lien Perfection. This Final Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of the DIP Liens, effective as of date of entry of the Interim Order (the “Effective Date”), without any further act and without regard to any other federal, state, or local requirements or law requiring notice, filing, registration, recording or possession of the DIP Collateral, or other act to validate or perfect such security interest or lien (each, a “Perfection Act”). Notwithstanding the foregoing, if the DIP Lender shall, in its sole discretion, elect for any reason to file, record, or otherwise effectuate any Perfection Act, the DIP Lender is authorized to perform such act, and the Debtor is authorized and directed to perform such act to the extent necessary or reasonably required by the DIP Lender, which act or acts shall be deemed to have been accomplished as of the Effective Date, notwithstanding the date and time actually accomplished, and in such event, the subject

1 filing or recording office is authorized to accept, file, and/or record any document in regard to such act in  
2 accordance with applicable law. The DIP Lender may choose to file, record, or present a certified copy of  
3 this Final Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act,  
4 and, in such event, the subject filing or recording office is authorized to accept, file, and/or record such  
5 certified copy of this Final Order in accordance with applicable law. Should the DIP Lender so choose  
6 and attempt to file, record, and/or perform a Perfection Act, no defect or failure in connection with such  
7 attempt shall in any way limit, waive or alter the validity, enforceability, attachment, or perfection of the  
8 post-petition liens and security interests granted herein by virtue of the entry of this Final Order.  
9

10 2.2. Superpriority Administrative Expense. For all DIP Obligations now existing or  
11 hereafter arising pursuant to this Final Order, the Credit Agreement, or otherwise, the DIP Lender is  
12 granted an allowed superpriority administrative expense claim pursuant to section 364(c)(1) of the  
13 Bankruptcy Code against the Borrower, and except as set forth in Section 2.2.1 below, having priority in  
14 right of payment over any and all other obligations, liabilities, and indebtedness of the Borrower, whether  
15 now in existence or hereafter incurred by either of them, including, without limitation, all administrative  
16 expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all  
17 administrative expenses or other claims arising under, inter alia, sections 105, 326, 328, 330, 331, 364,  
18 365, 503(b), 506(c), 507(a), 507(b), 546, 552(b), 726, 1113, or 1114 of the Bankruptcy Code or any other  
19 provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a  
20 judgment lien or other non-consensual lien, levy, or attachment (the “Superpriority Claim”); provided,  
21 however, that the Superpriority Claim shall be subject only to the payment of the Carve-Out and the  
22 provisions of Section 2.2.1 below. The Superpriority Claim shall, for purposes of section 1129(a)(9)(A) of  
23 the Bankruptcy Code, be considered an administrative expense allowed under section 503(b) of the  
24 Bankruptcy Code, shall be against the Borrower, and shall be payable from and have recourse to all  
25 prepetition and postpetition property of the Borrower and all proceeds thereof, subject only to the  
26 provisions of Section 2.2.1 below and the Carve-Out, and excluding proceeds of any avoidance actions  
27 pursuant to chapter 5 of the Bankruptcy Code or applicable state law equivalents (collectively,  
28 “Avoidance Actions”), any commercial tort claims (“Commercial Tort Claims”) and any claims against

1 the Debtor's directors and officers (the "D&O Claims") which arose prior to the Relief Date and which  
2 proceeds shall not be available to pay the Superpriority Claim. Other than as expressly provided in the  
3 Credit Agreement and this Final Order with respect to the Carve-Out, no costs or expenses of  
4 administration, including, without limitation, professional fees allowed and payable under sections 326,  
5 328, 330, or 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in this Case, or  
6 in any Successor Case, and no priority claims are, or will be, senior to, prior to, or on a parity with the  
7 Superpriority Claim or the DIP Obligations, or with any other claims of the DIP Lender arising hereunder.  
8

9 2.2.1 Notwithstanding anything to the contrary in Section 2.2 above, for all DIP  
10 Obligations under the Interim Order or this Final Order, to the extent that Socotra Capital, Inc. or any of  
11 its affiliates as lender and/or servicer ("Socotra") has, or services, existing, valid and unavowed pre-  
12 petition liens on property of Borrower that is not DIP Collateral (the "Borrower Property"), the  
13 Superpriority Claim shall not be senior to, or of equal priority with, and shall be junior to, such existing,  
14 valid and unavowed pre-petition liens of Socotra on the Borrower Property.

15 2.3. Carve-Out. The Carve-Out is an amount equal to the sum of (i) all fees required  
16 to be paid to the clerk of the Bankruptcy Court and to the Office of the United States Trustee under  
17 section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard  
18 to the notice set forth in (iii) below); (ii) fees and expenses of up to \$25,000 incurred by a trustee  
19 under section 726(b) of the Bankruptcy Code (which is included in the notice set forth in (iii) below);  
20 and (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise,  
21 all unpaid fees and expenses (the "Allowed Professional Fees") incurred by persons or firms  
22 ("Professional Persons") retained by the Borrower after the Relief Date, whose retention is approved by  
23 this Court pursuant to sections 327, 328 or 363 and 1103 of the Bankruptcy Code, at any time before or  
24 on the first business day following delivery by the DIP Lender of a Carve Out Trigger Notice (as  
25 defined below), whether allowed by the Court prior to or after delivery of a Carve Out Trigger  
26 Notice, and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to  
27 exceed \$250,000 incurred after the first business day following delivery by the DIP Lender of the  
28 Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural

1 order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice  
2 Cap”); *provided*, that (x) (1) the failure of the Carve-Out Account to satisfy in full the Allowed  
3 Professional Fees shall not affect the priority of the Carve-Out (or the obligations benefiting  
4 therefrom) as provided herein or in the Interim Order or Final Order (as applicable) and (2) in no way  
5 shall the Approved Budget, Carve-Out, Post Carve-Out Trigger Notice Cap, or any of the foregoing  
6 be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable  
7 by the Debtor; and (y) nothing herein shall be construed to impair the ability of any party to object to  
8 the fees, expenses, reimbursement or compensation described in clauses (i), (ii), (iii) or (iv) above, on  
9 any grounds. The Carve-Out shall be funded to an administrative reserve account (the “Carve-Out  
10 Account”) in an amount equal to the unpaid Allowed Professional Fees plus the Post-Carve Out  
11 Trigger Notice Cap, which account shall be used to pay Professional Fees and any unpaid fees to the  
12 United States Trustee. As cash flow permits, and assuming no issuance of a Carve-Out Trigger  
13 Notice, the Debtor shall pay the amounts for Allowed Professional Fees into the Carve-Out Account.  
14 Any shortfall in the Carve-Out Account shall be funded first from the DIP Facility in an amount that  
15 shall not cause the DIP Loan to exceed the Maximum DIP Facility Amount (delivery of the Carve  
16 Out Trigger Notice shall be deemed a request by the Debtor for DIP Loan under the DIP Facility in  
17 an amount equal to the Post-Carve Out Trigger Notice Cap) and second from the net proceeds of the  
18 Collateral resulting from a sale of the Collateral outside the ordinary course of business (which  
19 constitutes an event triggering mandatory prepayment of the DIP Loan). Notwithstanding the  
20 foregoing, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred  
21 by any party in connection with (a) the investigation, initiation or prosecution of any claims, causes  
22 of action, adversary proceedings or other litigation against the DIP Lender or its officers, directors  
23 and professionals; (b) attempts to adversely modify any of the rights granted to the DIP Lender; (c)  
24 attempts to prevent, hinder or otherwise delay the DIP Lender’s assertion, enforcement or realization  
25 upon any Collateral in accordance with the DIP and DIP Loan Financing Documents; (d) paying any  
26 amount on account of any claims arising before the Relief Date unless such payments are approved  
27 by an order of the Bankruptcy Court; or (e) after delivery of a Carve-Out Trigger Notice, any success,  
28

1 completion, back-end or similar fees. Notwithstanding anything to the contrary herein, the Carve-Out  
2 shall be senior to all liens and claims securing the DIP Facility and DIP Loan, any adequate  
3 protection liens, if any, the Superpriority Claim and any and all other liens or claims existing  
4 pursuant to the DIP Facility and DIP Loan. For purposes of the foregoing, "Carve Out Trigger  
5 Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Lender  
6 to the Debtor's lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, which  
7 notice may be delivered following the occurrence and during the continuation of an Event of Default  
8 and acceleration of the DIP Loans under the DIP Facility, stating that the Post-Carve Out Trigger  
9 Notice Cap has been invoked.

10  
11 2.4. Use of Cash Collateral; Reporting and Other Rights.

12 2.4.1. Authorization to Use Cash Collateral. Subject to the terms and conditions of  
13 this Final Order and the Credit Sheet, the Debtor shall be and is hereby authorized to use the Cash Collateral  
14 in accordance with, and solely and exclusively for the disbursements set forth in, the Approved Budget. The  
15 Approved Budget shall set forth, on a weekly and on a line item basis, (i) projected cash receipts, (ii)  
16 projected disbursements, and (iii) net cash flow, for the first thirteen (13) week period beginning July 27,  
17 2025 and in the event that projected receipts are less than, or disbursements exceed, 20% in the aggregate  
18 (with any aggregate excess collections in subparagraph (i) or aggregate unspent amounts in subparagraph  
19 (ii) being carried forward for the subsequent week), an "Event of Default" shall be deemed to have  
20 occurred. The Debtor shall, commencing on August 4, 2025, deliver to the DIP Lender, by not later than  
21 Thursday of every other week, a certificate (in form and substance acceptable to the DIP Lender) showing a  
22 reconciliation for the prior four-week cumulative period and certifying that the Debtor is in compliance with  
23 the Approved Budget. The Approved Budget shall be updated, modified, or supplemented by the Debtor not  
24 less than one time in each four (4) consecutive week period, and each such updated, modified, or  
25 supplemented budget shall be approved in writing (including by email) by, and shall be in form and  
26 substance satisfactory to, the DIP Lender, and no such updated, modified or supplemented budget shall be  
27 effective until so approved. In the event the Debtor fails to update, modify or supplement the Budget during  
28

1 a four (4) consecutive week period, and fails to do so within two business days after receiving written notice  
2 from the DIP Lender, the Borrower's right to use Cash Collateral shall terminate.

3 2.4.2. Inspection Rights. As an additional condition to the use of the Cash  
4 Collateral, the Debtor shall, upon reasonable prior written notice (including via email) and during  
5 normal business hours, permit representatives, agents, and employees of the DIP Lender to have  
6 reasonable access to: (i) inspect the Property; (ii) examine the Debtor's books and records, including  
7 with respect to the Property, and (iii) discuss the Debtor's affairs, finances, and condition with the  
8 Debtor's officers, management, financial advisors, attorneys and consultants.

9  
10 **Section 3. Default; Rights and Remedies; Relief from Stay.**

11 3.1. Events of Default. It shall be an "Event of Default" under this Final Order if an  
12 "Event of Default" as defined in the Credit Agreement occurs (together with the passage of any  
13 applicable cure period set forth therein). It shall not be an Event of Default under this Final Order if an  
14 "Event of Default" occurs with respect to any other debtor entity with whom the KSMP Case is jointly  
15 administered. Upon the occurrence of an Event of Default, the DIP Lender shall provide notice thereof  
16 to counsel for Socotra.

17 3.2. Rights and Remedies Upon Events of Default. Upon the occurrence of an  
18 Event of Default, (x) the DIP Lender may declare (i) the termination, reduction or restriction of any  
19 further commitment to the extent any such commitment remains, (ii) all obligations to be  
20 immediately due and payable, without presentment, demand, protest, or other notice of any kind, all  
21 of which are expressly waived by the Debtor, and (iii) the termination of the DIP Facility and the DIP  
22 Financing Documents as to any future liability or obligation of the DIP Lender, but without affecting  
23 any of the liens or the obligations under the DIP Facility and (y) upon the giving of five (5) business  
24 days' notice to the Debtor, counsel to the Committee, the U.S. Trustee, and Socotra, (the "Remedies  
25 Notice Period"), exercise all other rights and remedies provided for in the DIP Financing Documents  
26 and applicable law. During the Remedies Notice Period, Lender shall not be required to make  
27 advances under the DIP Facility and any party in interest shall be entitled to seek an emergency  
28

1 hearing with the Bankruptcy Court to be held prior to the expiration of the Remedies Notice Period,  
2 for the sole purpose of contesting whether an Event of Default has occurred and/or is continuing.

3           3.3     Relief from the Automatic Stay. The automatic stay otherwise applicable to the  
4 DIP Lender is modified to the extent necessary to (i) exercise its rights and remedies with respect to  
5 the DIP Collateral (as applicable), subject to the Remedies Notice Period, (ii) implement the  
6 postpetition financing arrangements authorized by this Final Order and pursuant to the terms of the  
7 Credit Agreement, (iii) take any act to create, validate, evidence, correct, attach or perfect any lien,  
8 security interest, right or claim in the DIP Collateral, and (iv) upon the occurrence and continuation  
9 of an Event of Default, (a) declare the DIP Loans and all other obligations under the DIP Facility to  
10 be due and payable; (b) refuse to extend any further DIP Loans under the DIP Facility, and/or (c)  
11 subject only to the Carve-Out, terminate the use of cash collateral securing payment of any  
12 obligations under the DIP Facility or the DIP Financing Documents.  
13

14           **Section 4.**     Good Faith. The terms of this Final Order were negotiated in good faith and  
15 arm's length by and among the Debtor and the DIP Lender. The DIP Lender shall be entitled to the  
16 full protections of section 364(e) of the Bankruptcy Code.

17           **Section 5.**     Collateral Rights.

18           5.1.     Collateral Rights. Except as may be authorized by this Court under  
19 separate order, including any order of this Court approving a stipulation between the Debtor and the  
20 applicable holder of liens secured by the DIP Collateral for relief from the automatic stay, until all of  
21 the DIP Obligations shall have been indefeasibly paid and satisfied in full, no other party shall  
22 foreclose or otherwise seek to enforce any lien or claim in any DIP Collateral. Notwithstanding  
23 anything to the contrary in this Section 5.1, upon dismissal of the Case, this Section 5.1 shall  
24 terminate and applicable lienholders seeking to foreclose or otherwise seek to enforce any lien or  
25 claim against any DIP Collateral shall not be prohibited from exercising their rights and remedies  
26 against Borrower under applicable non-bankruptcy law. If the DIP Lender determines to foreclose or  
27 otherwise seek to enforce any lien or claim against any of the Encumbered DIP Collateral, the DIP  
28 Lender shall give notice to the senior lienholders of its intent to foreclose or otherwise seek to enforce



1 the DIP Lender's lien or claim against the Encumbered DIP Collateral of not less than the greater of  
2 notice to which Debtor would be entitled or 15 days.

3 5.2. Limitation on Charging Expenses Against Prepetition Collateral. All rights to  
4 surcharge the interests of the DIP Lender in the DIP Collateral under section 506(c) of the  
5 Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally  
6 and irrevocably waived, and such waiver shall be binding upon the Debtor and all parties in interest  
7 in the Cases. No action, inaction, or acquiescence by the DIP Lender, including permitting the use of  
8 Cash Collateral to fund the Debtor's ongoing operations, shall be construed as consent to a charge  
9 against the DIP Collateral pursuant to Bankruptcy Code sections 105(a) or 506(c).  
10

11 5.3. No Marshaling. The DIP Lender shall not be subject to the equitable doctrine  
12 of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral.

13 **Section 6. Other Rights and Obligations.**

14 6.1. No Modification or Stay of This Final Order. Notwithstanding Bankruptcy  
15 Rules 4001(a)(3), 6004(h), 6006(d), 7062, 9024, or any other Bankruptcy Rule, or Rule 62(a) of the  
16 Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable  
17 upon its entry and there shall be no stay of execution or effectiveness of this Final Order.  
18 Notwithstanding (a) any stay, modification, amendment, supplement, vacating, revocation, or  
19 reversal of this Final Order, the Credit Agreement or any term hereunder or thereunder, (b) or the  
20 dismissal or conversion of the Case (each, a "Subject Event"), (i) the acts taken by the DIP Lender in  
21 accordance with this Final Order, and (ii) the DIP Obligations incurred or arising prior to the DIP  
22 Lender's actual receipt of written notice from Debtor expressly describing the occurrence of such  
23 Subject Event shall, in each instance, be governed in all respects by the original provisions of this  
24 Final Order, and the acts taken by the DIP Lender in accordance with this Final Order and the Credit  
25 Agreement, and the DIP Liens granted to the DIP Lender in the DIP Collateral, and all other rights,  
26 remedies, privileges, and benefits in favor of the DIP Lender pursuant to this Final Order and the  
27 Credit Agreement, shall remain valid and in full force and effect pursuant to section 364(e) of the  
28 Bankruptcy Code.



1                   6.2.    Power to Waive Rights; Duties to Third Parties. The DIP Lender, in its sole  
2 and absolute discretion, shall have the right to waive any of the terms, rights and remedies provided  
3 or acknowledged in this Final Order in respect of the DIP Lender (the “DIP Lender Rights”), with  
4 any such waiver to be made in writing by the DIP Lender, and shall have no obligation or duty to any  
5 other party with respect to the exercise or enforcement, or failure to exercise or enforce, any DIP  
6 Lender Rights. Any waiver by the DIP Lender of any DIP Lender Rights shall not be or constitute a  
7 continuing waiver. Any delay in or failure to exercise or enforce any DIP Lender Right shall neither  
8 constitute a waiver of such DIP Lender Right, subject the DIP Lender to any liability to any other  
9 party, nor cause or enable any other party to rely upon or in any way seek to assert a defense to any  
10 obligation owed by the Debtor to the DIP Lender.  
11

12                   6.3.    Reservation of Rights. The terms, conditions, and provisions of this Final  
13 Order are in addition to and without prejudice to the rights of the DIP Lender to pursue any and all  
14 rights and remedies under the Bankruptcy Code, the Credit Agreement (with respect to the DIP  
15 Lender), or any other applicable agreement or law, including, without limitation, to seek relief from  
16 the automatic stay, to seek an injunction, to oppose any request for use of cash collateral or granting  
17 of any interest in the DIP Collateral or priority in favor of any other party, to object to any sale of  
18 assets, and to object to applications for allowance and/or payment of compensation of professionals  
19 or other parties seeking compensation or reimbursement from the Debtor.  
20

21                   6.4.    Binding Effect of Final Order.

22                   6.4.1. Immediately upon entry by this Court, this Final Order shall be valid  
23 and binding upon and inure to the benefit of the DIP Lender, the Debtor and the property of the  
24 Debtor’s Estate, all other creditors of the Debtor, and all other parties in interest and their respective  
25 successors and assigns (including any chapter 11 or chapter 7 trustee or any other fiduciary hereafter  
26 appointed as a legal representative of the Debtor), in the Case, any Successor Case, or upon dismissal  
27 of the Case or Successor Case.  
28

                  6.4.2. Any order dismissing the Case or any Successor Case under section  
1112 or otherwise shall be deemed to provide (in accordance with sections 105 and 349 the

1 Bankruptcy Code) that (a) the Superpriority Claim and the DIP Liens shall continue in full force and  
2 effect notwithstanding such dismissal until the DIP Obligations are indefeasibly paid and satisfied in  
3 full, (b) this Court shall retain jurisdiction to the greatest extent permitted by applicable law,  
4 notwithstanding such dismissal, for the purposes of enforcing the Superpriority Claim and the DIP  
5 Liens. In the event any Court modifies any of the provisions of this Final Order or the DIP Financing  
6 Documents following the Final Hearing or otherwise, (i) such modifications shall not affect the rights  
7 or priorities of the DIP Lender pursuant to the Interim Order or this Final Order with respect to the  
8 DIP Collateral or any portion of the DIP Obligations which arises or is incurred or is advanced prior  
9 to such modifications, and (ii) this Final Order shall remain in full force and effect except as  
10 specifically amended or modified at any such hearing.

11  
12 6.5. Restrictions on Cash Collateral Use, Additional Financing, Plan Treatment. All  
13 postpetition advances and other financial accommodations under the Credit Agreement and the other  
14 DIP Financing Documents, and the use of Cash Collateral, are made in reliance on this Final Order  
15 and there shall not at any time be entered in the Case, or in any Successor Case, any order (other than  
16 the Final Order) which (a) authorizes the use of Cash Collateral of the Debtor in which the DIP  
17 Lender has an interest, or the sale, lease, or other disposition of the DIP Collateral, except as  
18 expressly permitted hereunder or in the Credit Agreement, (b) authorizes the sale, lease, or other  
19 disposition of the DIP Collateral, except as expressly permitted hereunder or in the Credit  
20 Agreement, or (c) authorizes under section 364 of the Bankruptcy Code the obtaining of credit or the  
21 incurring of indebtedness secured by a lien or security interest which is equal or senior to a lien or  
22 security interest in the DIP Collateral, or which is entitled to priority administrative claim status  
23 which is equal or superior to that granted to the DIP Lender herein unless, in each instance (i) the DIP  
24 Lender shall have given its express prior written consent with respect thereto (such consent to be in  
25 the DIP Lender's absolute and sole discretion, and no such consent being implied from any other  
26 action, inaction, or acquiescence by the DIP Lender) or (ii) such other order requires that all DIP  
27 Obligations shall first be indefeasibly paid and satisfied in full in accordance with the terms of Credit  
28 Agreement, including, without limitation, all debts and obligations of the Debtor to the DIP Lender

1 which arise or result from the obligations, loans, security interests, and liens authorized herein, on  
2 terms and conditions acceptable to the DIP Lender. The security interests and liens granted to or for  
3 the benefit of the DIP Lender hereunder and the rights of the DIP Lender pursuant to this Final Order  
4 shall not be altered, modified, extended, impaired, or affected by any plan of reorganization or  
5 liquidation of the Debtor without the express prior written consent of the DIP Lender (such consent to  
6 be in the DIP Lender's absolute and sole discretion).

7  
8 6.6. Term; Termination. Notwithstanding any provision of this Final Order to the  
9 contrary, the Credit Agreement among the Debtor and the DIP Lender authorized by this Final Order  
10 may be terminated pursuant to the terms of the Credit Agreement.

11 6.7. Objections Overruled. All objections to the entry of this Final Order are, to the  
12 extent not withdrawn or resolved, hereby overruled.

13 6.8. No Liability to Third Parties. With respect to any approval or disapproval of  
14 expenditures set forth in the Approved Budget, the DIP Lender shall not: (a) be deemed to be in  
15 "control" of the operations of the Debtor; (b) owe any fiduciary duty to the Debtor, its respective  
16 creditors, shareholders, or estates; or (c) be deemed to be acting as a "Responsible Person" or  
17 "Owner" or "Operator" with respect to the operation or management of the Debtor (as such terms or  
18 similar terms are used in the United States Comprehensive Environmental Response, Compensation  
19 and Liability Act of 1980 or any similar federal or state statute).

20 6.9. Payments Free and Clear. Any and all payments or proceeds remitted to the  
21 DIP Lender and its professionals shall be received free and clear of any claim, charge, assessment, or  
22 other liability. Any such payments, including for fees, costs and expenses, shall be paid by the  
23 Borrower without the need for application to or order of the Court, provided, however, that  
24 notwithstanding anything contained herein or in the DIP Facility, any invoices for fees, costs, and  
25 expenses of the DIP Lender's professionals (including, but not limited to, professional fees, expenses,  
26 or in house administration costs) shall be (i) provided to counsel to the Estate Notice Parties no more  
27 than once per month; and (ii) the Estate Notice Parties shall have ten (10) days to review such fees,  
28 costs, and expenses (the "Review Period") for reasonableness. In the absence of any written objection

1 to such fees, costs, and expenses, the Borrower shall be authorized to pay such amounts to the DIP  
2 Lender or its professionals. In the event there is a timely written objection by any of the Estate Notice  
3 Parties during the Review Period, the relevant Estate Notice Parties and the DIP Lender shall have  
4 five (5) business days to resolve such objection. If such objection cannot be resolved, the objection  
5 shall be filed by the objecting Estate Notice Party or Parties within fifteen (15) calendar days' after  
6 conclusion of the Review Period (the "Objection Deadline"), which objection shall be limited to the  
7 issue of the reasonableness of such fees and expenses, and shall be adjudicated by the Bankruptcy  
8 Court. During the period in which a written objection is pending, the fees, costs, and expenses subject  
9 to such objection may not be paid until the objection is resolved by the parties or adjudicated by the  
10 Bankruptcy Court. Any DIP Lender fees, costs, and expenses that are not subject to a timely  
11 objection may be paid following expiration of the Review Period.  
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13 **Section 7.** Proofs of Claim. Notwithstanding any order entered by this Court in relation to  
14 the establishment of a bar date in the KSMP Case or any Successor Case, neither the DIP Lender nor  
15 any of its affiliates (the "Serene Parties") shall be required to file proofs of claim in the KSMP Case  
16 or the Successor Case for any claims pertaining to mortgage loans (the "Mortgage Loans") for  
17 properties having an address at 969 Rachael Road, Sonoma CA; 62 Farragut Ave, Piedmont , CA and  
18 1716 Ocean Front, Del Mar, California serving as the primary collateral. This Order shall be deemed  
19 to constitute a timely filed proof of claim for the Serene Parties with regard to the foregoing, subject  
20 to agreement or adjudication of the amounts due and owing under such Mortgage Loans. The  
21 provisions set forth in this paragraph are intended solely for the purpose of administrative  
22 convenience and shall not affect the substantive rights of any party-in-interest or their respective  
23 successors-in-interest.

24 **Section 8.** Findings and Conclusions. This Final Order shall constitute findings of fact  
25 and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully  
26 enforceable, as of the Petition Date, immediately upon execution hereof. Notwithstanding  
27 Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9024 or any other Bankruptcy Rule, or Rule  
28 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and

1 enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim  
2 Order.

3       **Section 9.**     Final Order Governs. In the event that any provision of this Final Order  
4 conflicts with any term of the Credit Agreement or the DIP Financing Documents, this Final Order  
5 shall govern.

6       **Section 10.**   Retention of Jurisdiction. The Court has and will retain jurisdiction to interpret  
7 and enforce the provisions of this Final Order.

8                               \*\*\*END OF ORDER\*\*\*  
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**EXHIBIT 1**  
**Credit Agreement**

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**EXHIBIT 2**

**Budget**

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**EXHIBIT B**  
**(Debtor-in-Possession Loan and Security Agreement)**



## **DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT**

This **DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT** is entered into as of [\_\_\_\_], 2025 (this “**Agreement**”), by and between Serene Investment Management, LLC (“**Lender**”), and KS Mattson Partners, LP, a California limited partnership and a debtor-in-possession under Chapter 11 of the Bankruptcy Code (“**Loan Party**,” and also referred to as the “**Debtor**”).

### **RECITALS**

WHEREAS, on November 22, 2024 (the “**Involuntary Petition Date**”), certain creditors of the Debtor filed an involuntary petition with the Bankruptcy Court initiating a case pending under Chapter 11 of the Bankruptcy Code (the “**Case**”, and to the extent the Bankruptcy Court ever consolidates the Case with any other case, collectively, the “**Cases**”), and an order for relief was entered by the Bankruptcy Court on June 9, 2025 (the “**Relief Date**”). The Debtor has continued in the possession of its assets and in the management of its business pursuant to Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Debtor has requested that that the Lender make available to the Debtor debtor-in-possession term loans in an aggregate principal amount of up to of Four Million Dollars (\$4,000,000.00); and

WHEREAS, Lender is willing to make the Loan (as such term is defined in this Agreement) described herein on the terms and conditions set forth in this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Lender and the Loan Party agree as follows:

### **1. DEFINITIONS AND CONSTRUCTION.**

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

“**Advance**” or “**Advances**” means a cash advance or cash advances under the DIP Loan Facility.

“**Advance Request**” has the meaning assigned in Section 2.1(c).

“**Affiliate**” means, with respect to any Person, any other Person that owns or controls directly or indirectly such Person, or any Person that controls or is controlled by or is under common control with such Person.

“**Applicable Law**” means, as to any Person, any law (statutory or common), treaty, rule or regulation of a Governmental Authority or determination of a court or binding arbitrator, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“**Avoidance Action**” means any claim and cause of action that constitutes an avoidance action under Sections 544, 545, 547, 548, 550 or 553 of the Bankruptcy Code or any other avoidance action under the Bankruptcy Code, state law or similar laws and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise.

**“Bankruptcy Code”** means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

**“Bankruptcy Court”** means the United States Bankruptcy Court for the Northern District of California - Santa Rosa Division, or any court having jurisdiction over the Cases from time to time.

**“Bankruptcy Sale”** means a sale pursuant to Section 363 of the Bankruptcy Code of all or substantially all of the Collateral (measured by both aggregate value and number of assets) and other rights of the Debtor on such terms reasonably acceptable to Lender in its Permitted Discretion.

**“Bankruptcy Sale Order”** means an order of the Bankruptcy Court, in form and substance acceptable to Lender, approving and authorizing a Bankruptcy Sale.

**“Budget”** means a cash flow projection and debtor-in-possession budget in form and substance reasonably acceptable to the Lender, which begins on or around the Closing Date; provided that, with the consent of the Lender, such consent not to be unreasonably withheld, the budget may be updated in accordance with Section 6.13.

**“Budget Variance Report”** means a report provided by the Loan Party to the Lender showing by line item and in the aggregate the total cash disbursements of the Loan Party for the period set forth in Section 6.13(b), comparing the total cash disbursements (on a category by category basis) with the cumulative budgeted amounts for each such line item set forth in the Budget through such period, noting therein all variances on a category-level and cumulative basis from the amounts set forth for such period in the Budget, together with explanations for all material variances, and certified as being true and correct in all material respects by the Loan Party’s Responsible Individual.

**“Business Day”** means any day that is not a Saturday, Sunday, or other day on which banks in the State of California are authorized or required to close.

**“Carve Out”** shall have the meaning contained in the Final Order, as applicable.

**“Case”** and **“Cases”** have the respective meanings set forth in the recitals.

**“Closing Date”** means (i) with respect to the Interim Order, the Interim Order Entry Date, or the date immediately thereafter on which the conditions specified in Section 3.1 are satisfied or (ii) with respect to the Final Order, the Final Order Entry Date, or the date immediately thereafter on which the conditions specified in Section 3.2 are satisfied.

**“Code”** means the Uniform Commercial Code as enacted in the State of California.

**“Collateral”** means (i) means the property listed on Exhibit A attached hereto, (ii) the Ocean Front Note, (iii) books and records, but only as may be necessary to realize upon the Collateral and its proceeds, and (iv) such other rights of the Debtor as may be necessary to realize upon the Collateral and its proceeds, but in no event will Collateral include Excluded Assets.

**“Committee”** means an official committee of unsecured creditors appointed by the U.S. Trustee in the Case.

**“Contingent Obligation”** means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any indebtedness, lease, dividend, letter of credit or other obligation of another; (ii) any reimbursement obligations with respect to undrawn letters of credit;

and (iii) all obligations arising under any agreement or arrangement designed to protect such Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term “Contingent Obligation” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by Lender in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

“**Credit Extension**” means each Advance or any other extension of credit by Lender for the benefit of the Loan Party hereunder, including the DIP Loans, but subject to the Budget and the Final Cap.

“**D&O Claims**” means any claims arising prior to the Relief Date against any of Kenneth Mattson, Stacy Mattson, Tim Lefever, or KS Mattson Company, LLC that may be asserted by a creditor of the Debtor.

“**Debtor**” has the meaning set forth in the recitals.

“**Default**” means any event or circumstance that, with the passage of time or giving of notice, would unless cured or waived, constitute an Event of Default.

“**Default Rate**” has the meaning given to such term in Section 2.2(b) hereof.

“**Deeds of Trust**” means deeds of trust in favor of Lender in form and substance satisfactory to Lender on the following parcels of real property: (i) 2500 Castle Rd, Sonoma, California 95476, (ii) 3200 Castle Rd, Sonoma, California 95476, (iii) 454 15th St, Del Mar, California 92014, (iv) 405 London Way, Sonoma, California 95476, and (v) 415 Pacific Ave, Piedmont, California 94611.

“**DIP Loan**” has the meaning given to such term in Section 2.1(a) hereof.

“**DIP Loan Commitment**” means an aggregate amount not to exceed Four Million Dollars (\$4,000,000.00).

“**DIP Loan Facility**” means this Loan facility.

“**DIP Obligations**” has the meaning given to such term in the Final Order.

“**Equipment**” means all present and future machinery, equipment, furniture, fixtures, vehicles, tools, parts and attachments in which Loan Party has any interest.

“**Event of Default**” has the meaning assigned in Section 8.

“**Excluded Assets**” means collectively (i) all Avoidance Actions, (ii) all D&O Claims, (iii) any commercial tort claims owned by the Debtor at any time (or the proceeds thereof), and (iv) any and all amounts paid to the Loan Party and the Committee’s bankruptcy professionals as an administrative expense pursuant to an interim or final order of the Bankruptcy Court.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to Lender or required to be withheld or deducted from a payment to Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case (i) imposed as a

result of Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) any U.S. federal withholding Taxes imposed on amounts payable to or for the account of Lender with respect to any obligations under this Agreement pursuant to a law in effect on the date Lender acquired its interest in such obligations or on the date that Lender changes its lending office, except, in each case, to the extent that amounts with respect to such Taxes were payable to Lender immediately before the date it acquired such interest or changed its lending office, (c) Taxes that are attributable to Lender's failure to comply with Section 2.5, and (d) any U.S. federal withholding Taxes imposed under FATCA. For purposes of this definition, any reference to Lender shall be deemed to include a Foreign Lender.

**"Facility Fee"** has the meaning set forth in Section 2.3(a).

**"FATCA"** means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code, any intergovernmental agreement entered into in connection with the implementation of such sections of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to, or official interpretations implementing such, intergovernmental agreements.

**"Fees"** means each and all of the amounts set forth in Section 2.3.

**"Final Cap"** means the sum of Four Million Dollars (\$4,000,000.00), exclusive of all interest, fees, and expenses, tenderable in the form of DIP Loans by Lender to the Loan Party upon entry of the Final Order and compliance with all other requirements of this Agreement and the Loan Documents.

**"Final Order"** means a final order of the Bankruptcy Court (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms thereof) authorizing the Loans, with changes to such form as are satisfactory to the Lender, approving the Loan Documents and authorizing the DIP Loan in such amounts as are contemplated by Section 2.1(b), in substantially the form of Exhibit A hereto.

**"Final Order Entry Date"** means the date on which the Final Order is entered by the Bankruptcy Court, which such date shall not occur later than September 29, 2025.

**"First Priority DIP Liens"** has the meaning given to such term in Section 4.1(a).

**"Fourth Priority DIP Liens"** has the meaning given to such term in Section 4.1(d).

**"GAAP"** means generally accepted accounting principles as in effect from time to time.

**"Governmental Authority"** is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

**"Highest Lawful Rate"** shall mean the maximum nonusurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Obligations evidenced by this Agreement and as provided for herein or the other Loan Documents, under the laws of

such state or states whose laws are held by any court of competent jurisdiction to govern the interest rate provisions of the Loan.

**“Indebtedness”** means (a) all indebtedness for borrowed money or the deferred purchase price of property or services, including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (b) all obligations evidenced by notes, bonds, debentures or similar instruments, (c) all Contingent Obligations, and (d) all capital lease obligations.

**“Indemnified Taxes”** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of Lender under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

**“Insolvency Proceeding”** means any proceeding commenced by or against any person or entity under any provision of the Bankruptcy Code, or under any other bankruptcy or insolvency law, including assignments for the benefit of creditors, formal or informal moratoria, compositions, extension generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

**“Interim Order”** means the *Interim Order (i) Authorizing Debtor to Obtain Post-Petition Secured Financing pursuant to Section 364 of the Bankruptcy Code; (ii) Authorizing the Use of the DIP Lender’s Cash Collateral; (iii) Granting Superpriority Administrative Expense Claims; (iv) Modifying the Automatic Stay; (v) Scheduling a Final Hearing; and (vi) Granting Related Relief* (as the same may be amended, supplemented, or modified from time to time after entry thereof in accordance with the terms thereof), Docket No. 1966, entered by the Bankruptcy Court on the Interim Order Entry Date, approving the Loan Documents and authorizing the DIP Loan in such amounts as are contemplated by Section 2.1(b).

**“Interim Order Entry Date”** means August 6, 2025.

**“Investment”** means any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to any Person.

**“Involuntary Petition Date”** has the meaning set forth in the recitals.

**“IRC”** means the Internal Revenue Code of 1986, as amended.

**“IRS”** means the United States Internal Revenue Service.

**“Lender Expenses”** means all reasonable and documented audit fees and expenses, costs, and expenses (including reasonable attorneys’ fees and expenses) for preparing, negotiating, defending and enforcing the Loan Documents and monitoring and participating in the Cases (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings), all reasonable search, filing, recording and title insurance charges and fees related thereto, and other reasonable and documented out-of-pocket expenses incurred by or otherwise incurred by the Lender (including, but not limited to, attorneys’ fees, and fees and expenses of any financial and real estate advisors retained by the Lender); provided that documented attorneys’ fees and expenses shall not exceed \$145,000 through the period ending on the Final Order Entry Date.

**“Lien”** means any mortgage, lien, deed of trust, charge, pledge, security interest or other encumbrance that attaches to the Collateral or its proceeds.

**“Loans”** means collectively, each DIP Loan.

**“Loan Documents”** means, collectively, this Agreement, any note or notes or guaranties executed by the Loan Party, the Interim Order, the Final Order and any other agreement entered into in connection with this Agreement, all as amended or extended from time to time.

**“Loan Party”** has the meaning set forth in the recitals.

**“Loan Party’s Books”** means all of the Loan Party’s books and records including: ledgers; records concerning the Loan Party’s assets or liabilities, the Collateral, business operations or financial condition; and all computer programs, or tape files, and the equipment, containing such information.

**“Loan Party’s Knowledge”** means the actual knowledge of the Responsible Individual after reasonable inquiry.

**“Mandatory Prepayment Event”** means any of (i) the receipt by Debtor of proceeds from Indebtedness (other than a DIP Loan) outside the ordinary course of business without the prior written consent of Lender and (ii) the receipt of any net proceeds relating to any Collateral (including, but not limited to, proceeds after a casualty event, sale, or any other disposition).

**“Material Adverse Effect”** means a material adverse effect on (i) the business, operations, or financial condition of the Loan Party or (ii) the value of the Collateral taken as a whole or priority of Lender’s security interests in the Collateral; provided that the term “Material Adverse Effect” will not be deemed to exist as a result of the Case or the circumstances and events leading up thereto.

**“Maturity Date”** means the earlier of (i) December 31, 2025; (ii) September 29, 2025, if the Final Order Entry Date has not occurred by such time; (iii) the closing of a Bankruptcy Sale; (iv) the effective date of the Loan Party’s chapter 11 plan; (v) entry of an order by the Bankruptcy Court converting either of the Cases to a proceeding or proceedings under Chapter 7 of the Bankruptcy Code; (vi) entry of a final order by the Bankruptcy Court dismissing any Case; (vii) the date of filing or support by the Loan Party of a plan of reorganization that does not provide for indefeasible payment in full in cash of all Obligations owing hereunder; or (viii) the date of termination of the DIP Loan Commitments and the acceleration of any outstanding extensions of credit under the Loan in accordance with the terms of this Agreement.

**“Obligations”** means all debt, principal, interest, Fees, and other amounts owed to Lender by the Loan Party pursuant to this Agreement, including the DIP Obligations.

**“Ocean Front Note”** means that certain promissory note in the face amount of \$19 million in favor of Debtor and secured by a junior lien on the property located at 1716 Ocean Front, Del Mar, California 92014.

**“Orders”** means collectively, the Interim Order and the Final Order.

**“Other Connection Taxes”** means, with respect to Lender, Taxes imposed as a result of a present or former connection between Lender and the jurisdiction imposing such Tax (other than connections arising from Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any loan hereunder or Loan Document).

**“Other Taxes”** means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery,



performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

**“Permitted Budget Variance”** has the meaning given to it in Section 6.13.

**“Permitted Discretion”** means a determination made in good faith and in the exercise of its commercially reasonable (from the perspective of a first priority perfected secured asset based lender) business judgment based on how an asset based lender with similar rights providing a credit facility of the type provided under this Agreement would act in similar circumstances at the time with the information then available to it.

**“Permitted Indebtedness”** means:

- (a) Indebtedness of the Loan Party in favor of Lender arising under this Agreement, any other Loan Document;
- (b) Indebtedness arising in connection with the Carve Out;
- (c) The prepetition Indebtedness of the Debtor identified on Schedule 1.1.1; and
- (d) Indebtedness to trade creditors incurred in the ordinary course of business, and including professional fees incurred in the Case.

**“Permitted Investment”** means:

- (a) Investments existing on the Closing Date;
- (b) Advances necessary to sustain such Investments, but only and as set forth in the Budget; and
- (c) Investments held by the Loan Party in (i) cash and cash deposits that are maintained at a bank or other financial institution that is insured by the Federal Deposit Insurance Corporation, (ii) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency or any State thereof maturing within one (1) year from the date of acquisition thereof, and/or (iii) money market account funds held at financial institutions reasonably acceptable to Lender in Lender’s Permitted Discretion.

**“Permitted Liens”** means the following:

- (a) Any Liens arising under this Agreement or the other Loan Documents;
- (b) Liens for taxes, fees, assessments or other governmental charges or levies, either not yet delinquent or being contested in good faith by appropriate proceedings;
- (c) Liens on the Property existing as of the Relief Date that are disclosed on Exhibit B, Exhibit C, Exhibit D and Exhibit E.
- (d) With respect to the Property, those exceptions set forth on the title reports attached hereto as Schedule 1.1.2; and
- (e) to the extent constituting a Lien, the Carve Out.

**“Person”** means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or governmental agency.

**“Property”** means those certain real properties consisting of the parcels set forth on Exhibit A hereto.

**“Professional Fees”** means, collectively, all reasonable and documented fees, costs, disbursements, and expenses incurred by the Debtor and the Committee for services rendered or expenses incurred by attorneys, financial advisors, restructuring consultants, and any other professionals retained pursuant to sections 327, 328, 330, 363, or 1103 of the Bankruptcy Code, and in accordance with the Bankruptcy Local Rules for the United States Bankruptcy Court for the Northern District of California, the U.S. Trustee Guidelines, and any applicable orders of the Bankruptcy Court, including any interim compensation procedures order.

**“Relief Date”** has the meaning set forth in the recitals.

**“Remaining Obligations”** has the meaning given to such term in Section 2.6 hereof.

**“Responsible Individual”** means Robbin L. Itkin or her successor, which successor must be reasonably acceptable to the Lender in its Permitted Discretion, pursuant to that certain *Final Order Authorizing Designation of Robbin L. Itkin as Responsible Individual Pursuant to B.L.R. 4002-1* [D.I. 172]

**“Second Priority DIP Liens”** has the meaning given to such term in Section 4.1(b).

**“Superpriority Claim”** means a claim against the Debtor in a Case to the extent provided under Section 507(b) of the Bankruptcy Code, which is an administrative expense claim having priority over any and all administrative expenses, diminution claims and all other claims against the Loan Party, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in Sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under Sections 105, 326, 328, 330, 331, 364, 365, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code, but subject to the Carve Out.

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

**“Term Sheet”** means that certain DIP Term Sheet between DIP Lender and Loan Party approved by the Interim Order.

**“Third Priority DIP Liens”** has the meaning given to such term in Section 4.1(c).

**“Trademarks”** means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of the Loan Party connected with and symbolized by such trademarks.

**“Transfer”** has the meaning assigned in Section 7.1.

**“U.S. Trustee”** means Tracy Hope Davis, the United States Trustee for Region 17, or any successor.



**1.2 Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP (or such other accounting basis selected by the Loan Party, consistently applied and reasonably acceptable to Lender) and all calculations made hereunder shall be made in accordance with GAAP (or such other accounting basis selected by the Loan Party, consistently applied and reasonably acceptable to Lender). When used herein, the terms “financial statements” shall include the notes and schedules thereto.

## **2. LOAN AND TERMS OF PAYMENT.**

**2.1 Credit Extensions.** The Loan Party promises to pay to the order of Lender, in lawful money of the United States of America, the aggregate unpaid principal amount of all Credit Extensions made by Lender to the Loan Party hereunder.

(a) **Term Loan.** Subject to and upon the terms and conditions of this Agreement (including the satisfaction (or waiver) of the conditions precedent set forth in Sections 3.1 and 3.2), Lender agrees that it will make from time-to-time Credit Extensions in an amount not to exceed its DIP Loan Commitment (each, a “**DIP Loan**”). Other than the DIP Loan made on or around the Interim Order Entry Date, each DIP Loan shall be in a minimum amount of not less than \$250,000, or such lesser amount as Lender may agree in Lender’s sole but reasonable discretion. The Initial Credit Extension was subject to the conditions precedent set forth in the Term Sheet and were substantially concurrent with the Interim Order Entry Date and the subsequent Credit Extensions shall be subject to the conditions precedent set forth in Section 3.2. Amounts borrowed under this Section 2.1(a) may not be reborrowed once repaid.

(b) Subject to and upon the terms and conditions of this Agreement (including the satisfaction (or waiver) of the conditions precedent set forth in Sections 3.1 and 3.2), the Loan Party may request, and Lender shall make, Credit Extensions that do not exceed in the aggregate the DIP Loan Commitment. Notwithstanding anything contained herein to the contrary, in no event shall the Lender be obligated to make any DIP Loan in excess of the Final Cap.

(c) Whenever the Loan Party desires an Advance of a DIP Loan, the Loan Party will notify Lender by e-mail transmission or telephone no later than 2:00 p.m. Pacific time (each an “**Advance Request**”), (1) with respect to the initial Advance Request, two (2) Business Days, and (2) with respect to each Advance Request thereafter (which for the avoidance of doubt, shall be the subsequent advances upon entry of the Final Order and satisfaction of the conditions precedent in Section 3.2), three (3) Business Days (or such shorter period as agreed by Lender in its discretion) prior to the date the Advance may be made. Lender is authorized to make Advances under this Agreement, based upon instructions received from a Responsible Individual or a designee of a Responsible Individual. Lender shall be entitled to rely on any telephonic notice given by a person who Lender reasonably believes to be the Responsible Individual or a designee thereof. Lender will wire Advances in immediately available federal funds to a deposit account identified by the Loan Party in writing from time to time.

All Advances under this Section 2.1 and all accrued and unpaid interest thereon shall be repaid in full by Loan Party on the Maturity Date. Additionally, the Loan Party shall pay to Lender 100% of the proceeds received by Loan Party resulting from a Mandatory Prepayment Event. Irrespective of when the Obligations are repaid in full, at the time all Obligations hereunder have been repaid in full, the Loan Party shall have paid to Lender an amount equal to the greater of (i) six (6) months accrued interest on the DIP Loans, and (ii) the actual amount of interest that accrued on the DIP Loans.

## 2.2 Payment of Interest on the Loans.

(a) Interest Rate for Advances. Subject to Section 2.2(b), the principal amount outstanding under the DIP Loan Facility shall accrue interest at a per annum rate equal to 16%.

(b) Default Rate. After the occurrence and during the continuance of an Event of Default and upon written notice to the Loan Party, the Obligations shall bear interest at a rate per annum which is four percentage points (4%) above the rate that is otherwise applicable thereto (the “**Default Rate**”). Payment or acceptance of the increased interest rate provided in this Section 2.2(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Lender.

(c) Payment; Interest Computation. Interest is payable monthly on the first calendar day of each month and shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (a) all payments received after 2:00 p.m. Pacific time on any day shall be deemed received at the opening of business on the next Business Day, and (b) the date of the making of any Loan shall be included and the date of payment shall be excluded; provided, however, that if any Loan is repaid on the same day on which it is made, such day shall be included in computing interest on such Loan.

## 2.3 Fees. The Loan Party shall pay to Lender:

(a) Facility Fee. A fully earned, non-refundable facility fee in the amount of \$400,000, \$100,000 of which shall be payable in kind and added to the principal Obligations on the Interim Order Entry Date, and the remaining \$300,000 of which shall be payable in kind and added to the principal Obligations on the Final Order Entry Date, in each case payable upon the earlier of (i) repayment in full of the Obligations at any time, and (ii) the Maturity Date (the “**Facility Fee**”). For the avoidance of doubt, the Facility Fee shall be paid-in-kind and added to the DIP Obligations as and when such fees are deemed fully earned hereunder.

### (b) Lender Expenses.

(i) The Loan Party shall be responsible for all Lender Expenses.

(ii) None of the Lender Expenses shall be subject to the prior approval of the Bankruptcy Court and no recipient of any such payment shall be required to file with respect thereto any interim or final fee application with the Bankruptcy Court. Notwithstanding the foregoing, the Lender Expenses shall be paid in accordance with the procedures for payment of Lender Expenses set forth in the Orders and the Bankruptcy Court retains all jurisdiction in regard to a dispute between the Loan Party and the Lender regarding the reasonableness of the asserted Lender Expenses.

(c) Fees Fully Earned. Unless otherwise provided in this Agreement or in a separate writing by Lender, the Loan Party shall not be entitled to any credit, rebate, or repayment of any Lender Expenses paid or other fees earned by Lender pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of Lender’s obligation to make Credit Extensions.

**2.4 Crediting Payments.** Lender has the exclusive right to determine the order and manner in which all payments with respect to the Obligations may be applied. The Loan Party shall have no right to specify the order or the accounts to which Lender shall allocate or apply any payments required to be made by the Loan Party to Lender or otherwise received by Lender under this Agreement when any such allocation or application is not specified elsewhere in this Agreement. Notwithstanding anything to the contrary contained herein, any wire transfer or payment received by Lender after 2:00 p.m. Pacific Time

shall be deemed to have been received by Lender as of the opening of business on the immediately following Business Day. Whenever any payment to Lender under the Loan Documents would otherwise be due (except by reason of acceleration) on a date that is not a Business Day, such payment shall instead be due on the next Business Day.

## **2.5 Withholding.**

(a) Payments received by Lender from the Loan Party under this Agreement will be made free and clear of and without deduction for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of the Loan Party) requires the Loan Party to make any withholding or deduction of any Tax from any such payment, then the Loan Party shall be entitled to make such deduction or withholding and, if such Tax is an Indemnified Tax, then the sum payable by the Loan Party shall be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required.

(b) The Loan Party shall pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with applicable law, the Bankruptcy Code, and orders of the Bankruptcy Court, and the Loan Party will, upon request, furnish Lender with proof reasonably satisfactory to Lender indicating that the Loan Party has made such withholding payment.

(c) Notwithstanding anything to the contrary in this Section 2.5, the Loan Party need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings or as to which payment in full is bonded or reserved against by the Loan Party. The agreements and obligations of the Loan Party contained in this Section 2.5 shall survive the termination of this Agreement.

(d) Lender, if reasonably requested by the Loan Party, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Loan Party as will enable the Loan Party to determine whether or not Lender is subject to backup withholding or information reporting requirements.

(e) If Lender determines that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.5 (including by the payment of additional amounts pursuant to this Section 2.5), it shall pay to the Loan Party an amount equal to such refund (but only to the extent of indemnity payments made by the Loan Party under this Section 2.5 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that the Loan Party, upon the request of Lender, agrees to repay the amount paid over to the Loan Party (plus any penalties, interest or other charges imposed by the relevant taxing authority) to Lender in the event Lender is required to repay such refund to such taxing authority.

**2.6 Term.** This Agreement shall become effective on the Closing Date and, subject to Section 14.8, shall continue in full force and effect for so long as any Obligations remain outstanding or Lender has any obligation to make Credit Extensions under this Agreement, through and including the Maturity Date. Notwithstanding the foregoing, Lender shall have the right to terminate its obligation to make Credit Extensions under this Agreement upon the occurrence and during the continuance of an Event of Default, upon written notice to the Loan Party. Notwithstanding termination, Lender's Lien on the Collateral shall remain in effect for so long as any Obligations are outstanding; provided, however, that Lender shall release its interests in the Collateral if the only outstanding Obligations are contingent, unliquidated, or disputed Obligations (the "**Remaining Obligations**") and the Loan Party provides a

deposit acceptable to Lender in its Permitted Discretion or in an amount ordered by the Bankruptcy Court to adequately protect Lender on account of the Remaining Obligations.

**2.7 Right to Credit Bid.** In connection with any sale or disposition of all or any portion of the Collateral, including in each case pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code or as part of restructuring plan subject to confirmation under Section 1129 of the Bankruptcy Code, or at any sale or foreclosure conducted by Lender, by a chapter 7 trustee under Section 725 of the Bankruptcy Code, or otherwise, in each case in accordance with applicable law and, with respect to any credit bid, Section 363(k) of the Bankruptcy Code, the Loan Party hereby gives Lender the power and right, without assent by the Loan Party, to “credit bid” the full amount of all Obligations in order to purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral.

### **3. CONDITIONS OF LOANS.**

**3.1 Conditions Precedent to Initial Credit Extension.** The obligation of Lender to make the initial Credit Extension was subject to the satisfaction of the conditions precedent set forth in the Term Sheet, which were satisfied.

**3.2 Conditions Precedent to the Subsequent Credit Extension.** The obligation of Lender to make any subsequent Credit Extension, including any DIP Loan, is subject to the following conditions:

(a) Lender shall have received, in form and substance satisfactory to Lender, executed copies of this Agreement and the other Loan Documents;

(b) the representations and warranties contained in Section 5 shall be true and correct in all material respects on and as of the date of the Loan Party’s request for a Credit Extension and on the effective date of each Credit Extension as though made at and as of each such date;

(c) no Default or Event of Default shall be continuing or would exist after giving effect to such Credit Extension;

(d) the Loan Party shall have delivered to Lender an updated Budget and such Budget has been approved by Lender which approval shall not be unreasonably withheld, conditioned or delayed if no uncured Event of Default then exists;

(e) the Interim Order shall be in full force and effect, shall not have been vacated or reversed, shall not have been modified or amended other than as acceptable to Lender and shall not be subject to a stay;

(f) the Final Order Entry Date shall have occurred on or prior to September 29, 2025, and the Final Order shall be in full force and effect, shall not have been vacated or reversed, shall not have been modified or amended other than as acceptable to Lender and shall not be subject to a stay;

(g) the Case shall have been dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;

(h) all outstanding Taxes on the respective Property that are due and owing at the time of such DIP Loan have been paid or will be paid with the proceeds of such DIP Loan (other than those Taxes on the Property that will be paid upon closing of a Bankruptcy Sale);

(i) the Deeds of Trusts, executed by Debtor and recorded in all applicable jurisdictions;

(j) the Lender shall have confirmed to its satisfaction that the Collateral is in the priority positions set forth on the Exhibits hereto versus the respective Property and any errors of record have been addressed to the Lender's satisfaction; and

(k) no trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code shall have been appointed in the Case.

#### 4. CREATION OF SECURITY INTEREST.

**4.1 Grant of Security Interest.** To secure prompt repayment of any and all Obligations and prompt performance by the Loan Party of each of its covenants and duties under the Loan Documents, the Loan Party grants Lender a continuing security interest in all presently existing and hereafter acquired or arising Collateral (subject to Permitted Liens, and excluding the Excluded Assets as set forth herein). Such security interest shall constitute:

(a) a valid, perfected First Priority DIP Liens on Collateral Exhibit B that is not subject to valid, perfected, and non-avoidable Liens set forth on hereto which, as of the Relief Date, was not encumbered by first priority Liens, as set forth or subject to invalid, unperfected or avoidable liens ("**First Priority DIP Liens**"). For the avoidance of doubt, the First Priority DIP Liens shall encumber Collateral set forth on Exhibit B hereto existing prior to the Relief Date and any Collateral acquired after the Relief Date;

(b) a valid, perfected Second Priority DIP Lien on Collateral set forth on Exhibit C that is subject to valid, perfected, and non-avoidable Liens, as of the Relief Date, identified on Exhibit C hereto ("**Second Priority DIP Liens**");

(c) a valid, perfected Third Priority DIP Lien on Collateral set forth on Exhibit D that is subject to valid, perfected, and non-avoidable Liens, as of the Relief Date, identified on Exhibit D hereto ("**Third Priority DIP Liens**"); and

(d) a valid, perfected Fourth Priority DIP Lien on Collateral set forth on Exhibit E that is subject to valid, perfected, and non-avoidable Liens, as of the Relief Date, identified on Exhibit E hereto ("**Fourth Priority DIP Liens**").

The Loan Party agrees that the Obligations are entitled to Superpriority Claim status in the Cases. For the avoidance of doubt, the Superpriority Claim granted herein and in the Orders shall not extend to, nor be collectible from, any Excluded Assets.

**4.2 Delivery of Additional Documentation Required.** The Loan Party shall from time to time execute and deliver to Lender, at the request of Lender, all financing statements, deeds, deeds of trust, bills of sale, security agreements, mortgages, hypothecations, real estate transfer documentation, the notes evidencing the Ocean Front Note endorsed in favor of Lender, and other documents that Lender may reasonably request, in form satisfactory to Lender, to perfect and continue the perfection of Lender's security interests in the Collateral and in order to fully consummate all of the transactions contemplated under the Loan Documents.

**4.3 Authorization to File Financing Statements.** The Loan Party hereby authorizes Lender to file financing statements, without notice to the Loan Party, with all appropriate jurisdictions to perfect or protect Lender's interest or rights hereunder.

## **5. REPRESENTATIONS AND WARRANTIES.**

The Loan Party represents and warrants as follows:

**5.1 Due Organization and Qualification.** The Loan Party is a corporation duly existing under the laws of their state of California and qualified and licensed to do business in any state in which the conduct of its business or its ownership of property requires that it be so qualified, except in each case (other than with respect to their states of incorporation) where the failure to do so could not reasonably be expected to cause a Material Adverse Effect.

**5.2 Due Authorization; No Conflict.** Subject to the terms of the Interim Order, the execution, delivery, and performance of the Loan Documents are within the Loan Party's powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in the Loan Party's Certificate of Incorporation, Article of Organization, or Bylaws, nor will they constitute an event of default under any material agreement to which the Loan Party is a party or by which the Loan Party is bound. The Loan Party is not in default under any post-petition agreements to which it is a party or by which it is bound, except to the extent such default would not reasonably be expected to cause a Material Adverse Effect.

**5.3 No Prior Encumbrances.** The Debtor has good and marketable title to the Collateral, free and clear of Liens, except for Permitted Liens.

**5.4 Diligence.** To the best of the Loan Party's Knowledge, there exists no fact, condition or circumstance that may materially and adversely affect the assets, liabilities, business, prospects, condition or results of operations of the Loan Party or the Property that has not been previously disclosed to the Lender in writing.

**5.5 Name; Location of Business.** The Loan Party will advise Lender not less than ten (10) business days in advance of any change in the business headquarters of the Loan Party. The Loan Party has not done business under any name other than that specified on the signature page hereof.

**5.6 Litigation.** Except as disclosed in writing to Lender, there are no actions or proceedings (other than the Case) pending by or against Loan Party before any court or administrative agency in which an adverse decision could reasonably be expected to have a Material Adverse Effect.

**5.7 Intentionally Omitted.**

**5.8 Intentionally Omitted.**

**5.9 Intentionally Omitted.**

**5.10 Environmental Condition.** To the best of the Loan Party's Knowledge and except as would not reasonably be expected to have a Material Adverse Effect and/or except as otherwise disclosed in any property condition reports delivered to Lender in connection with the Loan, none of the Loan Party's properties or assets has ever been used by the Loan Party or to the best of the Loan Party's Knowledge, by previous owners or operators, in the disposal of, or to produce, store, handle, treat, release, or transport, any hazardous waste or hazardous substance other than in accordance with Applicable Law.



To the best of the Loan Party's Knowledge and except as disclosed in any property condition reports delivered to Lender in connection with the Loan, the Property has never been designated or identified in any manner pursuant to any environmental protection statute as a hazardous waste or hazardous substance disposal site, or a candidate for closure pursuant to any environmental protection statute. To the best of the Loan Party's Knowledge no lien arising under any environmental protection statute has attached to any revenues or to any real or personal property owned by the Loan Party, and the Loan Party has not received a summons, citation, notice, or directive from the Environmental Protection Agency or any other federal, state or other governmental agency concerning any action or omission by or resulting in the releasing, or otherwise disposing of hazardous waste or hazardous substances into the environment.

**5.11 Taxes.** Except as otherwise disclosed to Lender at Closing, the Loan Party has filed or caused to be filed all material tax returns required to be filed, and have paid, or have made adequate provision for the payment of, all Taxes reflected therein and all Taxes on the Property (other than those Taxes that will be paid promptly after receipt of a DIP Loan), except (i) for Taxes for which filing is not yet due, or (ii) for Taxes that are being contested in good faith by appropriate proceedings and are reserved against (to the extent required by GAAP (or such other accounting basis selected by the Loan Party, consistently applied and reasonably acceptable to Lender) by the Loan Party, or (iii) to the extent taxes are pre-petition taxes, or (iv) to the extent that failure to do so (other than Taxes on the Property) could not reasonably be expected to have a Material Adverse Effect.

**5.12 Reserved.**

**5.13 Government Consents.** The Loan Party has obtained (or will obtain, as and when required under Applicable Law) all material consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all governmental authorities that are necessary for the continued operation of the Loan Party's business as currently conducted, except where the failure to do so would not reasonably be expected to cause a Material Adverse Effect.

**5.14 Reserved.**

**5.15 Full Disclosure.** To the best of Debtor's knowledge, no representation, warranty or other statement made by the Loan Party in any of the Loan Documents contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements not misleading when made, taken as a whole, it being recognized by Lender that the projections and forecasts provided by the Loan Party in good faith and based upon assumptions that were reasonable at the time such projections were delivered and are not to be viewed as facts and that actual results during the period or periods covered by any such projections and forecasts may differ from the projected or forecasted results. No Loan Document has been amended. To the Loan Party's Knowledge, the Loan Documents are each in full force and effect and are not subject to any offset, claim, counterclaim or defense in favor of the Loan Party. Notwithstanding the foregoing, the Lender acknowledges that the Loan Party has disclosed to Lender prior to the Closing Date possible irregularities with respect to transactions originated by Kenneth Matson (and acknowledges that the Loan Party may make additional information about such transactions available after the Closing Date), but Loan Party represents and warrants that to the Loan Party's Knowledge no such irregularities pertain in any way to the Property or the Collateral.

**5.16 Use of Proceeds.** The Loan Party shall use the proceeds of the Loans in accordance with the Budget (subject to any Permitted Budget Variance) and the Final Order exclusively for one or more of the following purposes (subject to any additional restrictions on the use of such proceeds and any such cash collateral set forth in the Order):

- (a) to pay the expenses set forth in the Budget;

(b) to pay the Lender Expenses, whether or not set forth in the Budget; and

(c) to the extent not included in Section 5.16(a), to pay certain costs, premiums, fees and expenses related to the Case (including, without limitation, with respect to the Carve Out) in accordance with the Budget.

Proceeds of the DIP Loan Facility or cash collateral shall not be used (a) by the Debtor, or any other party-in-interest, including the Committee, or any of their representatives, to challenge or otherwise contest or institute any proceeding of any kind or nature to determine the validity, perfection, enforceability or priority of claims or security interests in favor of Lender, (b) to commence, prosecute or defend any claim, motion, proceeding or cause of action of any kind or nature against Lender and its agents, attorneys, advisors or representatives including, without limitation, any lender liability claims or subordination claims, or (c) to fund acquisitions, capital expenditures, capital leases, or any other similar expenditure other than capital expenditures specifically set forth in the Budget and approved by Lender. Notwithstanding the foregoing, nothing herein shall prohibit the Loan Party or the Committee from disputing the alleged occurrence of a default or Event of Default hereunder.

**5.17 Financial Information.** (a) On and as of the Closing Date, the Budget, copies of which have heretofore been furnished to the Lender and (b) following the Closing Date, any updated Budget delivered pursuant to Section 6.13, in each case, are based on good faith estimates and assumptions made at such time by the persons who prepared it.

**5.18 Case.** The Case was commenced on the Relief Date in accordance with applicable law, and notice of the hearing for the approval of the Final Order has been given as identified in the certificate of service filed with the Bankruptcy Court.

**5.19 Orders.** The Interim Order, and, after it has been entered, the Final Order are in full force and effect, and have not, in whole or in material part, been reversed, modified, amended, stayed, vacated, appealed or subject to a stay pending appeal or otherwise challenged or subject to any pending or threatened challenge or proceeding in any jurisdiction, and the Loan Party is in material compliance with the Orders.

## **6. AFFIRMATIVE COVENANTS.**

The Loan Party shall do all of the following:

**6.1 Good Standing.** The Loan Party shall maintain its corporate existence and good standing in its jurisdiction of incorporation and maintain qualification in each other jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect. The Loan Party shall maintain in force all necessary licenses, approvals, and agreements, the loss of which could have a Material Adverse Effect.

**6.2 Ordinary Course Payments.** The Loan Party shall make due and timely payment of all material obligations owing by Debtor on account of each Property, including, without limitation, for Taxes, insurance and loan payments relating to each Property.

**6.3 Financial Statements, Reports, Certificates.** The Loan Party shall deliver the following to the Lender:

(a) commencing on October 15, 2025, and thereafter on a monthly basis, a 13-week cash flow forecast in form and detail satisfactory to Lender, through the Maturity Date;



- (b) all reports, including monthly operating reports, filed with the Office of the United States Trustee;
- (c) reserved;
- (d) promptly upon receipt of notice thereof, a report of any legal actions (other than the Case) pending against the Loan Party that could reasonably be expected to result in liability to the Loan Party of One Hundred Thousand Dollars (\$100,000.00) or more;
- (e) reserved;
- (f) written notice within five (5) Business Days' of the resignation from or termination of employment of the Responsible Individual;
- (g) in accordance with the Final Order, on a biweekly basis, on or before 11:59 p.m. Pacific time on the Thursday following the end of each two week period, a Budget Variance Report certified by the Responsible Individual along with a reconciliation of the Budget for the prior two-week cumulative period, a certification that the Debtor is in compliance with the Budget, and any updates to the Budget that are approved by Lender in Lender's sole discretion; and
- (h) such other financial information as Lender may request from time to time in its Permitted Discretion.

To the extent any of the foregoing reports or financial information are due on a day that is not a Business Day, the Loan Party shall instead deliver such reports or financial information on the next Business Day.

**6.4 Right to Inspect.** Lender (through any of its officers, employees, or agents) shall have the right, upon reasonable prior notice, from time to time only during the Loan Party's usual business hours to inspect Loan Party's Books and to make copies thereof, to audit the Loan Party's Accounts and to inspect, visit, check, test, and appraise the Collateral in order to verify the Loan Party's financial condition or the amount, condition of, or any other matter relating to, the Collateral; provided that no notice is required if an Event of Default has occurred and is continuing and provided further that during the continuance of an Event of Default all reasonable and documented costs and fees associated with Lender's inspection shall be borne by the Loan Party.

**6.5 Taxes.** Except as disclosed on Schedule 6.5 hereto, the Loan Party shall make due and timely payment or deposit of all material post-Relief Date Taxes required of it by law (including the Bankruptcy Code), provided that the Loan Party need not make any payment if (i) the amount or validity of such payment is contested in good faith by appropriate proceedings and is reserved against (to the extent required by GAAP (or such other accounting basis selected by the Loan Party, consistently applied and reasonably acceptable to Lender)) by Loan Party and (ii) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

**6.6 Insurance.**

(a) The Loan Party, at its expense, shall keep the Collateral insured against loss or damage by fire, theft, explosion, sprinklers, and all other hazards and risks (including, but not limited to, insurance sufficient to cover personal injuries) in an amount not less than the Obligations, and in such amounts, as ordinarily insured against by other owners in similar businesses conducted in the locations where the Loan Party's business is conducted on the date hereof. Loan Party shall also maintain insurance

relating to the Loan Party's business, ownership and use of the Collateral in amounts and of a type that are customary to businesses similar to the Loan Party's.

(b) All such policies of insurance shall be in such form, with such companies, and in such amounts as are reasonably satisfactory to Lender (it being hereby acknowledged by Lender that the insurance policies of Loan Party in place on the Closing Date are satisfactory). All such policies of property insurance shall contain a lender's loss payable endorsement showing Lender as an additional loss payee thereof, and all liability insurance policies shall show the Lender as an additional insured and Loan Party shall use commercially reasonable efforts to have such policies specify that the insurer must give at least twenty (20) calendar days' notice to Lender before canceling its policy for any reason (or ten (10) calendar days for cancellation for nonpayment of premiums). Upon Lender's request (which shall occur once per year except following the occurrence and during the continuance of an Event of Default), Loan Party shall deliver to Lender certified copies of such policies of insurance and evidence of the payments of all premiums therefor. All proceeds payable under any such policy shall, at the option of Lender, be payable to Lender to be applied on account of the Obligations.

**6.7 Accounts.** Except as required under the Bankruptcy Code, rules or policies of the U.S. Trustee, and/or a Bankruptcy Court order, the Loan Party shall not establish any new deposit or securities account after the Closing Date without the approval of the Lender and shall use a cash management system that is the same as or substantially similar to its prepetition cash management system. Any material changes from such prepetition cash management system must be acceptable to the Lender in its reasonable discretion.

**6.8 Reserved.**

**6.9 Bankruptcy Filings.** Not less than two (2) Business Days prior to filing any motion requesting approval for debtor-in-possession financing, use of Lender's cash collateral, and approval of bidding procedures with respect to the Collateral, the Loan Party shall send copies of such motions to Lender, and all such motions shall be satisfactory to Lender in Lender's Permitted Discretion.

**6.10 Further Assurances.** At any time and from time to time, the Loan Party shall execute and deliver such further instruments and take such further action as may reasonably be requested by Lender to effect the purposes of this Agreement.

**6.11 Debtor-in-Possession Obligations.** Comply in a timely manner with its obligations and responsibilities as a debtor-in-possession under the Bankruptcy Code, the rules of procedure of the Bankruptcy Court, and any order of the Bankruptcy Court, provided, however, that any monthly operating reports shall be deemed timely filed if filed within sixty (60) days after the respective due date for such report.

**6.12 Reserved.**

**6.13 Budget Compliance and Variances.**

(a) The Loan Party will use the proceeds of the Loan solely to make disbursements for expenditures provided for in accordance with Section 5.16 and this Section 6.13. The Loan Party shall not pay any expenses (other than *de minimis* amounts) or other disbursements (other than *de minimis* disbursements) other than the type of expenses and disbursements set forth in the Budget.

(b) Beginning on the Closing Date, the Loan Party shall not cause expenses to vary from the applicable Budget by more than twenty percent (20%) in excess of the aggregate budgeted amount

for total cash disbursements on a trailing four (4) week basis (collectively, the “**Permitted Budget Variances**”), provided that to the extent the actual cash receipts in any such period exceed the amounts for such period in the applicable Budget, or if the total cash disbursements in any such period are less than the amounts for such period in the applicable Budget, then the “Permitted Budget Variance” for such receipts or total cash disbursements, as applicable, for the next succeeding period shall be increased by an amount equal to such difference (and shall continue to roll over into successive periods to the extent such additional budgeted capacity is unused by the Loan Party). Solely for purposes of calculating the Permitted Budget Variance, all Lender Expenses and Professional Fees shall be excluded from the Budget and shall not be taken into account. In the event that actual amounts for total cash receipts and total cash disbursements from operations line items are in excess of the Budget, the parties hereto agree to negotiate in good faith to discuss any modification to the Budget and Permitted Budget Variances, it being understood and agreed that the Lender shall have no obligation to fund any amounts in excess of the DIP Loan Commitment.

(c) If the Budget is updated, modified or supplemented by the Loan Party, each such updated, modified or supplemented budget shall be effectuated in consultation with the Committee and approved in writing by, and shall be in form and substance reasonably satisfactory to, the Lender, and no such updated, modified or supplemented budget shall be effective until so approved and once so approved shall be deemed to be a Budget, such approval not to be unreasonably withheld. The Budget shall not be updated more than one (1) time in any consecutive four (4) week period without the prior written consent of the Lender. Each Budget delivered to Lender shall be accompanied by such supporting documentation as reasonably requested by the Lender. Each Budget shall be prepared in good faith based upon assumptions which the Loan Party believes to be reasonable at the time of preparation.

**6.14 Filing of Motions and Applications.** Without the prior written consent of the Lender, the Loan Party shall not apply to the Bankruptcy Court for, or join in or support any motion or application seeking, authority to (a) take any action that is prohibited by the terms of any of the Loan Documents or the Final Order, (b) refrain from taking any action that is required to be taken by the terms of any of the Loan Documents or the Final Order, or (c) permit any Indebtedness or Claim to be *pari passu* with or senior to any of the Loans, except as expressly stated in the Final Order.

**6.15 Superpriority Claim.** The Debtor shall not incur, create, assume, suffer to exist or permit any other Superpriority Claim that is *pari passu* with or senior to the claims of the Lender against the Loan Party, except for the Carve Out, and as otherwise expressly stated in the Final Order.

## **7. NEGATIVE COVENANTS.**

Other than in accordance with a Bankruptcy Sale Order or a plan of reorganization confirmed by the Bankruptcy Court, the Loan Party shall not do any of the following:

**7.1 Dispositions.** Convey, sell, lease, transfer or otherwise dispose of any Collateral or the Property (collectively, a “**Transfer**”) other than: (i) transfers of (a) non-exclusive licenses and similar arrangements for the use of the property of the Loan Party in the ordinary course of business, (b) licenses that could not result in a legal transfer of title of the licensed property but that may be exclusive in respects other than territory, (c) licenses relating to discreet geographical areas outside of the United States (for the avoidance of doubt and for sake of clarity, however, the Loan Party may enter into limited non-competition arrangements with its licensees and similar business partners in the ordinary course of business) or (d) the transfer or sale of the Loan Party’s goods and inventory in the ordinary course of business. To avoid any ambiguity, cash not constituting Collateral may be used in the ordinary course of business, subject to the provisions of this Agreement and orders of the Bankruptcy Court.

**7.2 Change in Business.** Engage in any business, other than the businesses currently engaged in by the Loan Party and any business substantially similar or related thereto (or incidental thereto), or cease to conduct business in the manner conducted by the Loan Party as of the Closing Date; or without thirty (30) calendar days prior written notification to Lender (a) relocate its state of incorporation or change its legal name; (b) add any new offices or business locations or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of One Hundred Thousand Dollars (\$100,000.00) to a bailee, or (c) without Lender's prior written consent, change the date on which its fiscal year ends.

**7.3 Mergers or Acquisitions.** Merge, divide or consolidate, with or into any other business organization, or acquire, all or substantially all of the capital stock or property of another Person.

**7.4 Indebtedness.** Create, incur, guarantee, assume or be or remain liable with respect to any Indebtedness, other than Permitted Indebtedness. Notwithstanding the foregoing, the Loan Party may incur debt payable from only one or more Excluded Assets with the prior written consent of Lender, which shall not be unreasonably withheld.

**7.5 Encumbrances.** Create, incur, assume or suffer to exist any voluntary lien with respect to the Property or the Collateral except for Permitted Liens, or assign or otherwise convey any right to receive income, or enter into any agreement with any Person other than Lender not to grant a security interest in, or otherwise encumber, any of its property. Notwithstanding the foregoing, the Loan Party may create a Lien on any Excluded Asset.

**7.6 Distributions.** Pay any dividends or make any other distribution or payment on account of or in redemption, retirement or purchase of any equity interests, except that the Loan Party may repurchase equity interests from current or former employees, directors, or consultants of the Loan Party in any amount where the consideration for the repurchase is solely the cancellation of indebtedness owed by such current or former employees, directors or consultants to the Loan Party regardless of whether an Event of Default exists.

**7.7 Investments.** Directly or indirectly acquire or own, or make any Investment in or to any Person, other than Permitted Investments and the Loan Party's ownership interest in any subsidiary company in effect as of the Closing Date; or maintain or invest any of its property with a Person other than Lender unless such Person has entered into an account control agreement with Lender in form and substance satisfactory to Lender.

**7.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of the Loan Party except for transactions that are contained in the Budget, approved by the Bankruptcy Court, or entered into in the ordinary course of the Loan Party's business, upon fair and reasonable terms that are no less favorable to the Loan Party than would be obtained in an arm's length transaction with a non-affiliated Person.

**7.9 Compliance.** Become an "investment company" or be controlled by an "investment company," within the meaning of the Investment Company Act of 1940, or become principally engaged in, or undertake as one of its important activities, the business of extending credit for the purpose of purchasing or carrying margin stock, or use the proceeds of any Credit Extension for such purpose. Fail to comply with the Federal Fair Labor Standards Act, or violate any law or regulation, which violation could reasonably be expected to have a Material Adverse Effect.

## **8. EVENTS OF DEFAULT.**

Any one or more of the following events shall constitute an Event of Default by the Loan Party under this Agreement:

**8.1 Payment Default.** Except to the extent the holder thereof would be stayed from exercising remedies as a result of the Cases after accounting for the relief provided in the Final Order, if the Loan Party fails to pay, when due, (a) any regularly scheduled payment of interest under the Loan on the applicable payment date or (B) the Obligations in full on the Maturity Date. In the event of (a) or (b) Lender shall provide the Loan Party, the Committee and the U.S. Trustee written notice that an Event of Default for non-payment has occurred.

### **8.2 Covenant Default.**

(a) If the Loan Party violates or fails to perform any obligation under Article 6 or Article 7 and such failure continues for ten (10) Business Days after Lender delivers written notice thereof to the Loan Party. In such event Lender shall provide the Loan Party, the Committee and the U.S. Trustee written notice that an Event of Default for non-compliance of a specified obligation under Article 6 or Article 7 has occurred; and

(b) If the Loan Party fails or neglects to perform or observe any other material term, provision, condition, covenant contained in this Agreement not specified in Section 8.2 above, or in any of the other Loan Documents, for ten (10) Business Days after Lender delivers written notice thereof to the Loan Party, provided, however, that if the default cannot by its nature be cured within the ten (10) Business Days period or cannot after diligent attempts by the Loan Party be cured within such ten (10) Business Days period, and such default is likely to be cured within a reasonable time, then the Loan Party shall have an additional reasonable period (which shall not in any case exceed thirty (30) calendar days) to attempt to cure such default, and within such reasonable time period the failure to have cured such default shall not be deemed an Event of Default, but no Credit Extensions will be made. In such case and if an Event of Default is triggered under this Section 8.2(b), Lender may notify the Committee and the U.S. Trustee.

**8.3 Budget Default.** An Event of Default occurs as contemplated by Section 2.4.1 of the Orders.

**8.4 Attachment.** Other than in connection with the Cases in each case, if any material portion of the Loan Party's assets are attached, seized, subjected to a writ or distress warrant, or are levied upon, or come into the possession of any trustee, receiver or person acting in a similar capacity and such attachment, seizure, writ or distress warrant or levy has not been removed, discharged or rescinded within thirty (30) calendar days without the same being contested by the Loan Party in good faith, or if the Loan Party is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of its business affairs, or if a judgment or other claim becomes a Lien or material monetary encumbrance upon any material portion of the Loan Party's assets, or if a notice of lien, levy, or assessment is filed of record with respect to any material portion of the Loan Party's assets by the United States Government, or any department, agency, or instrumentality thereof, or by any state, county, municipal, or governmental agency, and the same is not removed, discharged, rescinded or paid within thirty (30) calendar days after receipt of written notice from Lender delivered to the Loan Party, the Committee and the U.S. Trustee, provided that none of the foregoing shall constitute an Event of Default where such action or event is stayed or an adequate bond has been posted pending a good faith contest by the Loan Party (provided that no Credit Extensions will be required to be made during such cure period);

**8.5 Assets.** Provided that such conditions are not cured within thirty (30) calendar days after receipt of written notice from Lender delivered to the Loan Party, the Committee and the U.S. Trustee: (a) the allowance of any claim or claims under Section 506(c) of the Bankruptcy Code against or with respect to any Collateral, which rights under Section 506(c) of the Bankruptcy Code shall be waived (subject only to and effective upon entry of the Final Order), (b) any Person attempts to apply the doctrine of marshalling with respect to the Lender, which shall be waived (subject only to and effective upon entry of the Final Order), or (c) any Person attempts to apply the “equities of the case” exception set forth in Section 552(b) of the Bankruptcy Code, which shall be waived (subject only to and effective upon entry of the Final Order);

**8.6 Other Agreements.** Except to the extent the counterparty thereto would be stayed from exercising remedies as a result of the Cases, if there is an event of default in any material agreement to which the Loan Party is a party or by which it is bound resulting in a right by a third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) or which could have a Material Adverse Effect;

**8.7 Lien Priority.** If the Obligations shall not have the priority contemplated by this Agreement, or the entry of any order by the Bankruptcy Court avoiding or requiring repayment of any portion of the payments made on account of the Obligations;

**8.8 Judgments.** If an unstayed and enforceable judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Fifty Thousand Dollars (\$250,000.00) (excluding amounts covered by insurance or third party indemnification) shall be rendered against the Loan Party and shall remain unsatisfied, unvacated or unstayed pending appeal for a period of sixty (60) calendar days after entry of such judgement (provided that no Credit Extensions will be made prior to the satisfaction or stay of such judgment);

**8.9 Misrepresentations.** If any material misrepresentation or material misstatement exists now or hereafter in any warranty or representation set forth herein or in any Loan Document or certificate delivered to Lender and prepared by the Responsible Individual pursuant to this Agreement. In such event Lender shall provide the Loan Party, the Committee and the U.S. Trustee written notice that an Event of Default for breach of this Section 8.9 has occurred;

**8.10 Case.** The Case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code without the consent of the Lender;

**8.11 Trustee.** A trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code shall be appointed in the Case;

**8.12 Cash Collateral.** An order of the Bankruptcy Court shall be entered denying or terminating use of Cash Collateral by the Loan Party;

**8.13 Relief from Stay.** The Bankruptcy Court shall enter an order or orders granting relief from any stay of proceeding (including, the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest) to (i) permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on (y) any assets of the Loan Party constituting Collateral which have a value in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) in the aggregate or the Property or (ii) permit other actions that would have a Material Adverse Effect on the Loan Party or its estate;



**8.14 Orders.** The Interim Order (prior to Final Order Entry Date) or Final Order (on and after the Final Order Entry Date) shall cease to create a valid and perfected first priority Lien on the Collateral or to be in full force and effect, shall have been in any material respect reversed, modified, amended, stayed, vacated, or subject to stay pending appeal, without prior written consent of Lender. In such event Lender shall provide the Loan Party, the Committee and the U.S. Trustee written notice that an Event of Default for breach of this Section 8.14 has occurred;

**8.15 Compliance with Orders.** The Loan Party shall fail to comply with the Interim Order (prior to Final Order Entry Date) or Final Order (on and after the Final Order Entry Date) in any material respect;

**8.16 Other Financing.** (a) Except as permitted in the Interim Order or the Final Order, the entry of any order of the Bankruptcy Court granting to any third party a Superpriority Claim or Lien *pari passu* with or senior to that granted to and/or for the benefit of the Lender hereunder without the prior written consent of Lender (which consent shall not be unreasonably withheld), or (b) the Loan Party shall make any payment of principal or interest or otherwise on account of any Indebtedness or payables other than the Obligations under the DIP Facility, or other than in accordance with the Budget approved by Lender; or

**8.17 Avoidance.** (a) Any suit or action is commenced against the Lender by the Loan Party that constitutes a challenge or that asserts a claim or seeks a legal or equitable remedy that would have the effect of subordinating the claim or Lien of the Lender, or (b) the Bankruptcy Court rules in favor of any Person in any suit or action commenced against the Lender by or on behalf of such Person (after the Bankruptcy Court has granted such Person standing to commence such suit or action).

The Bankruptcy Court shall have jurisdiction to resolve any dispute between the Loan Party and Debtor regarding whether an Event of Default has occurred;

## **9. LENDER'S RIGHTS AND REMEDIES.**

**9.1 Rights and Remedies.** During the continuance of an Event of Default, Lender may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by the Loan Party:

(a) Subject to the Orders, Lender may, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court, suspend the DIP Loan Facility with respect to additional Advances, whereupon any additional Advances shall be made or incurred in Lender's sole discretion so long as such Default or Event of Default is continuing. If any Event of Default has occurred and is continuing, Lender may, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court, except as otherwise expressly provided herein, increase the rate of interest applicable to the Loan to the Default Rate.

(b) Subject to the Orders, Lender may, notwithstanding the provisions of Section 362 of the Bankruptcy Code, without any application, motion or notice to, hearing before, or order from, the Bankruptcy Court: (i) terminate the DIP Loan Facility with respect to further Advances; (ii) reduce the DIP Loan Commitments from time to time; (iii) declare all or any portion of the Obligations, including all or any portion of the Loan to be forthwith due and payable, all without presentment, demand, protest or further notice of any kind, all of which are expressly waived by Borrower; or (iv) exercise any rights and remedies provided to Lender under the Loan Documents or at law or equity, including all remedies provided under the Bankruptcy Code; and pursuant to the Interim Order and the Final Order, the automatic stay of Section

362 of the Bankruptcy Code shall be modified and vacated to permit Lender to exercise its remedies under this Agreement and the Loan Documents, without further notice, application or motion to, hearing before, or order from, the Bankruptcy Court; provided, however, notwithstanding anything to the contrary contained herein, that Lender shall be permitted to exercise any remedy described in (iv) above only after providing not less than five (5) Business Days' prior written notice to Borrower, counsel approved by the Bankruptcy Court for the Committee and the U.S. Trustee and as set forth in the Final Order.

(c) **Waivers by the Loan Party.** Except as otherwise provided for in this Agreement (including any notice required pursuant to any of the other Loan Documents) or that is not capable of being waived by Applicable Law, the Loan Party waives: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by Lender on which the Loan Party may in any way be liable, and hereby ratifies and confirms whatever Lender may do in this regard, (b) all rights to any bond or security that might be required by any court prior to allowing Lender to exercise any of its remedies, and (c) the benefit of all valuation, appraisal, marshaling and exemption laws.

**9.2 Lender's Liability for Collateral.** So long as Lender complies with reasonable commercial lending practices, Lender shall not in any way or manner be liable or responsible for: (a) the safekeeping of the Collateral or the Property; (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause; (c) any diminution in the value thereof; or (d) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other person whomsoever. All risk of loss, damage or destruction of the Collateral or the Property shall be borne by the Loan Party.

**9.3 Remedies Cumulative.** Lender's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Lender shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity, subject to the requirements of the Bankruptcy Code. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Event of Default on the Loan Party's part shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence by it. No waiver by Lender shall be effective unless made in a written document signed on behalf of Lender and then shall be effective only in the instance and for the purpose for which it was given.

**9.4 Protective Payments.** If the Loan Party fails to obtain the insurance called for by Section 6.6 or fails to pay any premium thereon or fails to pay any other amount which the Loan Party is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Lender may obtain such insurance or make such payment, and all amounts so paid by Lender are Lender Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Lender will make reasonable efforts to provide the Loan Party with notice of Lender obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Lender are deemed an agreement to make similar payments in the future or Lender's waiver of any Event of Default.

**9.5 Demand; Protest.** Except for any notice required pursuant to the Loan Documents or that is not capable of being waived by Applicable Law, the Loan Party waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guaranties at any time held by Lender on which Borrower may in any way be liable.



**9.6 Savings Clause.** Notwithstanding any other provision herein, the aggregate interest rate charged with respect to any of the Obligations, including all charges or fees in connection therewith deemed in the nature of interest under applicable law shall not exceed the Highest Lawful Rate. If the rate of interest (determined without regard to the preceding sentence) under this Agreement at any time exceeds the Highest Lawful Rate, the outstanding amount of the Advances made hereunder shall bear interest at the Highest Lawful Rate until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Advances made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, Borrower shall pay to Lender an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the Highest Lawful Rate had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lender and the Loan Party to conform strictly to any applicable usury laws. Accordingly, if Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the Highest Lawful Rate, then any such excess shall be cancelled automatically and, if previously paid, shall at Lender's option be applied to the outstanding amount of the Advances made hereunder or be refunded to the Loan Party.

**9.7 Waiver of Consequential Damages; Etc.** To the fullest extent permitted by Applicable Law, no Loan Party shall assert, and the Loan Party hereby waives, any claim against any Indemnified Party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnified Party shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnified Party through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the fraud, gross negligence or willful misconduct of such Indemnified Party as determined by a final and nonappealable judgment of a court of competent jurisdiction, **WHICH LIMITATION OF LIABILITY SHALL APPLY REGARDLESS OF WHETHER THE LIABILITY ARISES FROM THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF THE INDEMNIFIED PARTY.**

## **10. NOTICES.**

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, or email address indicated below. Lender or the Loan Party may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10:

|                   |   |
|-------------------|---|
| If to the Debtor: | KS Mattson Partners, LP<br>c/o Robbin Itkin Corporate Governance Solutions<br>Attention: Robbin Itkin<br>16350 Ventura Blvd., Suite D-509 |
|-------------------|---|

Encino, CA 91436  
Email: robbin@robbinitkinsolutions.com

With a copy to (which does not constitute notice):

Hogan Lovells US LLP  
1999 Avenue of the Stars, Suite 1400  
Los Angeles, CA 9006  
Attention: Edward McNeilly, Esq.  
Todd Schwartz, Esq.  
Danielle Ullo, Esq.  
Email: [edward.mcneilly@hoganlovells.com](mailto:edward.mcneilly@hoganlovells.com)  
[todd.schwartz@hoganlovells.com](mailto:todd.schwartz@hoganlovells.com)  
[danielle.ullo@hoganlovells.com](mailto:danielle.ullo@hoganlovells.com)

If to Lender: Serene Investment Management LLC  
2625 Alcatraz Ave., Suite 513  
Berkeley, CA 94705  
Attention: Adam Phillips  
Email: [adam@sereneim.com](mailto:adam@sereneim.com)

With a copy to (which does not constitute notice):

Loeb & Loeb LLP  
345 Park Avenue  
New York, NY 10154  
Attention: Vadim Rubinstein, Esq.  
Email: [vrubinstein@loeb.com](mailto:vrubinstein@loeb.com)

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

**11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE.**

This Agreement was negotiated in the State of California, the Loan was made by Lender and accepted by the Loan Party in the State of California, and the proceeds of the Loan delivered pursuant hereto were disbursed from the State of California, which state the parties irrevocably and unconditionally agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects, including, without limiting the generality of the foregoing, matters of construction, validity and performance, each and all of this Agreement and the other Loan Documents, and the obligations arising hereunder and thereunder shall be governed by, and construed in accordance with, the laws of the State of California applicable to contracts made and performed in such state (without regard to principles of conflicts of laws) and any applicable law of the United States of America, it being understood that, to the fullest extent permitted by the law of such state, the law of the State of California shall govern the construction, validity and enforceability of this Agreement, the Loan and all of the obligations arising hereunder or thereunder.

To the fullest extent permitted by law, each of the Loan Party and Lender hereby unconditionally and irrevocably waives any claim to assert that the law of any other jurisdiction governs this Agreement and/or the Loan.

The Loan Party and Lender each further submit to the exclusive jurisdiction of the Bankruptcy Court; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations located in such other jurisdiction, or to enforce a judgment or other court order in favor of Lender. The Loan Party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and the Loan Party hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. The Loan Party hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to the Loan Party at the address set forth in, or subsequently provided by the Loan Party in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of the Loan Party's actual receipt thereof or three (3) calendar days after deposit in the U.S. mails, proper postage prepaid.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE LOAN PARTY AND LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

This Section 11 shall survive the termination of this Agreement.

## **12. BANKRUPTCY COURT.**

For the avoidance of doubt, to the extent there is conflict between the terms of this Agreement and the terms of the Orders, the Orders shall control.

## **13. RESERVED.**

## **14. GENERAL PROVISIONS.**

**14.1 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that neither this Agreement nor any rights hereunder may be assigned by the Loan Party or, prior to the occurrence of an Event of Default, Lender, without the other's prior written consent, which consent may be granted or withheld in such party's sole discretion.

**14.2 Indemnification.** The Loan Party shall defend, indemnify and hold harmless Lender and its officers, employees, and agents (each an "**Indemnified Party**") against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all actual losses or actual Lender Expenses in any way suffered, incurred, or paid by Lender as a result of or in any way arising out of, following, or consequential to transactions between Lender and the Loan Party whether under this Agreement, the DIP Loan Facility, the Case, or otherwise (including without limitation reasonable attorneys' fees and expenses), provided, the

foregoing shall specifically expressly exclude (i) any special, exemplary, punitive or consequential damages (unless the same are asserted by a third party against Lender and awarded to such third party in a legal proceeding against Lender and paid (or payable) by Lender), lost profits and diminution in value and any (ii) any losses caused by an Indemnified Party's fraud, gross negligence or willful misconduct. This Section 14.2(a) shall not apply to Taxes.

**14.3 Time of Essence.** Time is of the essence for the performance of all obligations set forth in this Agreement.

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

**14.5 Amendments in Writing, Integration.** Except as expressly set forth herein, all amendments to or terminations of this Agreement or the Loan Documents must be in writing signed by each of the parties hereto. All prior agreements, understandings, representations, warranties, and negotiations between any of the parties hereto with respect to the subject matter of this Agreement and the Loan Documents, if any, are merged into this Agreement and the Loan Documents.

**14.6 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

**14.7 Electronic Execution of Documents.** The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

**14.8 Survival.** All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any Obligations remain outstanding or Lender has any obligation to make Credit Extensions to the Loan Party (excluding any contingent payment obligations which expressly survive repayment of the Loan and which, as of the date of such full repayment, have not yet ripened). The obligations of the Loan Party to indemnify Lender with respect to the expenses, damages, losses, costs and liabilities described in Section 14.2(a) shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Lender have run.

**14.9 Confidentiality; Disclosure.** In handling any confidential information Lender and all employees and agents of Lender, including but not limited to accountants, shall exercise the same degree of care that it exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Agreement except that disclosure of such information may be made (i) to prospective transferees or purchasers of any interest in the loans, provided that they are similarly bound by confidentiality obligations, (ii) as required by law, regulations, rule or order, subpoena, judicial order or similar order (including in connection with the Case), provided, however, that Lender shall give Loan Party ten (10) days' advance notice, or as much notice as is reasonably practicable under the circumstances, before making any such disclosure unless such

disclosure to the Loan Party is prohibited by law, (iii) as may be required in connection with the examination, audit or similar investigation of Lender and (iv) as Lender may determine in connection with the enforcement of any remedies hereunder; provided that Lender shall use reasonable efforts to file confidential information under seal or otherwise protect confidentiality before making public disclosures. Confidential information hereunder shall not include information that either: (a) is in the public domain or in the knowledge or possession of Lender when disclosed to Lender, or becomes part of the public domain after disclosure to Lender through no fault of Lender; or (b) is disclosed to Lender by a third party, provided Lender does not have actual knowledge that such third party is prohibited from disclosing such information. The Loan Party authorizes Lender to disclose its relationship with the Loan Party, including use of the Loan Party's logo in Lender's promotional materials.

**14.10 Patriot Act Notice.** Lender notifies the Loan Party that, pursuant to the requirements of the USA Patriot Act, Title III of Pub. L. 107-56 (signed into law on October 26, 2001) (the "**Patriot Act**"), it is required to obtain, verify and record information that identifies the Loan Party, which information includes names and addresses and other information that will allow Lender to identify the Loan Party in accordance with the Patriot Act.

**14.11 Correction of Loan Documents.** Lender may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties.

SIGNATURE PAGES FOLLOW

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

**DEBTOR:**

**KS MATTSON PARTNERS, LP,**  
a California limited partnership

By: \_\_\_\_\_  
Robbin L. Itkin  
Responsible Individual

Signature Page 1 to Debtor-in-Possession Loan and Security Agreement

**Lender:**

**SERENE INVESTMENT MANAGEMENT, LLC**

By: \_\_\_\_\_  
Name: Adam Phillips  
Title: Manager

Signature Page 2 to Debtor-in-Possession Loan and Security Agreement

**SCHEDULE 1.1.1**

**PREPETITION INDEBTEDNESS OF THE DEBTOR**

**See attached**



**SCHEDULE 1.1.2**

**TITLE REPORT**

See attached

**SCHEDULE 6.5**

**TAXES**

See attached

## **EXHIBIT A**

### **Collateral**

#### **A-1. Unencumbered Properties (First Priority Liens)**

| <b>#</b> | <b><i>Property Address</i></b>         |
|----------|--|
| 1        | 2500 Castle Rd, Sonoma, CA 95476       |
| 2        | 3200 Castle Rd, Sonoma, CA 95476       |
| 3        | 443 Casabonne Lane, Sonoma, CA 95476   |
| 4        | 62 Farragut Ave. B, Piedmont, CA 94610 |
| 5        | 904 Highway 121, Sonoma, CA 95476      |
| 6        | 23105 Millerick Rd, Sonoma, CA 95476   |

#### **A-2. Encumbered Properties (Second, Third, or Fourth Priority Liens)**

| <b>#</b> | <b><i>Property Address</i></b>              |
|----------|---|
| 1        | 454 15 <sup>th</sup> St, Del Mar, CA 92014  |
| 2        | 405 London Way, Sonoma, CA 95476            |
| 3        | 415 Pacific Ave, Piedmont, CA 94611         |
| 4        | 3003 Castle Rd, Sonoma, CA 95476            |
| 5        | 1014 1 <sup>st</sup> St W, Sonoma, CA 95476 |
| 6        | 22 Boyes Blvd, Boyes Hot Springs, CA 95476  |
| 7        | 856 4 <sup>th</sup> St E, Sonoma, CA 95476  |
| 8        | 969 Rachael Rd, Sonoma, CA 95476            |
| 9        | 1834-1836 Ocean Front, Del Mar, CA 92014    |
| 10       | 531-533 Camino Del Mar, CA 92014            |

#### **A-3. Other Collateral**

|   |  |
|---|--|
| 1 | 1716 Ocean Front Deed of Trust, the Ocean Front Note |
|---|--|

**EXHIBIT B**

**First Priority DIP Liens**

**EXHIBIT C**

**Second Priority DIP Liens**

**EXHIBIT D**

**Third Priority Collateral**

**EXHIBIT E**

**Fourth Priority Collateral**