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

In re:	)	Chapter 11
MODIVCARE INC., *et al.*,	)	Case No. 25-90309 (ARP)
Debtors.[1]	)	(Jointly Administered)

OBJECTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO FINAL APPROVAL OF THE DIP MOTION

The Official Committee of Unsecured Creditors (the "**Committee**") appointed in the cases of the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**") states as follows in support of this objection (the "**Objection**") to entry of a final order (the "**Proposed Final Order**") granting the *Emergency Motion of the Debtors for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (C) Authorizing the Use of Cash Collateral, (D) Modifying the Automatic Stay, (E) Scheduling a Final Hearing, and (F) Granting Related Relief* [Docket No. 4] (the "**DIP Motion**"):[2]

PRELIMINARY STATEMENT

1. What is in front of the Court is a debtor-in-possession financing that currently does not benefit the estates. In exchange for the use of $100 million for six months (funds the Debtors

[1] A complete list of each of the Debtors in these chapter 11 cases (the "**Chapter 11 Cases**") and the last four digits of each Debtor's taxpayer identification number (if applicable) may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ModivCare. Debtor ModivCare Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

[2] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the DIP Motion or the Proposed Final Order, as applicable. In support of this Objection, the Committee filed the *Declaration of David MacGreevey in Support of the Objection of the Official Committee of Unsecured Creditors to Final Approval of the DIP Motion* (the "**MacGreevey Declaration**") contemporaneously herewith.

do not actually need), the Debtors are agreeing to:

- award fees to the DIP Lenders exceeding 100% of the DIP commitments due to a Backstop Premium equal to 20% of the Debtors' reorganized equity;
- borrow and pay interest on cash in escrow to fund the estimated future fees of estate professionals (approximately $21.5 million for the first 13 weeks of the Chapter 11 Cases), as well as on DIP proceeds that will be deposited in a blocked account and to which the Debtors will not immediately have access; and
- commit themselves to run a chapter 11 process on a too-short timeline, without any market check, which is intended to result in a judicial foreclosure in which the Prepetition First Lien Lenders are effectively being paid to take the keys.

The Court should not approve that relief on these terms and this record.

2. The DIP Facility must instead be modified to remedy numerous infirmities before it can be approved as "fair and reasonable." ***First***, the Backstop Premium is worth $154.9 million assuming an illustrative total enterprise value of $1.2 billion (the approximate sum of the first and second lien debt that participated in the Debtors' March 2025 liability management transaction), and potentially much more if the Debtors' business proves to be more valuable. Approval now is premature and unsupportable. Any final approval of the Backstop Premium should be postponed until confirmation when the Court has determined the value of the reorganized business and can assess its propriety.

3. ***Second***, the DIP Facility should not be used to syphon value from general unsecured creditors. To that end, the DIP Liens and the Adequate Protection Liens should not extend to unencumbered assets. This includes postpetition assets such as avoidance actions and assets generated by the Debtors postpetition that are not subject to the Prepetition First Lien

Lenders' valid, perfected and enforceable prepetition liens. As will be shown at the final DIP hearing, the Prepetition First Lien Lenders are using the chapter 11 process as a proxy for a foreclosure. Through their prepetition trade order, the Debtors will pay substantially all of their trade creditors 100% on their prepetition claims during the Chapter 11 Cases while the Debtors' proposed plan contemplates no recovery for over $228 million of prepetition unsecured bond claims and any other general unsecured claims (other than an option to purchase equity for new value). These unsecured creditors, already receiving starkly disparate treatment from trade claimants, should not be deprived of all unencumbered value for DIP borrowings that the Debtors either do not truly have access to or are using to make optional trade payments that are not legally required. This is particularly the case with respect to the Adequate Protection Liens, where the Prepetition First Lien Lenders seek to "double dip." Not content to obtain DIP liens over unencumbered assets, they also seek to use those priming liens (which they consented to, as they are simply priming themselves) to establish a diminution in value that would artificially expand the collateral package for their prepetition liens.

4. For the same reason, the estate must reserve the right to surcharge the Prepetition First Lien Lenders' collateral under section 506(c) of the Bankruptcy Code, argue that the "equities of the case" exception to section 552(b) of the Bankruptcy Code applies, and be able to argue that the Prepetition First Lien Lenders must marshal away from unencumbered assets.

5. ***Third***, the case milestones contained in the Proposed Final Order are unrealistic, requiring confirmation by November 18, 2025 and a plan effective date of December 8, 2025. This does not leave reasonable time for the Committee to evaluate the Debtors' business plan (which has yet to be provided) or meaningfully test the Debtors' highly suspect view of valuation. Further, the vast majority of the Debtors' so-called second lien debt was the product of a mostly cashless

uptier transaction completed in March of this year, which benefited the Prepetition First Lien Lenders and was predicated on a valuation far exceeding the valuation underlying the Debtors' proposed plan. There may also be potential flaws in the Prepetition First Lien Lenders' security package. All of this must be investigated.

6. The current timeline does not provide the Committee with sufficient time to ensure that it properly discharges its statutory duty to protect the interests of unsecured creditors. The Debtors cannot credibly argue that any more time would put an undue financial strain on the business. And yet, despite the fact that the Debtors are supposedly cash-strapped, the Debtors want to escrow estimated future estate professional fees and pay $181 million of their prepetition trade claims, neither of which is legally required. In any event, even taking into account these expenditures, the Debtors will have enough cash until at least the end of February 2026. The Court should ensure that the Committee is given the same runway to carry out its statutory duties that it would have had if payments had not been made to particular creditors that were not required under the Bankruptcy Code.

7. ***Fourth***, the DIP Facility would impose inappropriate restrictions on the Committee's fees, further hampering its ability to discharge its duties. The Prepetition First Lien Lenders are refusing to fund any of the Committee's professional fees above an arbitrary and insufficient $1.75 million cap. The total projected fees for the Debtors' and Prepetition First Lien Lenders' advisors are approximately $23.3 million, not including the special committee's counsel and ordinary course professionals. The proposed amount for the Committee's professionals falls far short of what will be required for the Committee to discharge its duties and, along with the current timeline, is clearly designed to limit the role of the Committee in these cases. Further, a proposed post-termination carve-out of $250,000 and investigation budget of $50,000 do not

provide adequate funding for the Committee to do its job. The Prepetition First Lien Lenders are using the chapter 11 process entirely to benefit and prosecute their own pecuniary interests. They should not be permitted to handcuff the Committee and otherwise avoid the cost of a chapter 11 process that provides the Committee with a full and fair opportunity to vindicate the rights of unsecured creditors.

8. ***Fifth***, the Prepetition First Lien Lenders are being paid substantial cash interest and fees for a DIP Facility whose sole purpose was to fund payments to certain unsecured creditors, whether because they were "critical vendors" or, more likely, so small that their payment was convenient. Moreover, the interest and fees are being paid on the entirety of the DIP Facility, including tens of millions of dollars that are funded into a blocked account and professional fee escrows and are not immediately available to the Debtors. The Proposed Final Order must be modified to provide that interest is paid only on amounts that the Debtors have access to now. And the escrowing of estate professional fees should be eliminated entirely.

9. ***Finally***, there are numerous other terms and provisions in the Proposed Final Order that are problematic, which are discussed in detail below.

10. Attached as **Exhibit A** is a markup of the Proposed Final Order that would resolve the Committee's objections, and which the Committee has provided to the Debtors in advance of the objection deadline for the DIP Motion. The Court should condition final approval of the DIP Facility on these changes.

OBJECTION

11. The Debtors cannot satisfy their burden for approval of the Proposed Final Order, which requires them to demonstrate that "(i) the credit transaction is necessary to preserve the estate, and (ii) the terms of the transaction are fair and reasonable given the circumstances." *In re*

Futures Equity L.L.C., No. 00-33682 (BJH), 2001 Bankr. LEXIS 2229, at *14 (Bankr. N.D. Tex. April 11, 2001); *see also In re Republic Airways Holdings Inc.*, No. 16-10429 (SHL), 2016 WL 2616717, at *11 (Bankr. S.D.N.Y. May 4, 2016) (evaluating similar factors, including whether the terms of the transaction are "fair, reasonable, and adequate, given the circumstances of the debtor and the proposed lender"); *In re L.A. Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (same) (citation omitted).

12. "[C]ourts look to whether the proposed terms [in DIP financing arrangements] would prejudice the powers and rights that the [Bankruptcy] Code confers for the benefit of all creditors and leverage the Chapter 11 process by granting the lender excessive control over the debtor or its assets as to unduly prejudice the rights of other parties in interest." *In re Laffite's Harbor Dev. I, LP*, No. 17-36191 (KKB), 2018 Bankr. LEXIS 2, at *6 (Bankr. S.D. Tex. Jan. 2, 2018).

13. For the reasons set forth below, the Proposed Final Order fails to strike the appropriate balance between the Debtors' need for adequate funding and the responsibilities and restrictions that the Bankruptcy Code imposes on debtors in chapter 11.

I. The Backstop Premium Is Premature and Unsupportable

14. The Debtors' burden of proving that the proposed terms of the DIP Facility are fair and reasonable, naturally includes any contemplated fees. *See, e.g., In re Phila. Newspapers, LLC*, 445 B.R. 450, 467 (Bankr. E.D. Pa. 2010) (reducing requested DIP-related fees as unreasonable in light of the benefit conferred on the debtors' estates under section 503(b) of the Bankruptcy Code); *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991) (providing that a requirement of obtaining post-petition financing is "that the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere"). By any measure, the proposed Backstop Premium equal to 20% of the equity in the reorganized Debtors

fails to meet this standard.

15. The Backstop Premium is outsized and off-market. Comparing it to eighteen other cases from the past three years where DIP financing included a backstop fee (the "**Comparison Set**"), the Backstop Premium is one of only two structured similarly—in the other sixteen DIP facilities, the backstop fee was fixed and payable in cash, in kind, or in equity.[3] Based on the Comparison Set, the Backstop Premium proposed by the Debtors is unique and its potential value above market and excessive. The Backstop Premium of 20.00% is well above the 5.00% to 10.00% range of the backstop fees included in the Comparison Set that were paid in equity of the reorganized debtors.[4] Assuming an illustrative total enterprise value of $1.2 billion, which is the approximate sum of the first and second lien debt that participated in the Debtors' March liability management transaction, the Backstop Premium as a percentage of the new money commitment (diluted solely on account of the MIP) is equal to 154.9%.[5] This is entirely outside the range of the Comparison Set, which has an average value of 9.8% and a high of 32.2% of the DIP facility commitments.[6] The Comparison Set makes clear that, as a result of the Backstop Premium, the DIP Facility's economics are unreasonable and provide the DIP Lenders with approximately 15.8 times the average and approximately 4.8 times as much compensation as the richest comparable DIP facility at the illustrative $1.2 billion valuation.[7]

16. Even if the Backstop Premium passes muster as fair and reasonable (which it does not), it is inaccurate to say that it only impacts the Prepetition First Lien Lenders and is only due

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[3] MacGreevey Decl. ¶ 9. A copy of the Comparison Set is attached as Exhibit A to the MacGreevey Declaration.

[4] *Id.* ¶ 10.

[5] *Id.* If the value of the Debtors' business proves to be worth more than $1.2 billion, the value of the Backstop Premium is even higher.

[6] *Id.*

[7] *Id.* ¶ 12.

and payable under the Debtors' proposed plan. The Debtors' proposed plan would provide 2.0% of the Debtors' reorganized equity to the Prepetition Second Lien Lenders, subject to dilution from the Backstop Premium, so at least one constituency other than the Prepetition First Lien Lenders would be impacted by the Backstop Premium. Moreover, the Backstop Commitment Letter, which provides for the Backstop Premium, states that it is "payable on the Effective Date of the Plan contemplated under the Restructuring Support Agreement."[8] Under the Debtors' Restructuring Support Agreement, the term "Plan" includes any amended, supplemented or modified version of the Debtors' proposed plan that is consistent with the Restructuring Support Agreement and in form and substance acceptable to the parties to the Restructuring Support Agreement.[9] This gives the Debtors the flexibility to materially amend or otherwise modify their proposed plan (and, if necessary, their Restructuring Support Agreement) and still require the payment of the Backstop Premium, even if that plan is dramatically different than the currently proposed one.

17. In light of the foregoing, the Court should reserve approval of the Backstop Premium until confirmation when the value of the reorganized business is determined and the Court can assess its propriety. This is the only equitable way to address the Backstop Premium and would be consistent with other bankruptcy courts that have refused to authorize postpetition financing that predetermines material terms of recovery under an eventual plan, including fixed distributions of reorganized equity. *See, e.g.*, *In re Sas Ab*, 644 B.R. 267, 272 (Bankr. S.D.N.Y. 2022) ("I have, in fact, had some prior cases in which parties have proposed that DIP lenders receive a specified percentage of the reorganized equity in consideration for their DIP loans. Those proposals all were made early in cases, at times when the parties had no clear idea what the equity

[8] Interim Order, Ex. B ¶ 2.

[9] First Day Decl. Ex. A p. 9.

values would be, and not as part of a plan process in which creditor votes were being solicited. I flatly denied the proposed terms in each of those prior cases. I think it is very clear that decisions about the issuance of equity in the reorganized debtors should be reserved for the plan process."); *In re Belk Props., LLC*, 421 B.R. 221, 225 (Bankr. N.D. Miss. 2009) (declining to approve DIP financing that would allow prepetition lender to obtain a 51% interest in the reorganized debtor, "loosely dictat[ing]" the manner in which existing creditors would be treated and achieving the same "effect as a *sub rosa* Chapter 11 plan of reorganization").

II. The DIP Facility Seeks to Syphon Value From Unsecured Creditors

a. *The DIP Liens and Adequate Protection Liens Should Not Extend to Unencumbered Assets*

18. The Debtors have unencumbered assets to which the Prepetition First Lien Lenders would not have access outside of these Chapter 11 Cases. First among them are assets that were not perfected as of the Petition Date, either because they could not be as a matter of law or because of infirmities in the perfection steps taken by the Prepetition First Lien Secured Parties prior to the Petition Date. Second are assets that are created postpetition and are, thus, cut off from prepetition liens under section 552(a) of the Bankruptcy Code (so long as they are not proceeds, products, offspring or profits of prepetition collateral as described in section 552(b)). The Debtors here are potentially entering into new contracts postpetition and are using postpetition services and other efforts to create new accounts receivable, all of which may be unencumbered under section 552. *See Local Loan Co. v. Hunt*, 292 U.S. 234, 243 (1934) (prohibiting "the creation of an enforceable lien upon a subject not existent when the bankruptcy became effective or even arising from, or connected with, preexisting property, but brought into being solely as the fruit of the subsequent labor of the bankrupt"); *In re Cafeteria Operators, L.P.*, 299 B.R. 400, 404-05, 410 (Bankr. N.D. Tex. 2003) (explaining that section 552 codified the prohibition on liens on after-acquired property

and holding that the secured parties' security interest did not flow to all cash generated by Debtors since it represented "the proceeds of Debtors' post-petition toil and effort"). Finally, there are assets that exist only because of the bankruptcy filing—causes of action under sections 544, 545, 547, 548, 549 and 550 of the Bankruptcy Code known as Avoidance Actions. These assets collectively may be of substantial value and, prior to the imposition of any DIP or adequate protection liens, would be shared by all of the Debtors' unsecured creditors.

19. The Prepetition First Lien Lenders seek to encumber these assets with the DIP Liens and the Adequate Protection Liens, and grab all of the value of such assets for themselves.[10] This has the cumulative effect of expanding the Prepetition First Lien Lenders' collateral package and fails to satisfy the fair and reasonable standard for DIP facilities. Moreover, the Prepetition First Lien Lenders are trying to "double dip" on these unencumbered assets by seeking DIP Liens on them and also Adequate Protection Liens with respect to which they will likely argue that every dollar advanced by the DIP Lenders will cause a diminution in value of their prepetition collateral in equal amount. In that case, the unencumbered assets will be encumbered by two dollars for every dollar advanced. Given that all DIP Lenders are also Prepetition First Lien Lenders, this is essentially a disguised impermissible cross-collateralization of the Prepetition First Lien Lenders' prepetition obligations (an extraordinary provision that has not been disclosed as such).

20. As discussed more fully below, the Prepetition First Lien Lenders are funding these Chapter 11 Cases to pursue what is essentially a judicial foreclosure for their own benefit. They are doing so on an unnecessarily and prejudicially truncated timeline and are seeking to impair the

[10] Proposed Final Order ¶¶ 2(j) (granting DIP Liens on all assets and property of the Debtors, including Avoidance Actions); 3(i) (granting Prepetition First Lien Lenders adequate protection lien on proceeds of Avoidance Actions); 4(i) (granting Prepetition Second Lien Lenders adequate protection lien on proceeds of Avoidance Actions). A draft of the Proposed Final Order has been shared by the Debtors with the Committee and the Committee's comments to the Proposed Final Order attached as **Exhibit A** hereto are to that draft. Paragraph references to the Proposed Final Order and consistent with those in the Interim Order.

Committee's ability to discharge its fiduciary duties.[11] These lenders should not be permitted to also soak up in the process every bit of unencumbered value that could inure to the benefit of unsecured creditors while proposing to pay them nothing under a plan.

21. It is well established that bankruptcy cases should not be run solely for the benefit of secured creditors at the expense of all other creditors. *See In re Laffite's Harbor Dev. I, LP*, 2018 WL 272781, at *3 (Bankr. S.D. Tex. Jan. 2, 2018) ("While certain favorable terms may be permitted [in DIP financing] as a reasonable exercise of the debtor's business judgment, bankruptcy courts do not allow terms in financing arrangements that convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender"); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 39 (Bankr. S.D.N.Y. 1990) (finding that proposed financing should not be approved "where it is apparent that the purpose of the financing is to benefit a creditor rather than the estate" and that "the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest"). To that end, as the Fifth Circuit has articulated, "unencumbered assets of a debtor's estate will not be used to benefit one class of creditors at the expense of another class." *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd. (In re Timbers of Inwood Forest Assocs., Ltd.)*, 793 F.2d 1380, 1387 (5th Cir. 1986).

22. This applies to all unencumbered assets, but is particularly true with respect to Avoidance Actions, which are specifically meant to provide value to unsecured creditors. *See McFarland v. Leyh (In re Tex. Gen. Petrol. Corp.)*, 52 F.3d 1330, 1335 (5th Cir. 1995) ("[T]he

[11] *See* infra. ¶¶ 27-36.

proceeds recovered in an avoidance action satisfy the claims of priority and general unsecured creditors before the debtor benefits."); *ASARCO LLC v. Americas Mining Corp.*, 404 B.R. 150, 161 (S.D. Tex. 2009) ("[T]he ultimate purpose of most fraudulent-transfer laws, and in particular § 550, is to protect unsecured creditors, and, as far as possible, to make them whole."); *Cullen Ctr. Bank & Tr. v. Hensley (In re Criswell)*, 102 F.3d 1411, 1414 (5th Cir. 1997) (noting that avoidance powers under the Bankruptcy Code were created to "facilitat[e] the prime bankruptcy policy of equality of distribution among creditors of the debtor"); *Gaudet v. Babin (In re Zedda)*, 103 F.3d 1195, 1203 (5th Cir. 1997) ("A trustee's avoidance powers are intended to benefit the debtor's creditors, as such powers facilitate a trustee's recovery of as much property as possible for distribution to the [unsecured] creditors."). It is for that reason that numerous bankruptcy courts have restricted a debtor's ability to pledge unencumbered assets, including avoidance actions proceeds. *See In re Klaas Talsma Frisia Hartley*, LLC, No. 10–43790 (DML), 2010 WL 5209363, at *4 (Bankr. N.D. Tex. June 10, 2010) (excluding avoidance actions and proceeds thereof from the adequate protection package provided to the prepetition secured lender); *In re HSAD 3949 Lindell, Ltd.*, No. 10–33986 (BJH), 2010 WL 5209266, at *5 (Bankr. N.D. Tex. Sept. 2, 2010) (excluding "any and all avoidance actions under Chapter 5 of the Bankruptcy Code and any proceeds thereof" from the adequate protection package).

b. *A Waiver of Section 506(c) of the Bankruptcy Code Is Not Appropriate*

23. The Proposed Final Order seeks to waive section 506(c) of the Bankruptcy Code.[12] This section allows a debtor to recover from property securing a claim the "reasonable, necessary costs and expenses of preserving, or disposing of, such property." 11 U.S.C. § 506(c); *see In re Dalton Crane, L.C.*, 641 B.R. 850, 863 (Bankr. S.D. Tex. 2022) ("Payment of administrative

[12] Proposed Final Order ¶ 8.

expenses from the proceeds of secured collateral are allowed when incurred primarily for the benefit of the secured creditor or when the secured creditor caused or consented to the expense."). This is a rule of fundamental fairness for all parties in interest, ensuring that secured creditors do not benefit from the actions resulting in the preservation or enhancement of their collateral to the detriment of the estate. *See Southwest Sec., FSB v. Segner (In re Domistyle, Inc.)*, 811 F.3d 691, 696 (5th Cir. 2015) (explaining that section 506(c) prevents the "inequity" of having "unsecured creditors . . . bear the costs of protecting what is not theirs"). Section 506(c) is designed to "prevent a windfall to the secured creditor" and "understandably shifts to the secured party . . . the costs of preserving or disposing of the secured party's collateral, which costs might otherwise be paid from the unencumbered assets of the bankruptcy estate." *Precision Steel Shearing, Inc. v. Fremont Fin. Corp. (In re Visual Indus., Inc.)*, 57 F.3d 321, 325 (3d Cir. 1995).

24. By seeking to waive section 506(c) of the Bankruptcy Code, the Proposed Final Order would deprive the Debtors' estates of their statutory surcharge rights. By insisting on this waiver, the Prepetition First Lien Lenders, who are attempting to encumber and cross-collateralize otherwise unencumbered assets, are also seeking to benefit from expenditures that preserve or enhance their collateral, potentially leaving the Debtors administratively insolvent. The Prepetition First Lien Lenders would not be able to avoid the related expenses outside of bankruptcy. Therefore, the section 506(c) waiver should not be approved.

25. At a minimum, the Committee (and other parties in interest with standing) should remain free to assert such rights derivatively if the Debtors are unwilling to do so. *See, e.g., In re Delta Towers*, 924 F.2d 74, 77 (5th Cir. 1991) (finding that creditor had standing to "use § 506(c), considering that the bankruptcy court noted the debtor-in-possession's refusal to seek recovery of [the creditor's] utility fees"); *see also Hartford Underwriters Ins. Co. v. Union Planters Bank,*

N.A., 530 U.S. 1, 13 n.5 (2000) ("We do not address whether a bankruptcy court can allow other interested parties to act in the trustee's stead in pursuing recovery under § 506(c)."") (citing *In re Xonics Photochemical, Inc.*, 841 F.2d 198, 202-03 (7th Cir. 1988) (holding that creditor had no right to bring fraudulent conveyance claims independently but noting that creditor could have sought derivative standing to bring such claims).

c. *A Waiver of the "Equities of the Case" Exception to Section 552(b) of the Bankruptcy Code Is Inappropriate*

26. The Proposed Final Order seeks to waive the "equities of the case" exception of section 552(b) of the Bankruptcy Code.[13] This is an exception to the rule that postpetition assets that are proceeds of prepetition collateral are deemed to be subject to prepetition liens, giving bankruptcy courts the discretion to cut off prepetition liens if equitable considerations warrant doing so. *In re Blackjewel, LLC*, No. 3:20-00866, 2021 U.S. Dist. LEXIS 121061, at *13-*14 (S.D. W. Va. June 29, 2021) ("This exception to the exception gives bankruptcy judges significant discretion to decide whether it is equitable for a prepetition interest to attach to postpetition proceeds."). This is meant to "prevent secured creditors from receiving windfalls and to allow bankruptcy courts broad discretion in balancing the interests of secured creditors against the general policy of the Bankruptcy Code." *In re Cafeteria Operators, L.P.*, 299 B.R. at 409 (quoting *In re Patio & Porch Sys., Inc.*, 194 B.R. 569, 575 (Bankr. D. Md. 1996)); *see also In re Muma Servs.*, 322 B.R. 541, 558-59 (E.D. Mich. 1989)) ("The purpose of the equity exception is to prevent a secured creditor from reaping benefits from collateral that has appreciated in value as a result of the trustee's/debtor-in-possession's use of other assets of the estate . . . to cause the appreciated value.").

27. Crucially, the "equities of the case" exception is a power vested in the Court and

[13] Proposed Final Order ¶¶ K, 3(iii), 4(iii).

not the Debtors. *See, e.g.*, *In re Linn Energy, LLC*, No. 16-60040 (Bankr. S.D. Tex.), July 28, 2016 Hr'g Tr. at 134:19-25 [Dkt. No. 746] (the court exercising discretion to preserve an official committee's right to seek application of the section 552(b) exception and noting that preservation of a committee's right under the exception "really just conforms with applicable Circuit law anyway"); *see also In re General Maritime Corp.*, No. 11-15285 (Bankr. S.D.N.Y.), Nov. 18, 2011 Hr'g Tr. at 74:15-24 [Dkt. No. 54] (court noting: "In my view, the parties cannot limit the Court's power with respect to the doctrine of the equities of the case. The debtor can agree that it will not assert the equities of the case doctrine under 552(b), but you can't preclude [the Court] from applying it"). Accordingly, because the Debtors are not vested with a unilateral right to invoke the "equities of the case" exception, they cannot impose a waiver of the exception on other parties.

28. Further, as discussed above, the Committee has serious questions as to whether the fruits of the Debtors' postpetition efforts are subject to the Prepetition First Lien Lenders' liens at all. If that is the case, there may be substantial unencumbered value available for distribution to unsecured creditors. Nevertheless, the Court should not approve the waiver of the "equities of the case" exception and should address any argument that the exception should be applied at the appropriate time—not at the beginning of these Chapter 11 Cases. *See In re Metaldyne Corp.*, No. 09-13412 (MG), 2009 WL 2883045, at *6 (Bankr. S.D.N.Y. June 23, 2009) (holding, in the context of a proposed section 552(b) waiver, that "the waiver of an equitable rule is not a finding of fact . . . and the Court, in its discretion, declines to waive prospectively an argument that other parties in interest may make").

d. *The Doctrine of Marshaling Should Not Be Waived*

29. The Proposed Final Order seeks to grant a waiver by the Debtors of any rights to argue for the equitable doctrine of marshaling. Marshaling, if imposed, requires a secured creditor to recover from assets that they have the exclusive right to before assets that they share with other

creditors, which "prevent[s] the arbitrary action of a senior lienor from destroying the rights of a junior lienor or a creditor having less security." *Meyer v. United States*, 375 U.S. 233, 237 (1963). "While the debtor may seek authority to waive its own rights, it cannot waive the marshaling rights of parties who have not consented." *In re The Colad Grp. Inc.*, 324 B.R. 208, 224 (Bankr. W.D.N.Y. 2005). The application of the marshaling doctrine is available to benefit unsecured creditors in bankruptcy since the estate can assert this state-law doctrine by virtue of the strong-arm powers under section 544(a), which grant the estate the status of a judicial lien creditor. *See, e.g.*, *Kittay v. Atl. Bank of N.Y. (In re Global Serv. Grp. LLC)*, 316 B.R. 451, 463 (Bankr. S.D.N.Y. 2004) ("The trustee has standing to invoke marshaling because he has the status of a hypothetical lien creditor."); *Official Comm. of Unsecured Creditors v. Hudson United Bank (In re America's Hobby Ctr., Inc.)*, 223 B.R 275, 287 (Bankr. S.D.N.Y. 1998) (same). The Committee can seek derivative standing to pursue marshaling rights on behalf of the estate for the benefit of all unsecured creditors. *See, e.g.*, *America's Hobby Ctr.*, 223 B.R. at 287 ("[S]tanding in the shoes of the debtor in possession, the Committee can assert this claim [for marshaling]."). As stated above, the Debtors are seeking to grant liens for new funds as well as funds advanced prepetition on unencumbered assets to the DIP Lenders and the Prepetition Secured Parties. To protect unsecured creditors, parties should be free to argue that any such liens should be available for recoveries only after liens on already encumbered assets are exhausted.

III. The Proposed Final Order Hampers the Committee's Ability to Discharge Its Fiduciary Duties

30. The Proposed Final Order should not be approved because it improperly hamstrings the Committee's ability to perform its fiduciary duties and, as a result, fails to satisfy the fair and reasonable standard. It does so by (i) seeking to impose milestones that are unrealistic and do not provide the Committee with sufficient time to discharge its statutory duties, (ii) attempting to

restrict the use of ***any*** cash to pay the professional fees of the Committee above the $1.75 million amount set forth in the Budget,[14] and (iii) proposing an anemic Carve-Out of $250,000 and investigation budget of $50,000 for the Committee.

a. *The Proposed Milestones Should Be Extended*

31. The Proposed Final Order would give the DIP Lenders the ability to terminate the DIP Facility and then receive pre-wired automatic stay relief to exercise foreclosure rights if certain milestones are not met, which include obtaining a confirmation order by November 18, 2025 and consummating the proposed plan by December 8, 2025. This means that the Committee would have no more than 74 days from its appointment to contest confirmation of a plan that offers no distribution to unsecured creditors (only an "opportunity" for certain qualified holders to purchase reorganized equity). This plan is predicated on a valuation that is not subject to a market check and has not yet been provided to the Committee or disclosed, but that apparently will allege that the business is worth less than the Debtors' outstanding secured debt.

32. Despite the Committee having served document requests and deposition notices relating to the DIP Facility and the proposed plan immediately upon retaining counsel on September 10, 2025, the Debtors produced approximately half of the total DIP-related documents on or after Saturday, September 20, 2025[15] and have yet to make any production related to their proposed plan. To date, the Debtors have not produced their Disclosure Statement exhibits (valuation analysis, liquidation analysis, and financial projections), which will allow the Committee to evaluate the plan valuation. The proposed milestones thus do not allow the Committee sufficient time to review diligence, take depositions, and properly investigate potential

[14] Attached as **Exhibit B** is an excerpt from the Debtors' 13-week budget, which the Debtors produced at bates number MODV_0000017813 (the "**Budget**").

[15] This includes a production the Debtors anticipate making on September 23, 2025, which the Committee understands will include certain high-priority documents discussed with Debtors' counsel on September 12, 2025.

prepetition claims and other confirmation issues, including the broad releases proposed under the proposed plan. Under this timeframe—especially with weeks already lost to the Debtors' unwillingness to expedite discovery—it will be impossible for the Committee to properly evaluate the plan, as it is statutorily required to do.

33. Further, these proposed milestones cannot be justified by any financial hardship of the Debtors. Based on analysis of the Debtors' weekly cash flow projections through December 31, 2025 and monthly income statement projections from January 1, 2026 through February 28, 2026, the Debtors have sufficient liquidity through February 2026.[16]

34. The Committee should not be hamstrung by these oppressive milestones. Instead, the Committee should be free to make its case to the Court that such dates should be extended. And the Debtors and the Prepetition First Lien Lenders are free to argue that they should not. But, if the Court agrees with the Committee and is inclined to set hearings on a more rational timeline, it should not give the DIP Lenders the opportunity to bring the house down. Instead, each proposed milestone should be extended by 90 days to ensure that the DIP Lenders cannot use the milestones as a means to pressure the Court on a timeline that is inequitable and unjustified.

b. *The Committee's Professional Fees Should Not Be Subject to a Cap*

35. The Proposed Final Order purports to cap the fees and expenses of the Committee's Professionals. Specifically, the Proposed Final Order restricts the use of any cash to pay the Committee Professionals' fees above the budgeted amount.[17] The Proposed Final Order also limits

[16] *See* MacGreevey Decl. ¶ 12.

[17] *See* Proposed Final Order ¶ 2(f) ("The Debtors shall only incur DIP Obligations and expend Cash Collateral and other DIP Collateral proceeds in accordance with the Approved Budget (and in the case of the costs and expenses of the Required DIP Lenders and the Required Prepetition First Lien Lenders, in accordance with the DIP Loan Documents and this Final Order without being limited by the Approved Budget), subject to the following Permitted Variances (as defined below)."); *see also id.* ¶ F (stipulating that all of the Debtors' cash is Cash Collateral).

the Committee Professionals' fees that benefit from the Carve-Out prior to a Termination Event to the amount set forth in the Budget.[18] The Budget provides for $1.75 million for all Committee professionals for the first 13 weeks of these Chapter 11 Cases.[19] The Debtors' professionals, on the other hand, are budgeted over $19.7 million and the Prepetition First Lien Lenders' professionals are budgeted over $3.6 million, in each case for the same 13-week period.[20] Comparing these budgeted amounts and applying common sense (given the typical cost of Committee professionals) demonstrates that this amount is woefully insufficient.

36. Moreover, there should not be a cap on Committee professional fees at all. Section 1103(c) of the Bankruptcy Code specifically provides for the appointment of an official committee of unsecured creditors and sections 503(b) and 507(a)(2) of the Bankruptcy Code give administrative claim priority to the professional fees of the Committee, subject to the requirement to obtain Court approval of retention and fee applications. The Debtors should not be permitted to undermine these statutory provisions and impose an arbitrary cap on the Committee's professional fees. Doing so would not only seek to circumvent the Bankruptcy Code but would also severely handicap the Committee in discharging its fiduciary duties. By attempting to impose this cap, the DIP Facility again fails to meet the fair and reasonable standard.

c. *The Committee's Carve-Out and Investigation Budget Should Be Increased*

37. The Proposed Final Order proposes to give the Committee a $250,000 post-termination Carve-Out and a $50,000 investigation budget.[21] Both amounts are woefully insufficient.

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[18] *Id.* ¶ 7(i) (providing that prior to a Carve-Out Trigger Notice, Committee Professionals' fees, to the extent allowed by the Court, are "subject to the Approved Budget").

[19] Ex. B at 3 ("UCC Professionals" line item).

[20] *Id.* at 2 ("Lender Professionals" line item).

[21] Proposed Final Order ¶¶ 7(i), 16.

38. If the DIP Lenders seek to terminate the DIP Facility, there will be a significant amount of work the Committee will need to undertake, including potentially seeking an emergency hearing and disputing the DIP Lenders' ability to exercise remedies, ensuring that the DIP Lenders do not access unencumbered assets in any foreclosure action and potentially overseeing a wind-down of the Debtors' business. Therefore, the Committee's post-termination Carve-Out should be the same as that of the Debtors: $2,500,000.

39. The proposed investigation budget is even more insulting. It is patently impossible for the Committee to properly investigate the validity, enforceability and perfection of prepetition liens and claims for $50,000, let alone to investigate what may be viable and very valuable causes of action against the Prepetition Secured Parties. Such investigations are not elective—rather, they are one of the core responsibilities of the Committee delineated in the Bankruptcy Code. *See* 11 U.S.C. § 1103(c) (empowering the Committee to "investigate the acts, conduct, assets, liabilities, and financial condition of the debtor . . . and any other matter relevant to the case . . . and perform[ing] such other services as are in the interest of those represented"). If such an investigation budget is to be imposed, in order for the DIP Facility to be fair and reasonable as is required, such budget should be increased to $3,000,000 and should also allow the Committee to seek reimbursement from the estates not just for investigation—but also pursuing—any viable causes of action.

IV. The Debtors Should Not Pay Interest and Fees on Inaccessible Funds or Escrow Professional Fees

40. The DIP Facility would require the establishment of two accounts, which hold certain DIP proceeds that the Debtors do not immediately have access to and yet the Debtors are inappropriately charged interest and fees on these funds. The Proposed Final Order requires that all DIP proceeds be deposited in a blocked account, defined as the DIP Account. The Debtors can

only access these funds on a weekly basis in the amount set forth in the Budget.[22] Other funds (approximately $21.5 million over the first 13 weeks of the Chapter 11 Cases) are to be placed in an Escrow Account for estimated future estate professional fees.[23] In both cases, despite not being able to access and use such cash, the Debtors are paying interest and fees on the full stated $100 million of the DIP Facility. The Debtors should not be permitted to pay interest and fees on cash in the DIP Account or the Escrow Account unless and until the Debtors actually access such cash.

41. Moreover, the Escrow Account is inappropriate and seeks to circumvent the Bankruptcy Code. Estate professionals (including the Committee) should not get what is effectively a security interest in DIP proceeds, representing free insurance against a potential conversion. Instead, all professionals should be motivated to avoid such a result, estate professional fees should be governed solely by the retention and fee application process and the Debtors should be given full access to DIP proceeds. *See* 11 U.S.C. § 329 (requiring attorneys representing the debtor to file applications for compensation); § 330 (establishing compensation procedures for estate professionals); § 331 (establishing interim compensation procedures for estate professionals). Therefore, funds in the Escrow Account should be remitted to the Debtors, and the Debtors should be prohibited from transferring any more funds to the Escrow Account.

V. The Proposed Final Order Includes Numerous Other Infirmities

42. The Proposed Final Order suffers from a number of other infirmities that result in the DIP Facility failing to meet the fair and reasonable standard. Such flaws include the following:

- ***Unchallengeable Stipulation Regarding Cash Collateral***: The Proposed Final Order includes a stipulation that all of the Debtors' cash is Cash Collateral without

[22] *Id.* ¶ 2(d); *see also* Ex. B ("DIP Account Balance" line item).

[23] Proposed Final Order ¶ 7(iii); *see also* Ex. B ("Restructuring Fees – Subject to Escrow" line item).

being subject to challenge.[24] This is entirely inappropriate, particularly given that there are specifically excluded accounts in the prepetition debt documents and there may be viable arguments under section 552 of the Bankruptcy Code that prepetition liens do not extend to postpetition cash.

- ***Increase in Interest Rate***: The Proposed Final Order provides for the current payment of interest to the Prepetition First Lenders at a rate that is ***2.0% above the default rate***, which is already 2.0% more than the standard rate.[25] This artificial interest rate increase, which is not provided for in the Prepetition First Lien Credit Agreement, should not be permitted. Rather, interest should be payable only at the non-default rate given that the only default in question is the filing of the bankruptcy cases, which is an unenforceable *ipso facto* provision. Moreover, the bankruptcy cases are supported by (and are entirely dictated by) the Prepetition First Lien Lenders who should not be able to benefit further from the judicial foreclosure they are pursuing.
- ***Challenge Limitations***: The Proposed Final Order states that a final, non-appealable order resulting in a Successful Challenge needs to be obtained prior to the Challenge Termination Date.[26] Requiring a Successful Challenge to be obtained before the Challenge Termination Date is impracticable and renders null the challenge period commonly provided to statutory committees. A requirement of this nature is inarguably not necessary nor is it fair and reasonable. The challenge

[24] Proposed Final Order ¶ F.

[25] *Id.* ¶ 3(iv); Prepetition First Lien Credit Agreement § 2.13(d).

[26] Proposed Final Order ¶ 6 (stating that "a final, non-appealable order in favor of such party in interest sustaining any such Challenge" must be obtained within the Challenge Period (i.e., 60 days from formation for the Committee).

language in the Proposed Final Order also says that upon the "Challenge Period Termination Date," the Debtors' stipulations are binding on all parties but does not address what happens if, by the time a Challenge is "fully and finally adjudicated," such a Challenge is successful.[27] The Proposed Final Order should clarify that a Challenge must be brought—but not adjudicated—within the Challenge Period and that a Successful Challenge will invalidate the challenged stipulation.

- ***Standing to Bring a Challenge***: The Proposed Final Order requires the Committee to obtain an order of the Court prior to the Challenge Period Termination Date granting standing to bring any Challenge.[28] When considered in connection with the Debtors' attempt to cap the fees of the Committee and the unreasonably short proposed milestones, the requirement to seek standing is a further hurdle meant to stifle the Committee's efforts to carry out its fiduciary duties. To the extent the Committee files a motion seeking standing to bring a Challenge, it is effectively a foregone conclusion that such motion will be granted. *La. World Expo. v. Fed. Ins. Co.*, 858 F.2d 233, 253 (5th Cir. 1988) (granting standing to a creditors' committee to pursue estate claims in part because the debtor's refusal to pursue them was unjustified); *Coral Petroleum, Inc. v. Banque Paribas-London*, 797 F.2d 1351, 1363 (5th Cir. 1986) (finding that section 1109(b) of the Bankruptcy Code grants an unsecured creditors committee standing and the right to intervene in a preference action because the debtors refused to bring the preference claim). Therefore, the Committee should be granted automatic standing under the circumstances. *See*,

[27] *Id.*

[28] *Id.* ¶ 6 (stating that "nothing in this Final Order shall be construed to grant standing on any party in interest, including any Committee, to bring any Challenge on behalf of the Debtors' estates").

e.g., *In re Mosaic Sustainable Fin. Corp.*, Case No. 25-90156 (CML) (Bankr. S.D. Tex. Jul. 2, 2025) [Dkt. No. 211] ¶ 43 (granting the official committee of unsecured creditors automatic standing to commence a challenge without any need to file a motion seeking standing).

- ***Proceeds of Subsequent Financing***: The Proposed Final Order states that any cash proceeds derived from any alternative financing obtained pursuant to section 364 of the Bankruptcy Code be used to repay both the DIP Obligations and the First Lien Adequate Protection Superpriority Claims in full.[29] As discussed above, the adequate protection liens are essentially a cross-collateralization of prepetition secured debt. This creates an unnecessary barrier to any refinancing of the DIP Facility because it potentially requires repayment of twice the amount funded under the DIP Financing. Any alternative postpetition facility should require only repayment of the DIP Facility.
- ***Unqualified Right to Credit Bid***: The Proposed Final Order provides that the DIP Agent and/or the Prepetition First Lien Agent shall have the "unqualified" right to credit bid.[30] This limits any potential restrictions or requirements imposed on a credit bid under the Bankruptcy Code. The Prepetition First Lien Secured Parties should be able to circumvent these statutory requirements solely because they are providing postpetition financing.
- ***Rights and Remedies Upon Termination Event***: The Proposed Final Order would grant the DIP Agent with the automatic right to exercise all remedies set forth in

[29] Proposed Final Order ¶ 11.

[30] *Id.* ¶ 13(b).

the Proposed Final Order and in the DIP Loan Documents upon a Termination Event, subject only to a five day notice period during which the Debtors and other parties in interest can seek an emergency hearing to contest whether a Termination Event has occurred.[31] This type of provision is of the type that is labeled as "disfavored" under the complex case procedures for this Court. Complex Case Procedures § 10(a). Such a provision is disfavored is because the automatic stay is "one of the fundamental debtor protections provided by the bankruptcy laws," and "prevents the dissipation or diminution of the bankrupt's assets while rehabilitative efforts are undertaken." *S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc.*, 817 F.2d 1142, 1146 (5th Cir. 1987) (citing legis. history at H.R. Rep. NO. 95-595, 95th Cong., 2d Sess. 340 (1978), reprinted in 1978 U.S. Code Cong. & Admin News 5787, 5963, 6297–98). The Proposed Final Order should not provide the DIP Agent with pre-wired stay relief—instead, the onus should be on the DIP Agent to seek stay relief in light of a termination event. And counterarguments available to the Debtors and other parties in interest should not be limited.

- ***Right to Enter Leased or Licensed Premises***: The Proposed Final Order allows the DIP Agent to enter upon any leased or licensed premises of the Debtors for the purposes of exercising any remedy with respect to the DIP Collateral, unless otherwise provided in any separate and enforceable agreement by and between the applicable landlord or licensor and the DIP Agent.[32] This would improperly expand the DIP Agent's rights beyond what the relevant lease or license or appliable state

[31] *Id.* ¶ 15(b).

[32] Proposed Final Order ¶ 15(e).

law would provide. In order to not unduly prejudice the rights of other parties in interest, the Proposed Final Order shall clarify that the right of the DIP Agent to enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to any DIP Collateral located thereon shall be only to the extent permitted in any separate and enforceable agreement by and between the applicable landlord or licensor and the DIP Agent or applicable law.

- ***Prepetition DIP Fees***: The Proposed Final Order would grant full approval to and shield from challenge any and all fees on the DIP Facility paid prepetition.[33] Given that the DIP Facility was not in effect or approved prior to the Petition Date, no fees should have been paid on it at that time. In any event, all of the Debtors' prepetition conduct should be subject to scrutiny by the Committee and such fees (if any) should not be shielded from any related challenge.
- ***Amendments to the DIP Loan Documents***: The Proposed Final Order provides no opportunity for the Committee to review or object to any amendments to the DIP Loan Documents that the Debtors determine (in their sole discretion) are immaterial.[34] It is critical that the Committee be given the right to review any amendments to the DIP Loan Documents and object. The Proposed Final Order shall clarify that the Committee shall be given at least three (3) business days' notice of any amendment to the DIP Loan Documents so that the Committee is provided with an opportunity to object and seek resolution by the Court of any such objection.

[33] *Id.* ¶ 20(b).

[34] *Id.* ¶ 20(g).

RESERVATION OF RIGHTS

43. This Objection is submitted without prejudice to, and with a full reservation of, the Committee's rights, claims, defenses, and remedies, including the right to amend, modify, or supplement this Objection, to raise additional objections and to introduce evidence at any hearing related to this Objection, and without in any way limiting any other rights of the Committee to further object to the DIP Motion, on any grounds, as may be appropriate.

CONCLUSION

For the reasons set forth herein, the Court should (i) require that the Proposed Final Order be modified to address the issues set forth herein, or alternatively, deny approval of the DIP Motion on a final basis and (ii) grant such other relief as it deems just and proper.

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September 23, 2025
Houston, Texas

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Proposed Counsel for the Official Committee of Unsecured Creditors

CERTIFICATE OF SERVICE

I CERTIFY that on September 23, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

By: */s/ Charles R. Koster*
Charles R. Koster

EXHIBIT A

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

In re:	:	Chapter 11
MODIVCARE INC., *et al.*,	:	Case No. 25-90309 (ARP)
Debtors.[1]	:	(Jointly Administered)

FINAL ORDER (A) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING, (B) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (C) AUTHORIZING THE USE OF CASH COLLATERAL, (D) MODIFYING THE AUTOMATIC STAY, AND (E) GRANTING RELATED RELIEF
[Relates to Docket Nos. 4 & 106]

Upon the emergency motion, dated August 20, 2025 [Docket No. 4] (the "DIP Motion"), of ModivCare Inc. and the other debtors and debtors-in-possession (collectively, the "Debtors"), in the above-referenced chapter 11 cases (these "Chapter 11 Cases"), seeking entry of an interim order (the "Interim Order") and a final order (this "Final Order") pursuant to sections 105, 361, 362, 363, 364(c), 364(d), 364(e), 503, 507, and 552 of chapter 11 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Rules 2002-1, 4001-1(b), 4002-1, and 9013-1 of the Local Rules of the United States Bankruptcy Court for the Southern

[1] A complete list of each of the Debtors in these chapter 11 cases (the "***Chapter 11 Cases***") and the last four digits of each Debtor's taxpayer identification number (if applicable) may be obtained on the website of the Debtors' proposed claims and noticing agent at https://www.veritaglobal.net/ModivCare. Debtor ModivCare Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

District of Texas (the "Bankruptcy Local Rules"), and the *Procedures for Complex Cases in the Southern District of Texas* (the "Complex Case Procedures"), that, among other things:

(i) authorizes the Debtor designated as "Borrower" under, and as defined in, the DIP Credit Agreement (as defined below) (the "Borrower") to obtain, and the other guarantors (the "DIP Guarantors") under the DIP Loan Documents (as defined below) to unconditionally guaranty, jointly and severally, the Borrower's obligations in respect of, senior secured priming and superpriority postpetition financing, which would consist of a term loan facility for up to $100 million in principal amount (the "DIP Facility") and loans extended under the DIP Facility, (the "DIP Loans"), pursuant to the terms of (x) this Final Order, (y) that certain Superpriority Secured Debtor in Possession Credit Agreement (as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms, the "DIP Credit Agreement"),[2] by and among the Borrower, the DIP Guarantors, Wilmington Trust, as administrative agent and collateral agent (in such capacity, collectively, the "DIP Agent"), and the other financial institutions party to the DIP Credit Agreement as "Lenders" under, and as defined in, the DIP Credit Agreement (collectively, the "DIP Lenders," and together with the DIP Agent and any other party to which DIP Obligations (as defined below) are owed, the "DIP Secured Parties"), in substantially the form attached as Exhibit A of the Interim Order, and (z) any and all other Loan Documents (as defined in the DIP Credit Agreement, and together with the DIP Credit Agreement, collectively, the "DIP Loan Documents"), to: (A) fund, among other things, ongoing working capital, general corporate expenditures and other financing needs of the Debtors (including Allowed Professional Fees), (B) pay certain adequate protection amounts to the Prepetition First Lien Secured Parties (as defined below) as described below, (C) pay certain transaction fees and other costs and expenses of administration of the Chapter 11 Cases, and (D) pay fees and expenses (including reasonable attorneys' fees and expenses) and interest owed to the DIP Secured Parties under the DIP Loan Documents and this Final Order;

(ii) approves the terms of, and authorizes the Debtors to execute and deliver, and perform under, the DIP Loan Documents (including, without limitation the DIP Backstop Commitment Letters and the Backstop Premium thereunder) and authorizes and empowers the Debtors to perform such other and further acts as may be required in connection with the DIP Loan Documents and this Final Order;

(iii) grants (x) to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, Liens on all of the DIP Collateral (as defined below) pursuant to sections

[2] Unless otherwise specified herein, all capitalized terms used herein without definition shall have the respective meanings given to such terms in the DIP Credit Agreement.

364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, which Liens shall be senior to the Primed Liens (as defined below) and shall be junior solely to the Carve-Out (as defined below) and any valid, enforceable and non-avoidable Liens that are (A) in existence on the Petition Date (as defined below), (B) either perfected as of the Petition Date or perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code, and (C) senior in priority to the Prepetition First Liens (as defined below) and Prepetition Second Liens (as defined below) after giving effect to any intercreditor or subordination agreement (all such Liens, collectively, the "Prepetition Prior Liens") and (y) to the DIP Secured Parties, pursuant to section 364(c)(1) of the Bankruptcy Code, superpriority administrative claims (junior solely to the Carve-Out) having recourse to ~~all prepetition and postpetition property of the Debtors' estates, now owned or hereafter acquired and the proceeds of each of the foregoing, including,[3] upon entry of the Interim Order, any proceeds of actions brought under section 549 of the Bankruptcy Code, and upon entry of this Final Order,~~ the Prepetition First Lien Collateral (as defined below) (which, for the avoidance of doubt, shall not include Avoidance Actions (as defined below) and the proceeds of Avoidance Actions ~~(as defined below)~~), and in all respects with respect to clauses (x) and (y) shall be subject to the relative priorities set forth on **Schedule 1** hereto;

(iv) authorizes the Debtors to use "cash collateral," as such term is defined in section 363(a) of the Bankruptcy Code (the "Cash Collateral"), including Cash Collateral in which the Prepetition First Lien Secured Parties (as defined below), the Prepetition Second Lien Secured Parties (as defined below) and/or the DIP Secured Parties have a Lien or other interest, in each case whether existing on the Petition Date, arising pursuant to this Final Order or otherwise;

(v) modifies the automatic stay imposed by section 362 of the Bankruptcy Code solely to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Final Order;

(vi) authorizes the Borrower to borrow upon entry of this Final Order under the DIP Facility in an aggregate outstanding principal amount of $37.5 million which shall be funded into the DIP Account (as defined below) with release subject to the terms and conditions of the DIP Credit Agreement, and authorizes the DIP Guarantors to unconditionally guaranty such obligations jointly and severally;

(vii) grants the Prepetition First Lien Secured Parties, as of the Petition Date and in accordance with the relative priorities set forth herein, the Prepetition First Lien Adequate Protection (as defined below), which consists of, among other things, First Lien Adequate Protection Liens (as defined below), First Lien Adequate

~~[3] As used herein, the words "including" or "include" and variations thereof shall not be deemed to be terms of limitation and shall be deemed to be followed by the words "without limitation."~~

Protection Superpriority Claims (as defined below) and current payment of accrued and unpaid prepetition and postpetition reimbursable fees and expenses;

~~(viii) waives certain rights of the Debtors to surcharge collateral pursuant to section 506(c) of the Bankruptcy Code;~~

(viii) ~~(ix)~~ provides for the immediate effectiveness of this Final Order and waives any applicable stay (including under Bankruptcy Rule 6004) to permit such immediate effectiveness; and

(ix) ~~(x)~~ grants related relief.

Having considered the DIP Motion, the DIP Credit Agreement, the *Declaration of Zul Jamal in Support of the Debtors' Motion to Obtain Postpetition Debtor-in-Possession Financing* (the "Jamal Declaration") and the *Declaration of Chad J. Sandler in Support of Debtors' Chapter 11 Petitions and First Day Relief* (the "First Day Declaration," and together with the Jamal Declaration, the "DIP Motion Declarations"), and the evidence submitted or proffered at the hearing on this Final Order (the "Final Hearing"); and in accordance with Bankruptcy Rules 2002, 4001(b), 4001(c), and 4001(d), and 9014 and all applicable Bankruptcy Local Rules, notice of the DIP Motion and the Final Hearing having been provided pursuant to Bankruptcy Rule 4001(b)(1)(C); an Interim Hearing having been held and concluded on August 21, 2025; a Final Hearing having been held and concluded on ~~[~~September ~~16]~~30, 2025; and it appearing that approval of the relief requested in the DIP Motion is fair and reasonable and in the best interests of the Debtors, their creditors, their estates and all parties in interest, and is essential for the continued operation of the Debtors' businesses and the preservation of the value of the Debtors' assets; and it appearing that the Debtors' entry into the DIP Credit Agreement is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

THIS COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[43]

A. **Petition Date**. On August 20, 2025 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (this "Court"). The Debtors have continued in the management and operation of their businesses and properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On September 5, 2025, the United States Trustee for the Southern District of Texas (the "United States Trustee") appointed an official committee of unsecured creditors (the "Committee") [Docket No. 124]. No request for the appointment of a trustee or an examiner has been made in the Chapter 11 Cases.

B. **Jurisdiction and Venue**. This Court has jurisdiction over these Chapter 11 Cases, the DIP Motion and the parties and property affected hereby pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for these Chapter 11 Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and other predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 507 and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014 and the Bankruptcy Local Rules.

C. **Notice**. The Final Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001. Notice of the Final Hearing has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to certain parties in interest, including: (i) the United States Trustee, (ii) those entities or individuals included on the Debtors'

[43] Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as appropriate, pursuant to Bankruptcy Rule 7052.

list of thirty (30) largest unsecured creditors on a consolidated basis, (iii) counsel to the Prepetition First Lien Agent (as defined below), (iv) the Prepetition First Lien Agent, (iv) counsel to the Prepetition Second Lien Trustee (as defined below), (v) the Prepetition Second Lien Trustee, (vi) the DIP Agent, (vii) counsel to the DIP Agent, (viii) all other known lienholders, (ix) the United States Attorney for the Southern District of Texas; (x) the Internal Revenue Service; (xi) the Securities and Exchange Commission; and (xii) the state attorneys general for states in which the Debtors conduct business. Under the circumstances, such notice of the DIP Motion, the relief requested therein, and the Final Hearing complies with Bankruptcy Rule 4001(b), (c) and (d) and the Bankruptcy Local Rules, and no other or further notice need be provided for entry of this Final Order.

D. **Debtors' Stipulations Regarding the Prepetition First Lien Facility**. Subject only to the rights of parties in interest that are specifically set forth in Paragraph 6 below, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree (Paragraphs D ~~and~~, E and F hereof shall be referred to herein collectively as the "Debtors' Stipulations") as follows:

(i) Prepetition First Lien Facility. Pursuant to that certain Credit Agreement, dated as of February 3, 2022 (as amended, restated or otherwise modified from time to time, the "Prepetition First Lien Credit Agreement," and collectively with any other agreements and documents executed or delivered in connection therewith, including the "Loan Documents" as defined therein, each as may be amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition First Lien Loan Documents"), among (a) ModivCare Inc., as borrower, and the other Debtors that are Subsidiary Guarantors (as defined in the Prepetition First Lien Credit Agreement), (b) the other financial institutions party thereto as

"Lenders" (collectively, the "Prepetition First Lien Lenders"), and (c) JPMorgan Chase Bank, N.A. and any successor in interest thereto, as administrative agent and collateral agent (in such capacities, the "Prepetition First Lien Agent" and, together with the Prepetition First Lien Lenders and any other party to which Prepetition First Lien Obligations are owed, the "Prepetition First Lien Secured Parties"), the Prepetition First Lien Secured Parties agreed to extend loans and other financial accommodations to, and issue letters of credit for the account of, the Borrower pursuant to the Prepetition First Lien Loan Documents. All obligations of the Debtors arising under the Prepetition First Lien Credit Agreement (including the "Obligations" as defined therein, whether or not arising under the Prepetition First Lien Loan Documents) or the other Prepetition First Lien Loan Documents shall collectively be referred to herein as the "Prepetition First Lien Obligations."

(ii) Prepetition First Liens and Prepetition First Lien Collateral. Pursuant to the Collateral Documents (as defined in the Prepetition First Lien Credit Agreement) (as such documents were amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition First Lien Collateral Documents"), by and among each of the Subsidiary Guarantors party thereto (the "Grantors") and the Prepetition First Lien Agent, each Grantor granted to the Prepetition First Lien Agent, for the benefit of itself and the other Prepetition First Lien Secured Parties, to secure the Prepetition First Lien Obligations, a first priority security interest in and continuing Lien (the "Prepetition First Liens" and all assets and property of the Debtors subject to the Prepetition First Liens and any proceeds thereof subject to the Prepetition First Liens pursuant to section 552 of the Bankruptcy Code, the "Prepetition First Lien Collateral") on substantially all of such Grantor's assets and properties (which, for the avoidance of doubt, includes Cash Collateral) and all proceeds, products, accessions, rents, and profits

thereof, in each case whether then owned or existing or thereafter acquired or arising. All "Collateral" as defined in the Prepetition First Lien Credit Agreement granted or pledged by such Grantors pursuant to any Prepetition First Lien Collateral Document or any other Prepetition First Lien Loan Document shall collectively be referred to herein as the "Prepetition First Lien Collateral." As of the Petition Date, (I) the Prepetition First Liens (a) are legal, valid, binding, enforceable, and perfected Liens, (b) were granted to, or for the benefit of, the Prepetition First Lien Secured Parties for fair consideration and reasonably equivalent value, (c) are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (except for the priming contemplated herein), and (d) are subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below), and (C) the Prepetition Prior Liens, and (II) (w) the Prepetition First Lien Obligations constitute legal, valid, and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable Prepetition First Lien Loan Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (x) no setoffs, recoupments, offsets, defenses, or counterclaims to any of the Prepetition First Lien Obligations exist, (y) no portion of the Prepetition First Lien Obligations or any payments made to any or all of the Prepetition First Lien Secured Parties are subject to avoidance, disallowance, disgorgement, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or "claim" (as defined in section 101(5) of the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (z) each of the Guarantees (as defined in the Prepetition First Lien Credit Agreement) shall continue in full force and effect to unconditionally guaranty the Prepetition First Lien Obligations notwithstanding any use of Cash Collateral permitted hereunder or any financing and financial accommodations extended by the

DIP Secured Parties to the Debtors pursuant to the terms of this Final Order or the DIP Loan Documents.

(iii) Amounts Owed under Prepetition First Lien Loan Documents. As of the Petition Date, the applicable Debtors owed the Prepetition First Lien Secured Parties, pursuant to the Prepetition First Lien Loan Documents, without defense, counterclaim, reduction or offset of any kind, in respect of loans made, letters of credit issued and other financial accommodations made by the Prepetition First Lien Secured Parties, (x) an aggregate principal amount of not less than $78,750,000 with respect to the Incremental Term Loans (as defined in the Prepetition First Lien Credit Agreement) (y) an aggregate principal amount of not less than $270,699,086 with respect to the Revolving Facility (as defined in the Prepetition First Lien Credit Agreement), but excluding outstanding letters of credit, and (z) and an aggregate principal amount of not less than $522,239,937 with respect to the Term Loan Facility (as defined in the Prepetition First Lien Credit Agreement), *plus* all accrued and hereafter accruing and unpaid interest thereon and any additional fees, expenses (including any reasonable attorneys', accountants', appraisers', and financial advisors' fees and expenses that are chargeable or reimbursable under the Prepetition First Lien Loan Documents), and other amounts now or hereafter due under the Prepetition First Lien Loan Documents.

(iv) Release of Claims. Subject to the reservation of rights set forth in Paragraph 6 below, each Debtor and its estate shall be deemed to have forever waived, discharged, and released each of the Prepetition First Lien Secured Parties and their respective affiliates, assigns or successors and the respective members, managers, equity holders, affiliates, agents, attorneys, financial advisors, consultants, officers, directors, employees and other representatives of the foregoing (all of the foregoing, collectively, the "Prepetition First Lien

Secured Party Releasees") from any and all "claims" (as defined in section 101(5) of the Bankruptcy Code), counterclaims, causes of action (including causes of action in the nature of "lender liability"), defenses, setoff, recoupment, other offset rights and other rights of disgorgement or recovery against any and all of the Prepetition First Lien Secured Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the Prepetition First Lien Obligations, the Prepetition First Liens, or the debtor-creditor relationship between any of the Prepetition First Lien Secured Parties, on the one hand, and any of the Debtors, on the other hand, including (I) any recharacterization, subordination, avoidance, disallowance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state law, federal law, or municipal law, and (II) any right or basis to challenge or object to the amount, validity, or enforceability of the Prepetition First Lien Obligations or any payments or other transfers made on account of the Prepetition First Lien Obligations, or the validity, enforceability, priority, or non-avoidability of the Prepetition First Liens securing the Prepetition First Lien Obligations, including any right or basis to seek any disgorgement or recovery of payments of cash or any other distributions or transfers previously received by any of the Prepetition First Lien Secured Party Releasees.

E. **Debtors' Stipulations Regarding the Prepetition Second Lien Facility**. Subject only to the rights of parties in interest that are specifically set forth in Paragraph 6 below, the Debtors, on their behalf and on behalf of their estates, admit, stipulate, acknowledge, and agree as follows:

(i) Prepetition Second Lien Facility. Pursuant to that certain Second Lien Senior Secured PIK Toggle Notes Indenture, dated as of March 7, 2025 (as amended,

restated or otherwise modified from time to time, the "Prepetition Second Lien Indenture," and collectively with any other agreements and documents executed or delivered in connection therewith, including the "Loan Documents" as defined therein, each as may be amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition Second Lien Loan Documents" together with the Prepetition First Lien Loan Documents, the "Prepetition Loan Documents"), among (a) ModivCare Inc., as issuer, and the other Debtors that are guarantors, (b) the Holders of Notes (as defined in the Prepetition Second Lien Indenture) issued in connection therewith (collectively, the "Prepetition Second Lien Noteholders"), and (c) Ankura Trust Company, LLC, as notes collateral agent (in such capacity, the "Prepetition Second Lien Trustee" and, together with the Prepetition Second Lien Noteholders and any other party to which Prepetition Second Lien Obligations are owed, the "Prepetition Second Lien Secured Parties"), the Prepetition Second Lien Secured Parties agreed to extend financial accommodations to the Borrower pursuant to the Prepetition Second Lien Loan Documents. All obligations of the Debtors arising under the Prepetition Second Lien Indenture (including the "Obligations" as defined therein, whether or not arising under the Prepetition Second Lien Loan Documents) or the other Prepetition Second Lien Loan Documents shall collectively be referred to herein as the "Prepetition Second Lien Obligations."

(ii) Prepetition Second Liens and Prepetition Second Lien Collateral. Pursuant to the Security Documents (as defined in the Prepetition Second Lien Indenture) (as such documents were amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition Second Lien Collateral Documents"), by and among each of the Grantors and the Prepetition Second Lien Trustee, each Grantor granted to the Prepetition Second Lien Trustee, for the benefit of itself and the other Prepetition Second Lien Secured Parties, to secure

the Prepetition Second Lien Obligations, a second priority security interest in and continuing Lien (the "Prepetition Second Liens" and all assets and property of the Debtors subject to the Prepetition Second Liens and any proceeds thereof subject to the Prepetition Second Liens pursuant to section 552 of the Bankruptcy Code, the "Prepetition Second Lien Collateral") on substantially all of such Grantor's assets and properties (which, for the avoidance of doubt, includes Cash Collateral) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising. All "Collateral" as defined in the Prepetition Second Lien Indenture granted or pledged by such Grantors pursuant to any Prepetition Second Lien Collateral Document or any other Prepetition Second Lien Loan Document shall collectively be referred to herein as the "Prepetition Second Lien Collateral." As of the Petition Date, (I) the Prepetition Second Liens (a) are legal, valid, binding, enforceable, and perfected Liens, (b) were granted to, or for the benefit of, the Prepetition Second Lien Secured Parties for fair consideration and reasonably equivalent value, (c) are not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (except for the priming contemplated herein), and (d) are subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Prepetition First Liens, (C) the Carve-Out (as defined below), and (D) the Prepetition Prior Liens, and (II) (w) the Prepetition Second Lien Obligations constitute legal, valid, and binding obligations of the applicable Debtors, enforceable in accordance with the terms of the applicable Prepetition Second Lien Loan Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (x) no setoffs, recoupments, offsets, defenses, or counterclaims to any of the Prepetition Second Lien Obligations exist, (y) no portion of the Prepetition Second Lien Obligations or any payments made to any or all of the Prepetition Second Lien Secured Parties

are subject to avoidance, disallowance, disgorgement, recharacterization, recovery, subordination, attack, offset, counterclaim, defense, or "claim" (as defined in section 101(5) of the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and (z) each of the Subsidiary Guarantees (as defined in the Prepetition Second Lien Indenture) shall continue in full force and effect to unconditionally guaranty the Prepetition Second Lien Obligations notwithstanding any use of Cash Collateral permitted hereunder or any financing and financial accommodations extended by the DIP Secured Parties to the Debtors pursuant to the terms of this Final Order or the DIP Loan Documents.

(iii) Amounts Owed under Prepetition Second Lien Loan Documents. As of the Petition Date, the applicable Debtors owed the Prepetition Second Lien Secured Parties, pursuant to the Prepetition Second Lien Loan Documents, without defense, counterclaim, reduction or offset of any kind, in respect of loans made, letters of credit issued and other financial accommodations made by the Prepetition Second Lien Secured Parties, an aggregate principal amount of not less than $316,233,250 with respect to the Notes Obligations (as defined in the Prepetition Second Lien Indenture), *plus* all accrued and hereafter accruing and unpaid interest thereon and any additional fees, expenses (including any reasonable attorneys', accountants', appraisers', and financial advisors' fees and expenses that are chargeable or reimbursable under the Prepetition Second Lien Loan Documents), and other amounts now or hereafter due under the Prepetition Second Lien Loan Documents.

(iv) Release of Claims. Subject to the reservation of rights set forth in Paragraph 6 below, each Debtor and its estate shall be deemed to have forever waived, discharged, and released each of the Prepetition Second Lien Secured Parties and their respective affiliates, assigns or successors and the respective members, managers, equity holders, affiliates,

agents, attorneys, financial advisors, consultants, officers, directors, employees and other representatives of the foregoing (all of the foregoing, collectively, the "Prepetition Second Lien Secured Party Releasees") from any and all "claims" (as defined in section 101(5) of the Bankruptcy Code), counterclaims, causes of action (including causes of action in the nature of "lender liability"), defenses, setoff, recoupment, other offset rights and other rights of disgorgement or recovery against any and all of the Prepetition Second Lien Secured Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the Prepetition Second Lien Obligations, the Prepetition Second Liens, or the debtor-creditor relationship between any of the Prepetition Second Lien Secured Parties, on the one hand, and any of the Debtors, on the other hand, including (I) any recharacterization, subordination, avoidance, disallowance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state law, federal law, or municipal law and (II) any right or basis to challenge or object to the amount, validity, or enforceability of the Prepetition Second Lien Obligations or any payments or other transfers made on account of the Prepetition Second Lien Obligations, or the validity, enforceability, priority, or non-avoidability of the Prepetition Second Liens securing the Prepetition Second Lien Obligations, including any right or basis to seek any disgorgement or recovery of payments of cash or any other distributions or transfers previously received by any of the Prepetition Second Lien Secured Party Releasees.

F. **Cash Collateral**. ~~All~~Subject to the rights of parties in interest that are specifically set forth in Paragraph 6 below, the Debtors, on their behalf and on behalf of their estates, stipulate, admit, acknowledge, and agree that all of the Debtors' cash, including any cash in deposit accounts of the Debtors, wherever located, constitutes Cash Collateral of the

Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties.

G. **Intercreditor Agreement**. The Intercreditor Agreement, dated as of March 7, 2025 (as amended, restated, supplemented, or otherwise modified in accordance with its terms, the "Intercreditor Agreement"), sets forth subordination and other provisions governing the relative priorities and rights of the Prepetition First Lien Secured Parties and their respective Prepetition First Lien Obligations and Prepetition First Liens, on the one hand, and the Prepetition Second Lien Secured Parties and their respective Prepetition Second Lien Obligations and Prepetition Second Liens, on the other hand. Pursuant to section 510 of the Bankruptcy Code, such Intercreditor Agreement and any other intercreditor agreement or subordination agreement between and/or among the Prepetition First Lien Agent, the Prepetition Second Lien Trustee, any Prepetition First Lien Lender, any Prepetition Second Lien Noteholder, any Debtor or affiliate thereof, and any other applicable intercreditor or subordination provisions contained in any credit agreement, security agreement, indenture or related document, (i) shall remain in full force and effect, (ii) shall continue to govern the relative priorities, rights and remedies of the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties (including the relative priorities, rights and remedies of such parties with respect to the replacement liens and administrative expense claims and superpriority administrative expense claims granted, or amounts payable, by the Debtors under this Final Order or otherwise and the modification of the automatic stay), and (iii) shall not be amended, altered or modified by the terms of this Final Order or the DIP Loan Documents, and for avoidance of doubt, any acts or omissions by any Prepetition Second Lien Secured Party in connection with any chapter 11 plan of reorganization or liquidation in these Chapter 11 Cases (whether confirmed under section 1129(a) or (b) of the Bankruptcy Code), and any distributions on account of, or other treatment

of, any Prepetition Second Lien Obligations pursuant to any such plan, shall remain subject to the Intercreditor Agreement (including its turnover provisions) or any other applicable intercreditor or subordination provisions.

H. **Findings Regarding the DIP Facility**.

(i) Need for Postpetition Financing. The Debtors have an immediate need to obtain the DIP Facility and use Cash Collateral to, among other things, permit the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers, and customers, to make payroll, to make capital expenditures, to satisfy other working capital and operational needs, and to otherwise preserve the value of the Debtors' estates. The Debtors' access to sufficient working capital and liquidity through the use of Cash Collateral and borrowing under the DIP Facility is vital to a successful reorganization and/or to otherwise preserve the enterprise value of the Debtors' estates. ~~Immediate and irreparable harm will be caused to the Debtors and their estates if immediate financing is not obtained and permission to use Cash Collateral is not granted, in each case in accordance with the terms of this Final Order and the DIP Loan Documents.~~

(ii) No Credit Available on More Favorable Terms. The Debtors have been and continue to be unable to obtain financing on more favorable terms from sources other than the DIP Secured Parties under the DIP Loan Documents and this Final Order. The Debtors are unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense or secured credit allowable only under sections 364(c)(1), 364(c)(2), or 364(c)(3) of the Bankruptcy Code. The Debtors are unable to obtain secured credit under section 364(d)(1) of the Bankruptcy Code without (a) granting to the DIP Secured Parties the rights, remedies, privileges, benefits, and protections provided herein and in the DIP Loan

Documents, including the DIP Liens and the DIP Superpriority Claims (as defined below), (b) allowing the DIP Secured Parties to provide the loans, letters of credit, and other financial accommodations under the DIP Facility on the terms set forth herein and in the DIP Loan Documents, (c) granting to the Prepetition First Lien Secured Parties the rights, remedies, privileges, benefits, and protections provided herein and in the DIP Loan Documents, including the Prepetition First Lien Adequate Protection, and (d) granting to the Prepetition Second Lien Secured Parties the rights, remedies, privileges, benefits, and protections provided herein and in the DIP Loan Documents, including the Prepetition Second Lien Adequate Protection (all of the foregoing described in clauses (a), (b), (c) and (d) above, collectively, the "DIP Protections").

I. **Reserved.**

J. **Adequate Protection for Prepetition Secured Parties**. The Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties have agreed to permit the Debtors to use the Prepetition First Lien Collateral and Prepetition Second Lien Collateral, respectively, including the Cash Collateral, subject to the terms and conditions set forth herein, including the protections afforded a party acting in "good faith" under section 364(e) of the Bankruptcy Code. In addition, the DIP Facility contemplated hereby provides for a priming of the Prepetition First Liens and the Prepetition Second Liens pursuant to section 364(d) of the Bankruptcy Code. The Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties are entitled to the adequate protection as set forth herein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. Based on the DIP Motion and on the record presented to this Court at the Final Hearing, the terms of the proposed adequate protection arrangements, use of the Cash Collateral, and the DIP Facility contemplated hereby are fair and reasonable, reflect the Debtors' prudent exercise of business judgment consistent with their

fiduciary duties, and constitute reasonably equivalent value and fair consideration for the consent of the Prepetition First Lien Secured Parties. Prepetition First Lien Lenders holding more than 50% of the aggregate principal balance of the Loans (as defined in the Prepetition First Lien Credit Agreement) (which Prepetition First Lien Lenders constitute "Required Lenders," as defined in the Prepetition First Lien Credit Agreement, the "Required Prepetition First Lien Lenders") have expressly consented to the entry of this Final Order and the relief provided herein and pursuant to the terms of the Prepetition First Lien Credit Agreement, the consents of such Prepetition First Lien Lenders are binding on all Prepetition First Lien Secured Parties. None of the remaining Prepetition First Lien Secured Parties has filed an objection to the entry of this Final Order or the relief provided herein, and in any event, the prepetition Liens and security interests of such parties are adequately protected pursuant to the terms of this Final Order. Notwithstanding anything to the contrary herein, the Prepetition First Lien Secured Parties' consent to the DIP Facility and to the priming of the Prepetition First Liens by the DIP Liens is expressly limited to the present DIP Facility and the DIP Liens securing same and shall not be applicable to any other debtor-in-possession credit facility, even if it contains substantially the same economic terms as this DIP Facility. Pursuant to the terms of the Intercreditor Agreement, the Prepetition Second Lien Noteholders are deemed to have consented to the entry of this Final Order and the relief provided herein.

K. **Section 552**. In light of the subordination of their Liens and superpriority administrative claims to the Carve-Out and the DIP Liens, each of the Prepetition First Lien Secured Parties is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code ~~and the "equities of the case" exception shall not apply~~.

L. **Business Judgment and Good Faith Pursuant to Section 364(e)**.

(i) The DIP Secured Parties have indicated a willingness to provide postpetition secured financing via the DIP Facility to the Debtors in accordance with the DIP Loan Documents and this Final Order.

(ii) The terms and conditions of the DIP Facility and the DIP Backstop Commitment Letters (as defined in the Restructuring Support Agreement) as set forth in the DIP Loan Documents, and the DIP Backstop Commitment Letters and this Final Order, and the fees, expenses and other charges paid and to be paid thereunder or in connection therewith (including, without limitation, the Backstop Premium (as defined in the DIP Backstop Commitment Letters)), are fair, reasonable, and the best available under the circumstances, and the Debtors' agreement to the terms and conditions of the DIP Loan Documents and to the payment of such fees reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties. Such terms and conditions are supported by reasonably equivalent value and fair consideration.

(iii) The DIP Secured Parties, the Prepetition First Lien Secured Parties and the Debtors, with the assistance and counsel of their respective advisors, have acted in good faith and at arms' length in, as applicable, negotiating, consenting to, and/or agreeing to, the DIP Facility, the Debtors' use of the DIP Collateral and the Prepetition First Lien Collateral (including Cash Collateral), the DIP Loan Documents and the DIP Protections (including the Prepetition First Lien Adequate Protection and the Prepetition Second Lien Adequate Protection). The DIP Obligations (including all advances that are made at any time to the Debtors under the DIP Loan Documents) and the Debtors' use of the DIP Collateral, the Prepetition First Lien Collateral and the Prepetition Second Lien Collateral (including Cash Collateral) shall be deemed to have been extended and/or consented to by the DIP Secured

Parties, the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties for valid business purposes and uses and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express and good faith reliance upon the protections offered by section 364(e) of the Bankruptcy Code and this Final Order, and, accordingly, the DIP Liens, the DIP Superpriority Claims, the Prepetition First Lien Adequate Protection, the Prepetition Second Lien Adequate Protection and the other DIP Protections shall be entitled to the full protection of section 364(e) of the Bankruptcy Code and this Final Order in the event this Final Order or any other order or any provision hereof or thereof is vacated, reversed, amended, or modified, on appeal or otherwise.

M. **Relief Essential; Best Interest**. For the reasons stated above, the Debtors have requested immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), and the Bankruptcy Local Rules. ~~Absent granting the relief set forth in this Final Order, the Debtors' estates, their businesses and properties and their ability to successfully reorganize or otherwise preserve the enterprise value of the Debtors' estates will be immediately and irreparably harmed~~. Consummation of the DIP Facility and authorization of the use of Cash Collateral in accordance with this Final Order and the DIP Loan Documents is therefore in the best interests of the Debtors' estates and consistent with their fiduciary duties. Based on all of the foregoing, sufficient cause exists for immediate entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the applicable Local Rules.

NOW, THEREFORE, based on the DIP Motion and the record before this Court with respect to the DIP Motion, and with the consent of the Debtors, the Prepetition First Lien Agent and the requisite Prepetition First Lien Secured Parties (on behalf of all of the Prepetition First Lien Secured Parties), the Prepetition Second Lien Trustee (on behalf of all of the Prepetition

Second Lien Secured Parties) and the DIP Agent (on behalf of all of the DIP Secured Parties) to the form and entry of this Final Order, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. **Motion Granted**. The DIP Motion is hereby granted in accordance with the terms and conditions set forth in this Final Order and the DIP Loan Documents. Any objections to the DIP Motion with respect to the entry of this Final Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled.

2. **DIP Loan Documents and DIP Protections**.

(a) Approval of DIP Loan Documents. The Debtors are expressly and immediately authorized to establish the DIP Facility, to execute, deliver, and perform under the DIP Loan Documents and this Final Order, to incur the DIP Obligations (as defined below), in accordance with, and subject to, the terms of this Final Order and the DIP Loan Documents, and to execute, deliver, and perform under all other instruments, certificates, agreements, and documents that may be required or necessary for the performance by the applicable Debtors under the DIP Loan Documents and the creation and perfection of the DIP Liens described in, and provided for, by this Final Order and the DIP Loan Documents. The Debtors are hereby authorized and empowered to do and perform all acts and pay the principal, interest, fees, expenses, and other amounts described in the DIP Loan Documents as such become due pursuant to the DIP Loan Documents and this Final Order, including all closing fees, administrative fees, commitment fees, and reasonable attorneys', financial advisors', and accountants' fees, and disbursements arising under the DIP Loan Documents and this Final Order, which amounts shall not be subject to further approval of this Court and shall be non-refundable and not subject to challenge in any

respect; provided, however, that the payment of the fees and expenses of the Lender Professionals (as defined below) shall be subject to the provisions of Paragraph 20(b); provided, further, that, notwithstanding anything to the contrary herein, nothing in this Final Order or any of the other DIP Loan Documents shall be construed to approve the Backstop Fee, which shall only be due, owed and payable if approved by the Court in a confirmation order. Upon their execution and delivery, the DIP Loan Documents shall represent the legal, valid and binding obligations of the applicable Debtors enforceable against such Debtors in accordance with their terms. Each officer of a Debtor (including the Chief Transformation Officer) acting singly is hereby authorized to execute and deliver each of the DIP Loan Documents, such execution and delivery to be conclusive evidence of such officer's respective authority to act in the name of and on behalf of the Debtors.

(b) DIP Obligations. For purposes of this Final Order, the term "DIP Obligations" shall mean all amounts and other obligations and liabilities owing by the respective Debtors under the DIP Credit Agreement and other DIP Loan Documents (including all "Obligations" as defined in the DIP Credit Agreement) and shall include the principal of, interest on, and fees, costs, expenses, and other charges owing in respect of, such amounts (including any reasonable attorneys', accountants', financial advisors', and other fees, costs, and expenses that are chargeable or reimbursable under the DIP Loan Documents and/or this Final Order), and any obligations in respect of indemnity claims, whether contingent or otherwise.

(c) Authorization to Incur DIP Obligations and Use Cash Collateral. To enable the Debtors to continue to operate their businesses and preserve and maximize the value of their estates, during the period from the entry of this Final Order through and including the delivery of the Termination Declaration (as defined below), in each case unless extended by written

agreement of the Required DIP Lenders and Required Prepetition First Lien Lenders, (I) the Borrower is hereby authorized to (a) incur DIP Obligations in an aggregate principal amount not to exceed $37.5 million under the DIP Facility and (b) use Cash Collateral and (II) any proposed use of the proceeds of DIP Loans or use of Cash Collateral shall be consistent with the terms and conditions of this Final Order and the DIP Loan Documents, including the Approved Budget and the Budget Covenants as defined and contained in Paragraph 2(e) and (f) below. All DIP Obligations shall be unconditionally guaranteed, on a joint and several basis, by the DIP Guarantors, as further provided in the DIP Loan Documents.

(d) DIP Account. The Debtors shall, immediately upon receipt of any proceeds of the DIP Facility, deposit such amounts into a segregated account (the "DIP Account") of the Borrower, which amounts may only be drawn in accordance with the Approved Budget (subject to Budget Covenants), the terms and conditions of this Final Order, and the DIP Credit Agreement, and with all funds held in the DIP Account deemed to be DIP Collateral. Once withdrawn from the DIP Account, the funds shall continue to be DIP Collateral until such funds are first used by the Debtors, and at all times the Debtors shall, notwithstanding any potential commingling, establish commercially reasonable internal cash management procedures to allow for the continued tracing of such funds. Funds in the DIP Account will become available to be drawn by and/or shall be disbursed to the Debtors in accordance with the Approved Budget (subject to Budget Covenants), this Final Order, and the DIP Credit Agreement. Notwithstanding anything in this Final Order or any of the other DIP Loan Documents to the contrary, no interest or fees will accrue with respect to funds in the DIP Account until drawn.

(e) Budget. Attached as Schedule 1 to the Interim Order is a rolling 13-week cash flow budget (the "Initial Approved Budget") that reflects on a line-item basis the Debtors' (i)

weekly projected cash receipts (including from non-ordinary course assets sales), (ii) weekly projected disbursements (including ordinary course operating expenses, bankruptcy-related expenses under the Chapter 11 Cases, capital expenditures, and estimated fees and expenses of the DIP Agent (including counsel and financial advisors therefor) and any other fees and expenses relating to the DIP Facility), and (iii) the sum of weekly unrestricted cash on hand and cash in the segregated account (collectively, "Liquidity"). The Debtors shall prepare and deliver to the DIP Agent (for distribution to the DIP Lenders) and counsel for the Committee an updated "rolling" 13-week budget in accordance with Schedule 5.01(f) to the DIP Credit Agreement (or, at the option of the Borrower, more frequently) (the "Updated Budget"), which shall become the then "Approved Budget" upon approval by Required DIP Lenders in their sole discretion (and to the extent any Updated Budget is not approved by the Required DIP Lenders, the Approved Budget that is then in effect shall continue to constitute the Approved Budget for purposes of the DIP Facility); provided, however, that (i) the Updated Budget will be deemed approved unless the Required DIP Lenders provide written notice of their objection thereto (email being sufficient) within three (3) Business Days of the delivery of such Updated Budget, and during such period, the Initial Approved Budget or most recent Approved Budget, as applicable, shall remain in effect (the "Interim Approval Period"), (ii) following the Interim Approval Period, if no objection is received from the Required DIP Lenders pursuant to clause (i), the Updated Budget shall be deemed the "Approved Budget" (it being understood that the Approved Budget shall be the initial Approved Budget until superseded by an approved Updated Budget), and (iii) the Required DIP Lenders shall not have any obligation to approve any Updated Budget. The Debtors shall filed a copy of any Approved Budget in these Chapter 11 Cases within one (1) business day of its approval. The Borrower shall provide to counsel to the DIP Agent and

counsel to the Committee, on or prior to the Friday of each week, Approved Budget variance reports on a line-item basis and Liquidity reports, in each case, for the cumulative Reporting Period pursuant to Schedule 5.01(f) to the DIP Credit Agreement and a computation of Liquidity as of the preceding calendar week-end. Notwithstanding anything to the contrary in this Final Order, the professional fees, costs and expenses of the DIP Agent's advisors ~~and~~, the Prepetition First Lien Agent's advisors and the Professional Persons (as defined below), respectively, shall be due, payable and paid in accordance with the terms of this Final Order notwithstanding any budgeted amounts for such fees, costs and expenses set forth in the Approved Budget, and the Debtors shall not be deemed to have breached the terms of the Approved Budget or the Budget Covenants (as defined in 2(f)) to the extent the actual amount of such fees, costs and expenses exceed the applicable budgeted amounts as set forth in the Approved Budget. For the avoidance of doubt, the foregoing shall not limit the timely payment of Allowed Professional Fees that benefit from the Carve-Out as set forth in Paragraph 7.

(f) Budget Covenants. The Debtors shall only incur DIP Obligations and expend Cash Collateral and other DIP Collateral proceeds in accordance with the Approved Budget (and in the case of the fees, costs and expenses of the Required DIP Lenders ~~and~~, the Required Prepetition First Lien Lenders and the Professional Persons, in accordance with the DIP Loan Documents and this Final Order without being limited by the Approved Budget), subject to the following Permitted Variances (as defined below). As of the last date of each Test Period, (1) the unfavorable variance (as compared to the Approved Budget) of the cumulative operating cash receipts of the Debtors shall not exceed 15% and (2) the unfavorable variance (as compared to the Approved Budget) of the cumulative operating disbursements (other than professional fees and expenses incurred by the Debtors, the Committee, the DIP Agent, and the

advisors to the Backstop Parties (as defined in the DIP Backstop Commitment Letters)) shall not exceed 15%, in each case, (collectively, the "Permitted Variances"). "Test Period" shall mean (i) initially, the period commencing on the Monday immediately prior to the Petition Date and ending on September 28, 2025, and (ii) thereafter, the four- or five-week period ending on the last Sunday of the month. For the avoidance of doubt, see Schedule 5.01(f) to the DIP Credit Agreement for Variance and Liquidity reporting. The foregoing budget-related covenants are collectively referred to herein as the "Budget Covenants." For the avoidance of doubt, the foregoing shall not limit the timely payment of Allowed Professional Fees that benefit from the Carve-Out as set forth in Paragraph 7.

(g) Interest, Fees, Costs, Indemnities and Expenses. The DIP Obligations shall bear interest at the rates, and be due and payable (and paid), as set forth in, and in accordance with the terms and conditions of, this Final Order and the DIP Loan Documents, in each case without further notice, motion, or application to, order of, or hearing before, this Court. The Debtors shall pay on demand all fees (subject to the Backstop Premium Limitation), costs, indemnities, expenses (including, subject to Paragraph 20(b), reasonable out-of-pocket legal and other professional fees and expenses of the DIP Agent) and other charges payable under the terms of the DIP Loan Documents. All such fees, costs, indemnities, expenses and disbursements, whether incurred, paid or required to be paid prepetition or post-petition and whether or not budgeted in the Approved Budget, are hereby affirmed, ratified, authorized and payable (and any funds held by the DIP Agent and/or its professionals as of the Petition Date for payment of such fees, costs, indemnities, expenses and disbursements may be applied for payment) as contemplated in this Final Order and the DIP Loan Documents, and, subject to the provisions of

Paragraph 20(b) with respect to the fees and expenses of the Lender Professionals, shall be non-refundable and not subject to challenge in any respect.

(h) Use of DIP Facility and Proceeds of DIP Collateral. The Borrower shall use the proceeds of all DIP Collateral solely in accordance with this Final Order and the DIP Loan Documents; provided, that the foregoing shall not limit the timely payment of Allowed Professional Fees that benefit from the Carve-Out as set forth in Paragraph 7. Without limiting the foregoing, the Debtors shall not be permitted to make any payments from the DIP Collateral, the proceeds of DIP Loans or otherwise on account of any prepetition debt or obligation prior to the effective date of a confirmed chapter 11 plan or plans with respect to any of the Debtors, except (a) with respect to the Prepetition First Lien Obligations as set forth in the Interim Order and this Final Order; (b) as provided in the "first day" orders, which "first day" orders shall be in form and substance reasonably acceptable to the Required DIP Lenders and the Required Prepetition First Lien Lenders; (c) as expressly provided in other orders of this Court in form and substance reasonably acceptable to the Required DIP Lenders and the Required Prepetition First Lien Lenders; or (d) as otherwise expressly provided in the DIP Credit Agreement.

(i) Conditions Precedent. The DIP Secured Parties, the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties each have no obligation to extend credit under the DIP Facility or permit use of any DIP Collateral, Prepetition First Lien Collateral or Prepetition Second Lien Collateral or any proceeds thereof, including Cash Collateral, as applicable, unless and until all conditions precedent to the extension of credit and/or use of DIP Collateral, Prepetition First Lien Collateral, Prepetition Second Lien Collateral or proceeds thereof under the DIP Loan Documents and this Final Order have been satisfied in full or waived by the Required DIP Lenders and the Required Prepetition First Lien Lenders in

accordance with the DIP Loan Documents or Prepetition First Lien Credit Agreement or Intercreditor Agreement, as applicable, and this Final Order.

(j) DIP Liens. As security for the DIP Obligations, effective as of the Petition Date, the following security interests and Liens, which shall immediately and without any further action by any Person be valid, binding, permanent, perfected, continuing, enforceable, and non-avoidable upon the entry of this Final Order, are hereby granted by the Debtors to the DIP Agent, for itself and the other DIP Secured Parties (all such security interests and Liens granted to the DIP Agent for the benefit of all the DIP Secured Parties pursuant to this Final Order and the DIP Loan Documents, the "DIP Liens"), on all property of the Debtors that constitutes Prepetition First Lien Collateral or Prepetition Second Lien Collateral, now existing or hereinafter acquired, including all cash and cash equivalents (whether maintained with the DIP Agent or otherwise), and any investment in such cash or cash equivalents, money, inventory, goods, accounts receivable, other rights to payment, intercompany loans and other investments, securities and other investment property, contracts, contract rights, properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds, real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, permits, franchise rights, capital stock and other equity interests of subsidiaries and in other entities, tax and other refunds, insurance proceeds, commercial tort claims, ~~the proceeds of Avoidance Actions,~~ and other causes of action, and proceeds relating thereto, ~~proceeds arising under section 549 of the Bankruptcy Code (whether received by judgment, settlement or otherwise), all other Collateral (as defined in the DIP Loan Documents),~~ and all other "property of the estate" (as

defined in section 541 of the Bankruptcy Code) of any kind or nature, real or personal, tangible, intangible, or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits, replacements, and cash and non-cash proceeds of all of the foregoing, in each case wherever located; provided, however, that, for the avoidance of doubt, the DIP Liens shall not extend to Avoidance Actions or the proceeds thereof and the DIP Liens shall not include any "Excluded Assets" (as defined in the DIP Loan Documents) (all of the foregoing collateral collectively referred to as the "DIP Collateral"):

(I) pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected, binding, continuing, enforceable, and non-avoidable first priority Lien (junior only to the Carve-Out) on all unencumbered DIP Collateral, ~~including proceeds of~~which (for the avoidance of doubt) shall not include the Debtors' claims and causes of action under sections 502(d), 544, 545, 547, 548, 550 and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state or municipal law ~~and the proceeds of each of the foregoing (~~collectively, the "Avoidance Actions"~~, which for avoidance of doubt, excludes proceeds arising from the Debtors' claims and causes of action under section 549 of the Bankruptcy Code or similar state or municipal law)~~)), and the proceeds thereof, whether received by judgment, settlement, or otherwise;

(II) pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected, binding, continuing, enforceable, and non-avoidable Lien upon all DIP Collateral that is subject to the Prepetition Prior Liens, which DIP Lien shall be junior only to such Prepetition Prior Liens and the Carve-Out; and

(III) pursuant to section 364(d)(1) of the Bankruptcy Code, a perfected, binding, continuing, enforceable and non-avoidable first priority, senior priming Lien on all other DIP Collateral (including Cash Collateral), which DIP Lien (x) shall be senior to the First Lien Adequate Protection Liens and the Second Lien Adequate Protection Liens and senior and priming to (A) the Prepetition First Liens, (B) the Prepetition Second Liens and (C) any other Liens that are junior to the Prepetition First Liens or the First Lien Adequate Protection Liens, after giving effect to any intercreditor or subordination agreements (the Liens referenced in clauses (A) and (B), collectively, the "Primed Liens") and shall be junior only to the Prepetition Prior Liens and the Carve-Out.

(k) DIP Lien Priority. ~~Notwithstanding anything to the contrary contained~~Except as otherwise set forth in this Final Order ~~or the DIP Loan Documents, for the avoidance of doubt~~,

the DIP Liens granted to the DIP Agent for the benefit of the DIP Secured Parties shall in each and every case be first priority senior Liens that (i) are subject only to the Prepetition Prior Liens and the Carve-Out, and (ii) except as provided in the immediately preceding sub-clause (i), are senior to all prepetition and postpetition Liens or other interests of any kind of any other person or entity (including the Primed Liens, the First Lien Adequate Protection Liens and the Second Lien Adequate Protection Liens), whether created voluntarily or involuntarily (including by order of a court).

(l) Enforceable Obligations. The DIP Loan Documents shall constitute and evidence the valid and binding DIP Obligations of the Debtors, which DIP Obligations shall be enforceable against the Debtors, their estates and any successors thereto (including any trustee or other estate representative in any Successor Case (as defined below)), and their creditors and other parties-in-interest, in accordance with their terms. No obligation, payment, transfer, or grant of security under the DIP Credit Agreement, the other DIP Loan Documents, or this Final Order shall be stayed, restrained, voidable, avoidable, disallowable or recoverable under the Bankruptcy Code or under any applicable law (including under sections 502(d), 544, 547, 548, or 549 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, reduction, setoff, surcharge, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

(m) Superpriority Administrative Claim Status. In addition to the DIP Liens granted herein, effective immediately upon entry of this Final Order, all of the DIP Obligations shall constitute allowed superpriority administrative claims pursuant to section 364(c)(1) of the

Bankruptcy Code, which shall have priority, subject only to the payment of the Carve-Out in full in cash in accordance with this Final Order, over all administrative expense claims, adequate protection and other diminution claims (including the First Lien Adequate Protection Superpriority Claims and the Second Lien Adequate Protection Superpriority Claims (each as defined below)), priority and other unsecured claims, and all other claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, other than any claims arising under section 506(c) of the Bankruptcy Code, including administrative expenses or other claims of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(a), 503(b), ~~506(c),~~ 507(a), 507(b), 546, 726, 1113, and 1114 or any other provision of the Bankruptcy Code or otherwise, whether or not such expenses or claims may become secured by a judgment Lien or other non-consensual Lien, levy, or attachment (the "DIP Superpriority Claims"). The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, shall be against each Debtor on a joint and several basis, and shall be payable from and have recourse ~~to all prepetition and postpetition property of the Debtors and all proceeds thereof, excluding~~only to DIP Collateral, which (for the avoidance of doubt) does not include any Avoidance Actions ~~but including~~or proceeds of any Avoidance Actions. Other than as expressly provided in the DIP Credit Agreement and/or this Final Order with respect to the Carve-Out, no costs or expenses of administration, including professional fees allowed and payable under sections 328, 330, or 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Cases, and no priority claims are, or will be, senior to, prior to, or on a parity with the DIP Superpriority Claims or the DIP

Obligations, or with any other claims of the DIP Secured Parties arising under the DIP Loan Documents and/or this Final Order.

(n) Priority of DIP Liens and DIP Superpriority Claims. Without affecting, modifying or limiting the scope or priority of the Carve-Out, the DIP Liens and the DIP Superpriority Claims: (A) shall not be subject to sections ~~506,~~ 510, 549, 550, or 551 of the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any Lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise or (y) any Liens or claims of any Debtor or any direct or indirect subsidiary thereof against any Debtor or any of such Debtor's property, (C) shall be valid and enforceable against any trustee or any other estate representative elected or appointed in the Chapter 11 Cases, upon the conversion of any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code or in any other proceedings related to any of the foregoing (each, a "Successor Case"), and/or upon the dismissal of any of the Chapter 11 Cases, and (D) notwithstanding anything to the contrary in any "first day" orders of this Court in any of the Chapter 11 Cases, shall be senior to any administrative claims arising under any such "first day" orders.

3. **Adequate Protection for Prepetition First Lien Secured Parties**. In consideration for the use of the Prepetition First Lien Collateral (including Cash Collateral) and the priming of the Prepetition First Liens, the Prepetition First Lien Agent, for the benefit of the Prepetition First Lien Secured Parties, shall receive the following adequate protection (collectively referred to as the "Prepetition First Lien Adequate Protection"):

(i) First Lien Adequate Protection Liens. To the extent there is a diminution in value of the interests of the Prepetition First Lien Secured Parties in the Prepetition First Lien Collateral (including Cash Collateral) from and after the Petition Date, whether or not

resulting from the use, sale, or lease by the Debtors of the applicable Prepetition First Lien Collateral (including Cash Collateral), the granting of the DIP ~~Superpriority Claims, the granting of the DIP~~ Liens, the subordination of the Prepetition First Liens thereto and to the Carve-Out, and the ~~imposition or enforcement of the automatic stay of~~stay of action against Prepetition First Lien Collateral under section 362(a) of the Bankruptcy Code ("Diminution in Prepetition First Lien Collateral Value"), the Prepetition First Lien Agent, for the benefit of all the Prepetition First Lien Secured Parties, is hereby granted, subject to the terms and conditions set forth below, pursuant to sections 361 and 363(e) of the Bankruptcy Code, replacement Liens upon all of the ~~DIP~~Prepetition First Lien Collateral, ~~including the proceeds of~~which (for the avoidance of doubt) does not include Avoidance Actions or the proceeds thereof (such adequate protection replacement Liens, the "First Lien Adequate Protection Liens"), which First Lien Adequate Protection Liens on such ~~DIP~~Prepetition First Lien Collateral shall be subject and subordinate only to the DIP Liens, the Prepetition Prior Liens, and the Carve-Out.

(ii) First Lien Adequate Protection Superpriority Claims. To the extent of Diminution in Prepetition First Lien Collateral Value, the Prepetition First Lien Secured Parties are hereby further granted allowed superpriority administrative claims (such adequate protection superpriority claims, the "First Lien Adequate Protection Superpriority Claims"), pursuant to section 507(b) of the Bankruptcy Code, with priority over all administrative expense claims and priority and other unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), ~~506(c),~~ 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, junior only to the DIP Superpriority Claims ~~and~~, the Carve-Out and any claims arising

under section 506(c) of the Bankruptcy Code, and payable from and having recourse ~~to all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding~~ only to the Prepetition First Lien Collateral (which, for the avoidance of doubt, does not include any Avoidance Actions ~~but including all~~or the proceeds of any Avoidance Actions); provided, however, that the Prepetition First Lien Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the First Lien Adequate Protection Superpriority Claims unless and until all DIP Obligations have been Paid in Full (as defined below). Subject to the relative priorities set forth above, the First Lien Adequate Protection Superpriority Claims against each Debtor shall be allowed and enforceable against each Debtor and its estate on a joint and several basis. For purposes of this Final Order, the terms "Paid in Full," "Repaid in Full," "Repay in Full," and "Payment in Full" shall mean, with respect to any referenced DIP Obligations, Prepetition First Lien Obligations and/or Prepetition Second Lien Obligations, (i) the indefeasible payment in full in cash of such obligations, (ii) the termination or cash collateralization, in accordance with the DIP Loan Documents, Prepetition First Lien Loan Documents or Prepetition Second Lien Loan Documents, as applicable, of all undrawn letters of credit outstanding thereunder, and (iii) the termination of all credit commitments under the DIP Loan Documents, Prepetition First Lien Loan Documents and/or Prepetition Second Lien Loan Documents, as applicable; provided, however, that the First Lien Adequate Protection Superpriority Claims granted to the Prepetition First Lien Secured Parties may be impaired pursuant to any chapter 11 plan of reorganization in the Chapter 11 Cases with the vote of the applicable class of the holders of such claims that satisfies the requirements of section 1126 of the Bankruptcy Code, in which case, Paid in Full (or any of the other variants of this phrase referenced above) would occur upon consummation of such plan.

(iii) Priority of First Lien Adequate Protection Liens and First Lien Adequate Protection Superpriority Claims. Without affecting, modifying or limiting the scope or priority of the Carve-Out, the First Lien Adequate Protection Liens and the First Lien Adequate Protection Superpriority Claim (as defined below) (A) shall not be subject to sections ~~506(c),~~ 510, 549, 550, or 551 of ~~the Bankruptcy Code or the "equities of the case" exception of section 552 of~~ the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any Lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise or (y) any Liens or claims of any Debtor or any direct or indirect subsidiary thereof against any Debtor or any of such Debtor's property, (C) shall be valid, binding, perfected and enforceable against any trustee or any other estate representative elected or appointed in the Chapter 11 Cases or any Successor Cases, and/or upon the dismissal of any of the Chapter 11 Cases, and (D) notwithstanding anything to the contrary in any "first day" orders of this Court in any of the Chapter 11 Cases, shall be senior to any administrative claims arising under any such "first day" orders.

(iv) Professional Fees and Interest. Without limiting any rights of the Prepetition First Lien Agent and the other Prepetition First Lien Secured Parties under section 506(b) of the Bankruptcy Code, which rights are hereby preserved, and in consideration, and as a requirement, for obtaining the consent of the Prepetition First Lien Secured Parties to the entry of this Final Order and the Debtors' consensual use of Cash Collateral as provided herein, the Debtors shall (i) pay or reimburse in cash the Prepetition First Lien Agent for any and all fees, costs, expenses, and charges (including, subject to Paragraph 20(b) below, the reasonable fees, costs, and expenses of counsel and financial advisors for the Prepetition First Lien Agent) to the extent, and at the times, payable under the Prepetition First Lien Loan Documents, including any

unpaid fees, costs and expenses accrued prior to the Petition Date and (ii) pay to the applicable Prepetition First Lien Secured Parties interest on the Prepetition First Lien Obligations under the Prepetition First Lien Credit Agreement accruing at ~~a rate of 2.00% above~~ the applicable rate set forth in Section 2.13(~~d~~a), (b) or (c) of the Prepetition First Lien Credit Agreement, as applicable, to be capitalized to the outstanding principal of the Loans on the last Business Day of each calendar month after the Petition Date whether or not budgeted in the Approved Budget, and without further notice (except as provided in Paragraph 20(b) below with respect to postpetition professional fees, costs, and expenses), motion, or application to, order of, or hearing before, this Court.

(v) First Lien Reporting. The Debtors shall deliver to the Prepetition First Lien Secured Parties all information, reports, documents and other material that the Debtors provide to the DIP Secured Parties pursuant to the DIP Loan Documents.

(vi) Unless otherwise expressly set forth herein, any consent or approval rights or similar rights granted or referenced in this Final Order in favor of any or all of the DIP Agent, the other DIP Secured Parties, the Prepetition First Lien Agent and the other Prepetition First Lien Secured Parties may be exercised (or not exercised) in the sole discretion of such party.

(vii) Consent to Priming and Adequate Protection. The Prepetition First Lien Agent, on behalf of the Prepetition First Lien Secured Parties, consents to the Prepetition First Lien Adequate Protection and the priming provided for herein; provided, however, that such consent of the Prepetition First Lien Agent to the priming of the Prepetition First Liens and the use of Cash Collateral is expressly conditioned upon the entry of this Final Order, and such consent shall not be deemed to extend to any other Cash Collateral usage or other replacement

financing or debtor-in-possession financing other than the DIP Facility provided under the DIP Loan Documents; and provided, further, that such consent shall be of no force and effect in the event this Final Order is ~~not entered or is entered and subsequently~~ reversed, modified, stayed, or amended (unless such reversal, modification, stay, or amendment is acceptable to the Prepetition First Lien Agent) ~~or the DIP Loan Documents and DIP Facility as set forth herein are not approved~~.

(viii) Right to Seek Additional Adequate Protection. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, this Court finds that the adequate protection provided herein is reasonable to protect the interests of the Prepetition First Lien Secured Parties. However, the Prepetition First Lien Agent, on behalf of the Prepetition First Lien Secured Parties, may request Court approval for additional or alternative adequate protection, without prejudice to any objection of the Debtors or any other party in interest to the grant of any additional or alternative adequate protection (except as provided in the Intercreditor Agreement); provided that any such additional or alternative adequate protection shall at all times be subordinate and junior to (i) the Carve-Out and (ii) the claims and Liens of the DIP Secured Parties granted under this Final Order and the DIP Loan Documents. The consent of the Prepetition First Lien Secured Parties to the priming of the Prepetition First Liens by the DIP Liens and the Debtors' use of Cash Collateral on the terms set forth herein does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Prepetition First Lien Secured Parties that their respective interests in the Prepetition First Lien Collateral are adequately protected pursuant to this Final Order or otherwise.

4. **Adequate Protection for Prepetition Second Lien Secured Parties**. In consideration for the use of the Prepetition Second Lien Collateral (including Cash Collateral) and the priming of the Prepetition Second Liens, the Prepetition Second Lien Trustee, for the benefit of the Prepetition Second Lien Secured Parties, shall receive the following adequate protection (collectively referred to as the "Prepetition Second Lien Adequate Protection"):

(i) Second Lien Adequate Protection Liens. To the extent there is a diminution in value of the interests of the Prepetition Second Lien Secured Parties in the Prepetition Second Lien Collateral (including Cash Collateral) from and after the Petition Date, whether or not resulting from the use, sale, or lease by the Debtors of the applicable Prepetition Second Lien Collateral (including Cash Collateral), the granting of the DIP ~~Superpriority Claims, the granting of the DIP~~ Liens, the subordination of the Prepetition Second Liens thereto and to the Carve-Out, and the ~~imposition or enforcement of the automatic stay of~~stay of action against Prepetition First Lien Collateral under section 362(a) of the Bankruptcy Code ("Diminution in Prepetition Second Lien Collateral Value"), the Prepetition Second Lien Trustee, for the benefit of all the Prepetition Second Lien Secured Parties, is hereby granted, subject to the terms and conditions set forth below, pursuant to sections 361 and 363(e) of the Bankruptcy Code, replacement Liens upon all of the ~~DIP~~Prepetition Second Lien Collateral, ~~including the proceeds of~~which (for the avoidance of doubt) does not include Avoidance Actions or the proceeds thereof (such adequate protection replacement Liens, the "Second Lien Adequate Protection Liens"), which Second Lien Adequate Protection Liens on such DIP Collateral shall be subject and subordinate only to the DIP Liens, the Prepetition Prior Liens, the Prepetition First Liens, the First Lien Adequate Protection Liens and the Carve-Out.

(ii) Second Lien Adequate Protection Superpriority Claims. To the extent of Diminution in Prepetition Second Lien Collateral Value, the Prepetition Second Lien Secured Parties are hereby further granted allowed superpriority administrative claims (such adequate protection superpriority claims, the "Second Lien Adequate Protection Superpriority Claims"), pursuant to section 507(b) of the Bankruptcy Code, with priority over all administrative expense claims and priority and other unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), ~~506(c),~~ 507(a), 507(b), 546(c), 546(d), 726, 1113, 1114 or any other provision of the Bankruptcy Code or otherwise, junior only to the DIP Superpriority Claims, the First Lien Adequate Protection Superpriority Claims ~~and~~, the Carve-Out and any claims arising under section 506(c) of the Bankruptcy Code, and payable from and having recourse to all ~~prepetition and postpetition property of the Debtors and all proceeds thereof (excluding~~Prepetition First Lien Collateral and Prepetition Second Lien Collateral (which, for the avoidance of doubt, shall not include any Avoidance Actions ~~but including all the~~or any proceeds of Avoidance Actions); provided, however, that the Prepetition Second Lien Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the Second Lien Adequate Protection Superpriority Claims unless and until all DIP Obligations and Prepetition First Lien Obligations have been Paid in Full; provided, further, that the Second Lien Adequate Protection Superpriority Claims granted to the Prepetition Second Lien Secured Parties may be impaired pursuant to any chapter 11 plan of reorganization in the Chapter 11 Cases with the vote of the applicable class of the holders of such claims that satisfies the requirements of section 1126 of the Bankruptcy Code, in which case, Paid in Full (or any of the other variants of

this phrase referenced above) would occur upon consummation of such plan. Subject to the relative priorities set forth above, the Second Lien Adequate Protection Superpriority Claims against each Debtor shall be allowed and enforceable against each Debtor and its estate on a joint and several basis.

(iii) Priority of Second Lien Adequate Protection Liens and Second Lien Adequate Protection Superpriority Claims. Without affecting, modifying or limiting the scope or priority of the Carve-Out, the Second Lien Adequate Protection Liens and the Second Lien Adequate Protection Superpriority Claim (as defined below) (A) shall not be subject to sections ~~506(c),~~ 510, 549, 550, or 551 of ~~the Bankruptcy Code or the "equities of the case" exception of section 552 of~~ the Bankruptcy Code, (B) shall not be subordinate to, or *pari passu* with, (x) any Lien that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code or otherwise or (y) any Liens or claims of any Debtor or any direct or indirect subsidiary thereof against any Debtor or any of such Debtor's property, (C) shall be valid, binding, perfected and enforceable against any trustee or any other estate representative elected or appointed in the Chapter 11 Cases or any Successor Cases, and/or upon the dismissal of any of the Chapter 11 Cases, and (D) notwithstanding anything to the contrary in any "first day" orders of this Court in any of the Chapter 11 Cases, shall be senior to any administrative claims arising under any such "first day" orders.

(iv) Second Lien Reporting. The Debtors shall deliver to the Prepetition Second Lien Secured Parties all information, reports, documents and other material that the Debtors provide to the DIP Secured Parties pursuant to the DIP Loan Documents.

(v) Consent to Priming and Adequate Protection. The Prepetition Second Lien Trustee, on behalf of the Prepetition Second Lien Secured Parties, consents to the

Prepetition Second Lien Adequate Protection and the priming provided for herein; provided, however, that such consent of the Prepetition Second Lien Trustee to the priming of the Prepetition Second Liens and the use of Cash Collateral is expressly conditioned upon the entry of this Final Order, and such consent shall not be deemed to extend to any other Cash Collateral usage or other replacement financing or debtor-in-possession financing other than the DIP Facility provided under the DIP Loan Documents; and provided, further, that such consent shall be of no force and effect in the event this Final Order is ~~not entered or is entered and subsequently~~ reversed, modified, stayed, or amended (unless such reversal, modification, stay, or amendment is acceptable to the Prepetition Second Lien Trustee) ~~or the DIP Loan Documents and DIP Facility as set forth herein are not approved~~.

5. **Automatic Postpetition Lien Perfection.** This Final Order shall be sufficient and conclusive evidence of the validity, enforceability, perfection, and priority of the DIP Liens, the First Lien Adequate Protection Liens and the Second Lien Adequate Protection Liens without the necessity of (a) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document that may otherwise be required under the law of any jurisdiction, (b) obtaining "control" (as defined in any applicable Uniform Commercial Code or other law) over any DIP Collateral (and the DIP Agent and, after Payment in Full of the DIP Facility, the Prepetition First Lien Agent and, after Payment in Full of the Prepetition First Lien Credit Agreement, the Prepetition Second Lien Trustee shall be deemed, without any further action, to have control over all the Debtors' deposit accounts, securities accounts and commodities accounts within the meaning of such Uniform Commercial Code and other law) or (c) taking any other action to validate or perfect the DIP Liens, the First Lien Adequate Protection Liens and the Second Lien Adequate Protection Liens or to entitle the

DIP Liens, the First Lien Adequate Protection Liens and the Second Lien Adequate Protection Liens to the priorities granted herein. Notwithstanding the foregoing, each of the DIP Agent, the Prepetition First Lien Agent (in the latter case, solely with respect to the First Lien Adequate Protection Liens) and the Prepetition Second Lien Trustee (in the latter case, solely with respect to the Second Lien Adequate Protection Liens) may, each in their sole discretion, enter into and file, as applicable, financing statements, mortgages, security agreements, notices of Liens, and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices, and other agreements or documents shall be deemed to have been entered into, filed or recorded as of the Petition Date. The applicable Debtors shall execute and deliver to the DIP Agent, the Prepetition First Lien Agent and/or the Prepetition Second Lien Trustee, as applicable, all such financing statements, mortgages, notices, and other documents as such parties may reasonably request to evidence and confirm the contemplated validity, perfection and priority of the DIP Liens, the First Lien Adequate Protection Liens and the Second Lien Adequate Protection Liens, as applicable, granted pursuant hereto. Without limiting the foregoing, each of the DIP Agent, the Prepetition First Lien Agent and the Prepetition Second Lien Trustee may, in its discretion, file a photocopy of this Final Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which any Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Final Order. Any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document, or other instrument or agreement that

requires the payment of any fees or other monetary obligations to any governmental entity or non-governmental entity in order for the Debtors to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold interest or the proceeds thereof or other DIP Collateral is and shall be deemed to be inconsistent with the provisions of the Bankruptcy Code, and shall have no force or effect with respect to the Liens on such leasehold interests or other applicable DIP Collateral or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Secured Parties in accordance with the terms of the DIP Loan Documents and this Final Order or in favor of the Prepetition First Lien Secured Parties or the Prepetition Second Lien Secured Parties in accordance with this Final Order. To the extent that the Prepetition First Lien Agent is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, financing statement, or account control agreements, listed as loss payee or additional insured under any of the Debtors' insurance policies, or is the secured party under any of the Prepetition First Lien Loan Documents, the DIP Agent shall also be deemed to be the secured party under such account control agreements, loss payee or additional insured under the Debtors' insurance policies, and the secured party under each such Prepetition First Lien Loan Document, shall have all rights and powers attendant to that position (including rights of enforcement), and shall act in that capacity and distribute any proceeds recovered or received first, for the benefit of the DIP Secured Parties in accordance with the DIP Loan Documents and second, subsequent to Payment in Full of all DIP Obligations, for the benefit of the Prepetition First Lien Secured Parties and third, subsequent to the Payment in Full of all Prepetition First Lien Obligations, for the benefit of the Prepetition Second Lien Secured Parties. The Prepetition First Lien Agent shall serve as agent for the DIP Agent for purposes of perfecting the DIP Agent's

Liens on all DIP Collateral that, without giving effect to the Bankruptcy Code and this Final Order, is of a type such that perfection of a Lien therein may be accomplished only by possession or control by a secured party.

6. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims**. The Debtors' Stipulations shall be binding upon the Debtors in all circumstances upon entry of the Interim Order. The Debtors' Stipulations shall be binding upon the estates and each other party in interest, including the Committee, except to the extent and only to the extent such Committee, or any other party in interest with standing (including any chapter 11 trustee), other than the Debtors (or if the Chapter 11 Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period (as defined below), the chapter 7 trustee in such Successor Case), upon the earlier of (x) with respect to any Committee, sixty (60) calendar days after the formation of any Committee, and (y) with respect to other parties in interest with requisite standing other than the Debtors or any Committee, sixty (60) calendar days following the date of the entry of the Interim Order (such time period established by the earlier of clauses (x) and (y) as the same may be extended in accordance with this Paragraph 6, shall be referred to as the "Challenge Period," and the date that is the next Business Day after the termination of the Challenge Period in the event that either (i) no Challenge (as defined below) is properly raised during the Challenge Period or (ii) with respect only to those parties who properly file a Challenge, such Challenge is fully and finally adjudicated, shall be referred to as the "Challenge Period Termination Date"), has ~~(I)~~ commenced (A) a contested matter or adversary proceeding challenging or otherwise objecting to the admissions, stipulations, findings, or releases included in the Debtors' Stipulations, (B) a contested matter or adversary proceeding against any or all of the

Prepetition First Lien Secured Parties in connection with or related to the Prepetition First Lien Obligations, or the actions or inactions of any of the Prepetition First Lien Secured Parties arising out of or related to the Prepetition First Lien Obligations or the Prepetition First Lien Loan Documents, including any claim against any or all of the Prepetition First Lien Secured Parties in the nature of a "lender liability" cause of action, setoff, counterclaim, or defense to the Prepetition First Lien Obligations (including those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code or by way of suit against any of the Prepetition First Lien Secured Parties), or (C) a contested matter or adversary proceeding against any or all of the Prepetition Second Lien Secured Parties in connection with or related to the Prepetition Second Lien Obligations, or the actions or inactions of any of the Prepetition Second Lien Secured Parties arising out of or related to the Prepetition Second Lien Obligations or the Prepetition Second Lien Loan Documents, including any claim against any or all of the Prepetition Second Lien Secured Parties in the nature of a "lender liability" cause of action, setoff, counterclaim, or defense to the Prepetition Second Lien Obligations (including those under sections 506, 544, 547, 548, 549, 550, and/or 552 of the Bankruptcy Code or by way of suit against any of the Prepetition Second Lien Secured Parties) (clauses (~~i~~A), (B), and (~~ii~~C), collectively, the "Challenges," ~~and,~~ each individually, a "Challenge"~~),~~ and ~~(II) obtained a final, non-appealable order in favor of such party in interest sustaining any such Challenge in any such timely filed contested matter, adversary proceeding, or other action (any such Challenge timely brought for which such a final and non-appealable order is so obtained~~, any such sustained Challenge, a "Successful Challenge"). If a chapter 7 trustee or a chapter 11 trustee is appointed or elected during the Challenge Period, then the Challenge Period Termination Date with respect to such trustee

only, shall be the later of (i) the last day of the Challenge Period and (ii) the date that is thirty (30) days after the date on which such trustee is appointed or elected. If a chapter 7 trustee or a chapter 11 trustee is appointed or elected prior to the Challenge Period Termination Date, then the Challenge Period Termination Date shall be extended, with respect to such trustee only, to the date that is thirty (30) days after the date on which such trustee is appointed or elected. ~~Except as otherwise expressly provided herein, from and after~~ Any Challenge that (i) is not the subject of a pending standing motion or a pending contested matter, adversary proceeding, or other action as of the Challenge Period Termination Date ~~and~~or (ii) has been adjudicated pursuant to a final, non-appealable order that does not result in a Successful Challenge, for all purposes in these Chapter 11 Cases and any Successor Cases (and after the dismissal of these Chapter 11 Cases or any Successor ~~Cases), (i) all payments made to or for the benefit of the Prepetition First Lien Secured Parties pursuant to, or otherwise authorized by, this Final Order or otherwise (whether made prior to, on, or after the Petition Date) shall be indefeasible and not be subject to counterclaim, set-off, subordination, recharacterization, defense, disallowance, recovery or avoidance, (ii) any and all such Challenges by any party in interest~~Case), shall be deemed to be forever released, waived, and barred, ~~(iii) all of the Prepetition First Lien Obligations shall be deemed to be fully allowed claims within the meaning of section 506 of the Bankruptcy Code,~~ and ~~(iv)~~ the Debtors' Stipulations, including the release provisions therein that are unrelated to a pending Challenge and are not the subject of a Successful Challenge, shall be binding on all parties in interest in these Chapter 11 Cases or any Successor Cases, including any Committee or chapter 11 or chapter 7 trustee. Notwithstanding the foregoing, to the extent any Challenge is timely asserted, the Debtors' Stipulations ~~and the other provisions in clauses (i) through (iv) in the immediately~~

~~preceding sentence~~ shall nonetheless remain binding and preclusive on any Committee and on any other party in interest from and after the Challenge Period Termination Date, except to the extent that such Debtors' Stipulations or the other provisions in clauses (i) through (iv) of the immediately preceding sentence were expressly challenged in such Challenge ~~and such Challenge becomes a Successful Challenge~~. The Challenge Period may be extended only with the written consent of the Prepetition First Lien Agent, with respect to the Prepetition First Lien Obligations, or by the Prepetition Second Lien Trustee, with respect to the Prepetition Second Lien Obligations, in their respective sole discretion. Notwithstanding any provision to the contrary herein, nothing in this Final Order shall be construed to grant standing on any party in interest, ~~including any Committee,~~ to bring any Challenge on behalf of the Debtors' estates; provided that the Committee shall hereby be granted standing to bring any Challenge without any need to file a motion seeking standing. The failure of any party in interest~~, including any Committee,~~ to obtain an order of this Court prior to the Challenge Period Termination Date granting standing to bring any Challenge on behalf of the Debtors' estates shall not be a defense to failing to commence a Challenge prior to the Challenge Period Termination Date as required under this Paragraph 6 or to require or permit an extension of the Challenge Period Termination Date~~; provided, however, that if the Committee files a motion for standing to assert any Challenge prior to the Challenge Period Termination Date (and provided that the relevant pleading asserting such Challenge is attached as an exhibit to such motion), then the Challenge Period Termination Date shall be tolled, solely for the Committee and solely with respect to such Challenge set forth in the exhibit to such motion, until three (3) Business Days after the Court rules on such motion.~~ .

7. **Carve-Out**.

(i) As used in this Final Order, the term "Carve-Out" means the sum of the following: (a) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under 28 U.S.C. § 1930(a) plus interest at the statutory rate (without regard to the notice set forth in sub-paragraph (ii) below); (b) all reasonable fees, costs, and expenses up to $75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in sub-paragraph (ii) below); (c) to the extent allowed by the Court at any time, whether by interim or final compensation order, procedural order, or otherwise, all unpaid fees, costs, and expenses (collectively, the "Allowed Professional Fees") earned, accrued or incurred by persons or firms retained by the Debtors or the Committee pursuant to section 327, 328, or 363 of the Bankruptcy Code (collectively, the "~~Debtor Professionals~~Professional Persons") at any time before or on the first Business Day following delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice and without regard to whether such Allowed Professional Fees are provided for in the Approved Budget or when invoiced~~; (d) to the extent allowed by the Court at any time, whether by interim or final compensation order, procedural order, or otherwise, all Allowed Professional Fees earned, accrued or incurred in accordance with and subject to the Approved Budget by persons or firms retained by the Creditors Committee (if any) pursuant to section 328 or 1103 of the Bankruptcy Code (collectively, the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first Business Day following delivery by the DIP Agent of a Carve-Out Trigger Notice, whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice or when invoiced~~, and subject (in the case of the Committee) to the investigation budget set forth in Paragraph 16 below (the

aggregate amounts set forth in clauses (a) through (~~d~~c) above, the "Pre-Carve-Out Trigger Notice Amount"); and (~~e~~d) Allowed Professional Fees of ~~Debtor~~the Debtors' Professionals Persons in an aggregate amount not to exceed $2,500,000 and Allowed Professional Fees of ~~Committee Professionals~~the Committee's Professional Persons in an aggregate amount not to exceed $~~250,000~~2,500,000, in each case earned, accrued or incurred after the first Business Day following the date of delivery by the DIP Agent of the Carve-Out Trigger Notice in accordance with sub-paragraph (ii) below (such date, the "Trigger Date"), to the extent allowed by the Court at any time, whether by interim or final compensation order, procedural order, or otherwise (the amounts set forth in this clause (e) being the "Post-Carve-Out Trigger Notice Amount" and, together with the Pre-Carve-Out Trigger Notice Amount, the "Carve-Out Amount").

(ii) For purposes of the foregoing, "Carve-Out Trigger Notice" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (at the direction of the Required DIP Lenders) to the Borrower, counsel to the Borrower (Latham & Watkins), the U.S. Trustee, and counsel to the Committee (~~if any~~White & Case LLP), which notice (A) shall expressly state that the Post-Carve-Out Trigger Notice Amount has been invoked and (B) may be delivered only following the occurrence and during the continuation of Termination Event (as defined herein), the acceleration of the DIP Obligations under the DIP Loan Documents, and the termination of the Debtors' consensual use of Cash Collateral under this Final Order.

~~(iii) From and after the Petition Date, the Debtors shall utilize cash on hand, the proceeds from the DIP Facility, amounts held in the DIP Account, and/or any other available cash thereafter held by any Debtor to fund, on a weekly basis, the Pre-Carve-Out Trigger Notice Amount into the Escrow Account (as defined below) in an amount equal to the greatest of (A) the aggregate unpaid amount of estimated fees, costs, and expenses of Professional Persons~~

~~included in all weekly estimates timely received by the Debtors in respect of the preceding week, (B) the aggregate unpaid amount of actual fees, costs, and expenses of Professional Persons earned, accrued or incurred at the applicable time, and (C) the aggregate amount of fees, costs, and expenses of Professional Persons provided for in the Approved Budget at the applicable time. As used herein, the term "Escrow Account" means a segregated account of the Borrower not subject to the control of any DIP Secured Party, Prepetition First Lien Secured Party, and/or Prepetition Second Lien Secured Party (collectively, the "Funded Debt Secured Parties").~~

(iii) Without affecting, limiting, or otherwise modifying the scope or priority of the Carve-Out, within two (2) business days of entry of this Final Order, the Debtors shall (i) transfer all funds in the Escrow Account established under the Interim Order to one or more accounts not subject to the control of any Funded Debt Secured Party and (ii) thereafter, not deposit or transfer any funds into the Escrow Account.

(iv) Upon delivery of a Carve-Out Trigger Notice in accordance with sub-paragraph (ii) above, such Carve-Out Trigger Notice shall constitute a demand to, and approval for, the Debtors to utilize all cash on hand as of such date (including in the DIP Account) and any available cash thereafter generated by the Debtors ~~to fund the Escrow Account~~ in an amount equal to the Carve-Out Amount and to hold such amount in trust to pay the obligations benefitting from the Carve-Out.

(v) Upon delivery of a Carve-Out Trigger Notice in accordance with sub-paragraph (ii) above, and prior to the payment to of any DIP Secured Party, Prepetition First Lien Secured Party, and/or Prepetition Second Lien Secured Party (collectively, the "Funded Debt Secured ~~Party~~Parties") on account of any claim or administrative expense held by such person or entity (whether postpetition, super priority, adequate protection, prepetition, or

otherwise), the Debtors shall ~~deposit into the Escrow Account cash available~~, immediately on the Trigger Date ~~(or available thereafter)~~, segregate cash in an aggregate amount equal to the Carve-Out Amount~~. The funds in the Escrow Account shall be available only~~ to satisfy ~~the~~all obligations benefitting from the Carve-Out in Paragraph 7(i) above~~, and the~~. The Funded Debt Secured Parties (A) shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of assets) of the Debtors unless and until ~~the Escrow Account is funded in full in cash as provided above~~all obligations benefitting from the Carve-Out in Paragraph 7(i) above are segregated and (B) shall have a valid and perfected security interest upon any residual ~~amount in the Escrow Account~~Cash Collateral available following payment in full in cash of all obligations benefiting from the Carve-Out, subject to the lien and claim priorities set forth in this Final Order.

(vi) Notwithstanding anything to the contrary in this Final Order, the DIP Loan Documents, the Prepetition First Lien Loan Documents, and/or the Prepetition Second Lien Loan Documents (collectively, including this Final Order, the "Funded Debt Documents"), all claims and administrative expenses arising under, with respect to, or in connection with any Funded Debt Document (including the DIP Obligations, the DIP Superpriority Claims, the Prepetition First Lien Obligations, the First Lien Adequate Protection Superpriority Claims, the Prepetition Second Lien Obligations, and the Second Lien Adequate Protection Superpriority Claims) and all security interests and liens securing such claims and administrative expenses (including the DIP Liens, the Prepetition First Liens, the First Lien Adequate Protection Liens, the Prepetition Second Liens and the Second Lien Adequate Protection Liens) shall, in each case, be subject and subordinate to the payment in full in cash of the Carve-Out.

(vii) Notwithstanding anything to the contrary in any Funded Debt Document, (a) the failure of the ~~Escrow Account~~Debtors to satisfy in full the Allowed Professional Fees of the Professional Persons shall not affect, limit, or otherwise modify the scope or priority of the Carve-Out, (b) in no way shall any Approved Budget, the Carve-Out, the Carve-Out Amount, ~~the Escrow Account,~~ or any other budget or financial projection delivered in connection with any Funded Debt Document be construed as a cap or limitation on the amount of Allowed Professional Fees due and payable by the Debtors or that may be allowed by the Court at any time (including on an interim basis), and (c) the Debtors' authority to use proceeds from the DIP Facility, the DIP Collateral, and/or Cash Collateral on account of, and to timely pay, the Allowed Professional Fees and the other obligations benefitting from the Carve-Out shall in no way be limited or deemed limited by any Approved Budget ~~(other than as expressly set forth above as to the Allowed Professional Fees for the Committee Professionals)~~.

(viii) Prior to the occurrence of the Termination Declaration Date (as defined below), the Debtors shall be permitted to pay Allowed Professional Fees (including on an interim basis), and such payments shall not reduce or be deemed to reduce the Carve-Out. Moreover, for the avoidance of doubt, any amounts paid prior to the Carve-Out Trigger Notice shall not reduce or be deemed to reduce the Post-Carve-Out Trigger Notice Amount.

~~(ix) The DIP Agent shall be entitled to establish and maintain reserves against borrowing availability under the DIP Facility on account of the Carve-Out (including, for avoidance of doubt, the DIP Agent's estimate of future fees and expenses of the Debtor Professionals, the Committee Professionals and the Committee members that may be incurred before or after the delivery of Carve-Out Trigger Notice) in accordance with the terms of the DIP Credit Agreement.~~

(ix) ~~(x)~~ Without affecting, limiting, or otherwise modifying the scope or priority of the Carve-Out, neither the DIP Secured Parties nor the Prepetition First Lien Secured Parties shall be responsible for the direct payment or reimbursement of any fees or disbursements of any of the ~~Debtor Professionals, Committee Professionals~~Professional Persons or Committee members incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code. Without affecting, limiting, or otherwise modifying the scope or priority of the Carve-Out, nothing in this Final Order or otherwise shall be construed (i) to obligate any DIP Secured Party or any Prepetition First Lien Secured Party in any way to pay compensation to, or to reimburse expenses of, any of the ~~Debtor Professionals, the Committee Professionals~~Professional Persons or Committee members, or to guarantee that the Debtors or their estates have sufficient funds to pay such compensation or reimbursement or (ii) to increase the Carve-Out if actual allowed fees and expenses of any of the ~~Debtor Professionals, Committee Professionals~~Professional Persons or Committee members are higher in fact than the Carve-Out Amount~~. Notwithstanding any provision in this Paragraph 7 to the contrary, no portion of the Carve-Out, Cash Collateral, Prepetition First Lien Collateral, DIP Collateral or proceeds of the DIP Facility shall be utilized for the payment of professional fees and disbursements to the extent restricted under Paragraph 16 hereof; provided that the foregoing shall not be construed as a cap or limitation on the amount of Allowed Professional Fees due and payable by the Debtors or that may be allowed by the Court at any time (including on an interim basis)~~. Nothing herein shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtors, any Committee, any other official or unofficial committee in these Chapter 11 Cases or any Successor Cases, or of any other person or entity, or shall affect the right of any DIP Secured

Party or any Prepetition First Lien Secured Party to object to the allowance and payment of any such fees and expenses.

8. **Waiver of 506(c) Claims**. In the case of the DIP Secured Parties (and their DIP Liens and their other rights in respect of the DIP Collateral, the Prepetition First Lien Collateral and Cash Collateral), the Prepetition First Lien Secured Parties (and their Prepetition First Liens and their other rights in respect of the DIP Collateral, the Prepetition First Lien Collateral and Cash Collateral) and the Prepetition Second Lien Secured Parties (and their Prepetition Second Liens and their other rights in respect of the DIP Collateral, the Prepetition Second Lien Collateral and Cash Collateral), and as a further condition of (i) the DIP Facility and any obligation of the DIP Secured Parties to make credit extensions pursuant to the DIP Loan Documents (and the consent of the DIP Secured Parties, the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties to the payment of the Carve-Out to the extent provided herein) and (ii) the Debtors' use of Cash Collateral pursuant to this Final Order, (a) no costs or expenses of administration of the Chapter 11 Cases or any Successor Cases shall be charged against or recovered from or against any or all of the DIP Secured Parties and/or the Prepetition First Lien Secured Parties, the Prepetition Second Lien Secured Parties, the Prepetition First Lien Collateral, the Prepetition Second Lien Collateral, the DIP Collateral and the Cash Collateral, in each case pursuant to section 506(c) of the Bankruptcy Code or otherwise, without the prior written consent of the DIP Agent, the Prepetition First Lien Agent and the Prepetition Second Lien Trustee, and (b) no such consent shall be implied from any other action, inaction, or acquiescence of any or all of the DIP Secured Parties, the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties, and (c) the exercise of any rights under section 506(c) of the Bankruptcy Code or otherwise to charge any costs or expense of administration of

~~the Chapter 11 Cases or any Successor Cases from or against the Prepetition First Lien Secured Parties or their Prepetition First Liens or the Prepetition Second Lien Secured Parties or their Prepetition Second Liens on or other interests in any or all of the DIP Collateral, the Prepetition First Lien Collateral, the Prepetition Second Lien Collateral and the Cash Collateral shall not impair and shall be subject to, and junior to, the DIP Liens on and the DIP Secured Parties' other interests in the DIP Collateral, the Prepetition First Lien Collateral, the Prepetition Second Lien Collateral and the Cash Collateral and the other DIP Protections accorded the DIP Secured Parties.~~

8. **Reserved.**

9. ~~**After-Acquired Property**~~**Section 552**. Upon entry of this Final Order (but retroactive to the Petition Date), ~~pursuant to section 552(a)~~the Prepetition Secured Parties shall have all the benefits of, and be subject to all limitations, of section 552 of the Bankruptcy Code~~, all property acquired by the Debtors on or after the Petition Date is not, and shall not be, subject to any Lien of any person or entity resulting from any security agreement entered into by the Debtors prior to the Petition Date, except to the extent that such property constitutes proceeds of property of the Debtors that is subject to a valid, enforceable, perfected, and unavoidable Lien as of the Petition Date (or a valid, enforceable and unavoidable Lien that is perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code) that is not subject to subordination or avoidance under the Bankruptcy Code or other provisions or principles of applicable law.~~.

10. **Protection of DIP Secured Parties' and Prepetition First Lien Secured Parties' Rights**.

(a) Unless the DIP Agent and the Prepetition First Lien Agent shall have provided their prior written consent or all DIP Obligations ~~and First Lien Adequate Protection Superpriority Claims~~ have been (or will promptly be) Paid in Full, there shall not be entered in any of these Chapter 11 Cases or any Successor Cases any order (including any order confirming any plan of reorganization or liquidation) that authorizes ~~any of the following: (i)~~ the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the DIP Collateral or Prepetition First Lien Collateral and/or that is entitled to administrative priority status, in each case that is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, the Prepetition First Liens, the First Lien Adequate Protection Liens, the First Lien Adequate Protection Superpriority Claims, the Prepetition Second Liens, the Second Lien Adequate Protection Liens, the Second Lien Adequate Protection Superpriority Claims and/or the other DIP Protections~~; (ii) the use of Cash Collateral for any purpose other than Payment in Full of the DIP Obligations and the First Lien Adequate Protection Superpriority Claims or as otherwise permitted in the DIP Loan Documents and/or this Final Order; provided that the foregoing shall not affect, modify or limit the scope or priority of the Carve-Out, (iii) the return of goods pursuant to section 546(h) of the Bankruptcy Code (or other return of goods on account of any prepetition indebtedness) to any creditor of any Debtor or any creditor's taking any setoff against any of its prepetition indebtedness based upon any such return of goods pursuant to section 553 of the Bankruptcy Code or otherwise, or (iv) any modification of any of the DIP Secured Parties' or the Prepetition First Lien Secured Parties' rights under this Final Order, the DIP Loan Documents or the Prepetition First Lien Loan Documents with respect to any DIP Obligations.~~

(b) The Debtors shall, until all DIP Obligations, Prepetition First Lien Obligations and First Lien Adequate Protection Superpriority Claims have been Paid in Full, (i) maintain books, records, and accounts to the extent and as required by the DIP Loan Documents, (ii) reasonably cooperate with, consult with during normal business hours, and provide to the DIP Secured Parties and the Prepetition First Lien Secured Parties all such information and documents that any or all of the Debtors are obligated (including upon reasonable written request by any of the DIP Secured Parties or the Prepetition First Lien Secured Parties) to provide under the DIP Loan Documents, the Prepetition Loan Documents (in the absence of the pendency of these Chapter 11 Cases) or the provisions of this Final Order, (iii) during normal business hours and upon reasonable written request, permit consultants, advisors and other representatives (including third party representatives) of each of the DIP Agent and the Prepetition First Lien Agent to visit and inspect any of the Debtors' respective properties, to examine and make abstracts or copies from any of their respective books and records, to tour the Debtors' business premises and other properties, and to discuss, and provide advice with respect to, their respective affairs, finances, properties, business operations, and accounts with their respective officers, employees, independent public accountants and other professional advisors (other than legal counsel) as and to the extent required by the DIP Loan Documents and/or the Prepetition First Lien Loan Documents, (iv) during normal business hours and upon reasonable written request, permit the DIP Agent and the Prepetition First Lien Agent and their respective consultants, advisors and other representatives to consult with the Debtors' management and advisors on matters concerning the Debtors' businesses, financial condition, operations and assets, and (v) during normal business hours and upon reasonable written request, permit the DIP Agent and the Prepetition First Lien Agent to conduct, at their discretion and at the Debtors' cost and expense,

field audits, collateral examinations and inventory appraisals at reasonable times in respect of any or all of the DIP Collateral and the Prepetition First Lien Collateral. Notwithstanding anything to the contrary contained herein, the Debtors do not waive any right to attorney-client, work product, or similar privilege, and the Debtors shall not be required to provide the DIP Agent, the Prepetition First Lien Agent, or their respective counsel and financial advisors with any information subject to attorney-client privilege or consisting of attorney work product. For avoidance of doubt, the Prepetition First Lien Agent shall have the same access and cooperation rights as the DIP Agent for purposes of this subparagraph (b).

11. **Proceeds of Subsequent Financing**. Without limiting the provisions and protections of Paragraph 10 above, if at any time prior to the Payment in Full of all the DIP Obligations ~~and the First Lien Adequate Protection Superpriority Claims~~ (including subsequent to the confirmation of any chapter 11 plan or plans with respect to any of the Debtors), the Debtors' estates, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to ~~sections 364(b), 364(c),~~section 364(d)~~, or any other provision~~ of the Bankruptcy Code in violation of this Final Order or the DIP Loan Documents, then, after payment or reservation in full in cash of the Carve-Out, ~~all of~~ the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Agent for application to the DIP Obligations until Paid in Full ~~and then to the First Lien Adequate Protection Superpriority Claims until Paid in Full~~in an amount necessary for such payment.

12. **Cash Collection**. From and after the date of the entry of this Final Order, all collections and proceeds of any DIP Collateral or Prepetition First Lien Collateral or services provided by any Debtor and all Cash Collateral that shall at any time come into the

possession, custody, or control of any Debtor, or to which any Debtor is now or shall become entitled at any time, shall be promptly deposited in the same lock-box and/or deposit accounts into which the collections and proceeds of the Prepetition First Lien Collateral were deposited under the Prepetition First Lien Loan Documents (or in such other accounts as are designated by the DIP Agent from time to time) (collectively, the "Cash Collection Accounts"), which accounts shall be subject to the liens of the DIP Agent and the Prepetition First Lien Agent (and the funds in such accounts may be used by the Debtors to the extent provided in this Final Order and the DIP Loan Documents). Upon the direction of the DIP Agent or, following Payment in Full of the DIP Obligations, the Prepetition First Lien Agent, at any time after the occurrence of a Termination Event and subject to the provisions of Paragraph 7 and Paragraph 15, all proceeds; provided that the Debtors shall maintain a record of any such collections and proceeds and the deposit of such funds in the Cash Collection Accounts shall be remitted to the DIP Agent for application to the DIP Obligations until Payment in Full and then to the Prepetition First Lien Agent for application to the Prepetition First Lien Obligations until Payment in Full, and the DIP Agent and the Prepetition First Lien Agent shall be entitled to take all action that is necessary or appropriate to effectuate the foregoingnot result in the encumbrance of cash that is otherwise unencumbered. Unless otherwise agreed to in writing by the DIP Agent and the Prepetition First Lien Agent, the Debtors shall maintain no accounts except those identified in the *Interim Order (A) Authorizing Debtors to (I) Continue Existing Cash Management System, (II) Maintain Existing Business Forms, and (III) Continue Intercompany Transactions; and (B) Granting Related Relief* (the "Interim Cash Management Order") and the *Final Order (A) Authorizing Debtors to (I) Continue Existing Cash Management System, (II) Maintain Existing Business*

Forms, and (III) Continue Intercompany Transactions; and (B) Granting Related Relief (the "Final Cash Management Order" together with the Interim Cash Management Order, the "Cash Management Orders"). ~~Subject to the provisions of Paragraph 7 and Paragraph 15, the Debtors and the financial institutions where the Debtors' Cash Collection Accounts are maintained (including those accounts identified in the Cash Management Orders) are authorized and empowered to remit, without offset or deduction, funds in such Cash Collection Accounts upon receipt of any direction to that effect from the DIP Agent or, following Payment in Full of the DIP Obligations, the Prepetition First Lien Agent.~~

13. **Disposition of DIP Collateral; Credit Bid**.

(a) Unless the DIP Obligations and the Prepetition First Lien Obligations are Paid in Full upon the closing of a sale or other disposition of the DIP Collateral or Prepetition First Lien Collateral, the Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral or any Prepetition First Lien Collateral (or enter into any binding agreement to do so) without the prior written consent of the DIP Agent and the Prepetition First Lien Agent (and no such consent shall be implied from any other action, inaction, or acquiescence by any DIP Secured Party or Prepetition First Lien Secured Party or any order of this Court), except in the ordinary course of business or as otherwise permitted in the DIP Loan Documents and/or the Prepetition First Lien Loan Documents, as applicable, and this Final Order. Except to the extent otherwise expressly provided in the DIP Loan Documents and subject to Paragraph 7 of this Final Order, all proceeds from the sale, transfer, lease, encumbrance or other disposition of any DIP Collateral outside the ordinary course of business shall be remitted to the DIP Agent for application to the DIP Obligations, in each case, in accordance with the terms of this Final Order and the DIP Loan Documents or the Prepetition First Lien Loan Documents, as the case may be.

In addition, the Debtors are authorized and empowered to enter into such blocked account agreements (with cash dominion, if the DIP Agent so elects) with the DIP Agent and such financial institutions as the DIP Agent may require, and, if it so elects, the DIP Agent shall be entitled to enjoy the benefit of all control agreements to which the Prepetition First Lien Agent is a party without the need to enter into new blocked account agreements.

(b) Subject to Paragraph 6 of this Final Order, the Prepetition First Lien Agent (or one or more of its designees, affiliates or assignees) (at the direction of Required Prepetition First Lien Lenders) shall have the ~~unqualified~~ right to credit bid up to the full amount of any Prepetition First Lien Obligations in any sale of the Prepetition First Lien Collateral (or any DIP Collateral subject to any First Lien Adequate Protection Liens) under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) any plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code to the extent any sale contemplated thereunder does not result in payment in full of all of the DIP Obligations on the effective date of such plan, or (iii) section 725 of the Bankruptcy Code~~. Subject to Paragraph 6 of this Final Order, the Debtors, on behalf of themselves and their estates, stipulate and agree that any sale of all or part of the Prepetition First Lien Collateral (or any DIP Collateral subject to any First Lien Adequate Protection Liens) that does not include an unqualified right to credit bid up to the full amount of the Prepetition First Lien Obligations would mean that the Prepetition First Lien Agent and the other Prepetition First Lien Secured Parties will not receive the indubitable equivalent of their claims and interests~~, in each cash subject to the terms and limitations set forth in the Bankruptcy Code. The DIP Agent (or one or more of its designees, affiliates or assignees) shall have the ~~unqualified~~ right to credit bid any or all of the DIP Obligations under or pursuant to (i) section 363 of the Bankruptcy Code, (ii) any plan of reorganization or plan of liquidation under section 1129 of the Bankruptcy Code, or

(iii) section 725 of the Bankruptcy Code~~. If the DIP Agent or the Prepetition First Lien Agent or their respective designees, affiliates or assignees make a credit bid in connection with any auction or other sale process relating to the sale or other disposition of any DIP Collateral or Prepetition First Lien Collateral, then for purposes of such auction or sale process or any applicable order of this Court, the DIP Agent and/or Prepetition First Lien Agent shall be automatically deemed to be a qualified bidder and its bid shall be automatically deemed to constitute a qualified bid, regardless of whether the qualified bidder or qualified bid requirements are satisfied.~~, in each cash subject to the terms and limitations set forth in the Bankruptcy Code.

14. **Termination Events**. The following shall constitute a termination event under this Final Order and the DIP Loan Documents unless waived in writing by each of the DIP Agent and the Prepetition First Lien Agent (each, a "Termination Event"):

(a) The occurrence and continuation of an "Event of Default" under the DIP Credit Agreement~~,~~ (other than those set forth in sections 7.01(r)(viii), (xii) and (xviii) thereof), as set forth therein (a "DIP Default Termination Event"), including, for avoidance of doubt, the Debtors' failure to timely and strictly comply with any of the obligations and deadlines set forth on **Exhibit A** hereto ~~thereto~~ (the "Chapter 11 Milestones")~~.~~;

(b) Any material breach by the Debtors of their obligations under the Restructuring Support Agreement (subject to any applicable cure periods), and any valid termination of the Restructuring Support Agreement by the Debtors or the Required Consenting First Lien Lenders (as defined in the Restructuring Support Agreement)~~.~~ (other than those set forth in sections 7.02(e), (f) and (i) thereof); and

(c) Any other material breach, default or other violation by any of the Debtors of the terms and provisions of this Final Order (subject to any applicable cure periods).

15. **Rights and Remedies Upon Termination Event**.

(a) Upon the occurrence and during the continuation of a Termination Event, following delivery by the DIP Agent (at the direction of the Required DIP Lenders) of written notice (a "Remedies Notice"), of not less than five (5) Business Days', to the Debtors and Debtors' counsel, the United States Trustee, and counsel to the Committee ~~(if any) (~~the "Remedies Notice Period"), ~~unless prior to such time the Court orders otherwise,~~ the DIP Agent ~~is hereby granted~~may seek expedited relief from the automatic stay~~, without further notice, hearing, motion, order or other action of any kind, to the extent necessary~~ to permit the DIP Secured Parties to exercise ~~(i)~~ all rights and remedies under the DIP Loan Documents and applicable law and the Debtors, the Committee and all other parties in interest may oppose such relief on any basis; provided that immediately upon the occurrence and during the continuance of any Termination Event, ~~all rights and remedies under this Final Order, the DIP Loan Documents and/or applicable non-bankruptcy law (other than those rights and remedies against the DIP Collateral as provided in subparagraph 15(b) below), including~~ the DIP Agent shall have the right to (1) declare all DIP Obligations to be immediately due and payable, (2) declare the termination, reduction or restriction of any further commitment to extend credit to the Debtors, to the extent any such commitment remains, and/or (3) terminate the DIP Facility and any other DIP Loan Documents as to any future liability or obligation of the DIP Agent and the other DIP Secured Parties, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations~~; and/or (ii) declare a termination, reduction or restriction on the ability of the Debtors to use any Cash Collateral~~ (any such declaration under any of clauses 15(a)(~~i)~~(1), (2) or (3~~) or (ii~~) shall be made to the respective lead counsel to the Debtors, the Committee and the U.S. Trustee, and shall be referred to herein as a "Termination Declaration" and the date that is

the earliest to occur of any such Termination Declaration being herein referred to as the "Termination Declaration Date").

(b) In addition to the rights and remedies described above, ~~on the later of: (i) the expiration of the Remedies Notice Period, including as such period may be tolled as provided herein, and (ii) five (5) Business Days following the Termination Declaration Date, unless prior to such time this Court determines that a Termination Event has not occurred and/or is not continuing, the DIP Agent is hereby granted~~and only upon entry of a Court order providing relief from the automatic stay~~, without further notice, hearing, motion, order or other action of any kind, to~~ to the DIP Agent (that is not stayed), the DIP Agent may (subject to the terms of any such order) foreclose on, or otherwise enforce and realize on, its DIP Liens on all or any portion of the DIP Collateral, ~~including by collecting accounts receivable and applying the proceeds thereof to the DIP Obligations,~~ subject to the payment or reservation in full in cash of the Carve-Out as set forth in Paragraph 7. ~~Prior to the expiration of the Remedies Notice Period, the Debtors and/or any Committee shall be entitled to request an emergency hearing with the Court. If a request for such hearing is made prior to the end of the Remedies Notice Period, then the Remedies Notice Period shall be continued until the Court hears and rules with respect thereto. During such Remedies Notice Period, (i)~~ Following the Termination Declaration Date, unless and until the Court enters an order granting relief from the automatic stay to the DIP Agent, the Debtors may use Cash Collateral or any amounts previously or thereafter advanced under the DIP Credit Facility (a) to fund operations and pay obligations incurred prior to the Termination Declaration Date in accordance with the DIP Facility and the Approved Budget and (b) the Carve-Out~~; and (ii) the Debtors and the DIP Lenders consent to a hearing on an expedited basis to consider whether a Termination Event has occurred, and if a hearing to consider the~~

~~foregoing is requested to be heard before the end of the Remedies Notice Period but is scheduled for a later date by the Bankruptcy Court, the Remedies Notice Period shall be automatically extended to the date of such hearing. Unless the Bankruptcy Court orders otherwise, upon the expiration of the Remedies Notice Period (subject to extension in the event an Emergency Motion is filed), the automatic stay shall automatically be deemed terminated, without further notice, hearing or order of the Bankruptcy Court, and the DIP Agent (acting at the instruction of the Required DIP Lenders under the DIP Loan Documents) shall be permitted to exercise all remedies set forth in the Interim Order or this Final Order and in the DIP Loan Documents or applicable law, and the Debtors' right to use any Cash Collateral shall immediately cease, subject to the payment or reservation in full in cash of the Carve Out as set forth in Paragraph 7.~~.

(c) Subject to Paragraph 6, upon the effectiveness of any relief from the automatic stay with respect to the DIP Facility pursuant to Paragraph 15(b) hereof, the Prepetition First Lien Agent shall have relief from the automatic stay to the same extent as the DIP Agent~~, and without further notice, hearing, motion, order or other action of any kind,~~ to foreclose on, or otherwise enforce and realize on its Prepetition First Liens and the First Lien Adequate Protection Liens on, all or any portion of the DIP Collateral or Prepetition First Lien Collateral ~~(including by collecting accounts receivable and applying the proceeds thereof to the Prepetition First Lien Obligations)~~ or otherwise exercise remedies against the DIP Collateral or Prepetition First Lien Collateral permitted by this Final Order, the Prepetition First Lien Loan Documents and/or applicable non-bankruptcy law; provided, however, that any such foreclosure or other enforcement by the Prepetition First Lien Agent of any Prepetition First Liens or the First Lien Adequate Protection Liens or any other such exercise of remedies by the Prepetition First Lien Agent against the DIP Collateral or Prepetition First Lien Collateral shall not interfere

with or otherwise be inconsistent with any foreclosure or other enforcement by the DIP Agent of any DIP Liens or other DIP Protections or any other exercise of remedies by the DIP Agent, and any proceeds received by the Prepetition First Lien Agent in connection with such foreclosure, enforcement or other exercise of remedies shall, subject to the payment or reservation in full in cash of the Carve-Out as set forth in Paragraph 7, be turned over to the DIP Agent for application to the DIP Obligations until Paid in Full.

(d) Subject to the provisions of Paragraph 6 hereof, all proceeds realized in respect of DIP Collateral in connection with the exercise of the rights and remedies of the DIP Secured Parties or the Prepetition First Lien Secured Parties shall be turned over first to the Debtors to fund the Carve-Out in full in cash, then to the DIP Agent for application to the DIP Obligations under, and in accordance with the provisions of, the DIP Loan Documents and this Final Order until Payment in Full of all of the DIP Obligations and then to the Prepetition First Lien Agent for application to the Prepetition First Lien Obligations under, and in accordance with the provisions of, the Prepetition First Lien Loan Documents and this Final Order until Payment in Full of the Prepetition First Lien Obligations.

(e) Notwithstanding anything contained herein to the contrary and without limiting any other rights or remedies of the DIP Agent or the other DIP Secured Parties contained in this Final Order or the DIP Loan Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Loan Documents, upon five (5) Business Days' written notice to the Debtors and any landlord, lienholder, licensor, or other third party owner of any leased or licensed premises or intellectual property that a Termination Event has occurred and is continuing, the DIP Agent (i) may, ~~unless otherwise provided~~to the extent permitted in any separate and enforceable agreement by and between the applicable landlord or licensor and the

DIP Agent ~~(the terms of which shall be reasonably acceptable to the parties thereto)~~, enter upon any leased or licensed premises of the Debtors for the purpose of exercising any remedy with respect to any DIP Collateral located thereon and (ii) shall be entitled to all of the Debtors' rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents, or any other similar assets of the Debtors that are owned by or subject to a Lien of any third party and that are used by Debtors in their businesses, in the case of either subparagraph (i) or (ii) of this Paragraph 15(e) without interference from lienholders or licensors thereunder, subject to such lienholders' or licensors' rights under applicable law; provided, however, that the DIP Agent, on behalf of the DIP Secured Parties, shall pay only rent and additional rent, fees, royalties, or other monetary obligations of the Debtors that first arise after the written notice referenced above from the DIP Agent and that accrue during the period of such occupancy or use by such DIP Agent calculated on a *per diem* basis. ~~Nothing herein shall require the Debtors, the DIP Agent, or the other DIP Secured Parties to assume any lease, license or other contract under Bankruptcy Code section 365(a) as a precondition to the rights afforded to the DIP Agent and the other DIP Secured Parties in this Paragraph 15(e).~~

(f) Subject to Payment in Full of the DIP Obligations, notwithstanding anything contained herein to the contrary, and without limiting any other rights or remedies of the Prepetition First Lien Agent or the other Prepetition First Lien Secured Parties contained in this Final Order or the Prepetition First Lien Loan Documents, or otherwise available at law or in equity, the Prepetition First Lien Agent shall succeed to, and be entitled to, all of the rights, remedies, benefits and protections accorded to the DIP Agent pursuant to Paragraph 15(e), as if

all references therein to the "DIP Agent" and the " DIP Parties" are references to the "Prepetition First Lien Agent" and the "Prepetition First Lien Secured Parties."

(g) The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of this Final Order and the DIP Loan Documents as necessary to (i) permit the Debtors to grant the First Lien Adequate Protection Liens, the Second Lien Adequate Protection Liens and the DIP Liens and to incur all liabilities and obligations to the DIP Secured Parties and the Prepetition First Lien Secured Parties under the DIP Loan Documents, the DIP Facility, and this Final Order, (ii) subject to Paragraph 7, authorize the DIP Secured Parties and the Prepetition First Lien Secured Parties to retain and apply payments made in accordance with the DIP Loan Documents, the Prepetition First Lien Loan Documents and/or this Final Order, (iii) to permit each of the DIP Agent, the other DIP Secured Parties, the Prepetition First Lien Agent and the other Prepetition First Lien Secured Parties to perform any act authorized under this Final Order and the DIP Loan Documents, and (iv) otherwise to the extent necessary to implement and effectuate the provisions of this Final Order and the DIP Loan Documents.

16. **Restriction on Use of Proceeds**. Notwithstanding anything herein to the contrary, but subject to the last sentence of this Paragraph 16, no loans and/or proceeds from the DIP Facility (including the DIP Account), DIP Collateral, Cash Collateral (including any retainer held by any professionals for the below-referenced parties), Prepetition First Lien Collateral, Prepetition Second Lien Collateral or any portion of the Carve-Out may be used by (a) any Debtor, Committee or trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Cases, or any other person, party, or entity (including any of the Debtors' Professionals, the Committee's Professionals or the Committee members) to

investigate (except as set forth below) or prosecute any Challenge (including any litigation or other action) against the DIP Secured Parties, the Prepetition First Lien Secured Parties or the Prepetition Second Lien Secured Parties (or to pay any professional fees and disbursements incurred in connection therewith) at any time; or (b) any Debtor, any Committee, or any trustee or other estate representative appointed in the Chapter 11 Cases or any Successor Cases, or any other person, party, or entity (including any of the Debtors' Professionals, the Committee's Professionals or the Committee members) to (or to pay any professional fees and disbursements incurred in connection therewith): (i) request authorization to obtain postpetition loans or other financial accommodations pursuant to section 364 (~~c) or (~~d) of the Bankruptcy Code~~, or otherwise~~, other than from the DIP Secured Parties, or to seek any modification to this Final Order not approved by the DIP Agent and, to the extent such modification would affect the rights of any of the Prepetition First Lien Secured Parties, the Prepetition First Lien Agent and, to the extent such modification would affect the rights of any of the Prepetition Second Lien Secured Parties, the Prepetition Second Lien Trustee; (ii) investigate (except as set forth below), assert, join, commence, support, or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, any or all of the DIP Secured Parties, the Prepetition First Lien Secured Parties, the Prepetition Second Lien Secured Parties, their respective affiliates, assigns or successors and the respective officers, directors, employees, agents, attorneys, representatives and other advisors of the foregoing, with respect to any transaction, occurrence, omission, action, or other matter (including formal or informal discovery proceedings in anticipation thereof), including (A) any Challenges and any Avoidance Actions or other actions arising

under chapter 5 of the Bankruptcy Code; (B) any action with respect to the validity, enforceability, priority, and extent of the DIP Obligations, the Prepetition First Lien Obligations, and/or the Prepetition Second Lien Obligations or the validity, extent, and priority of the DIP Liens, the Prepetition First Liens, the Prepetition Second Liens, the First Lien Adequate Protection Liens or the Second Lien Adequate Protection Liens; (C) any action seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the DIP Liens, the other DIP Protections, the Prepetition First Liens, the First Lien Adequate Protection Liens, the other Prepetition First Lien Adequate Protection, the Prepetition Second Liens, the Second Lien Adequate Protection Liens, or the other Prepetition Second Lien Adequate Protection; (D) any action preventing, hindering, or otherwise delaying any or all of the DIP Secured Parties', and, after the Payment in Full of the DIP Obligations, the Prepetition First Lien Secured Parties' and/or the Prepetition Second Lien Secured Parties', assertion, enforcement, or realization on the Cash Collateral, the DIP Collateral, the Prepetition First Lien Collateral or the Prepetition Second Lien Collateral in accordance with the DIP Loan Documents, the Prepetition First Lien Loan Documents or the Prepetition Second Lien Loan Documents, as applicable, or this Final Order; and/or (E) any action seeking to modify any of the rights, remedies, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties, the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties hereunder or under the DIP Loan Documents, the Prepetition First Lien Loan Documents or the Prepetition Second Lien Loan Documents, as applicable, or any payments made thereunder or in respect thereof; provided, however, up to $~~50,000~~3,000,000 in the aggregate of the Carve-Out, any DIP Collateral, any Prepetition First Lien Collateral, any Prepetition Second Lien Collateral, any Cash Collateral

and proceeds of the DIP Facility may be used by the Committee ~~(to the extent such Committee is appointed)~~ to investigate ~~(but not to~~and prosecute~~)~~ the claims and/or Liens of the Prepetition First Lien Agent and the other Prepetition First Lien Secured Parties under the Prepetition First Lien Loan Documents and/or the Liens of the Prepetition Second Lien Trustee and the other Prepetition Second Lien Secured Parties under the Prepetition Second Lien Loan Documents (but in any case not the claims and/or Liens of the DIP Agent and the other DIP Secured Parties) so long as such investigation occurs within the Challenge Period; or (iii) use or seek to use Cash Collateral or sell or otherwise dispose of DIP Collateral or Prepetition First Lien Collateral, unless otherwise permitted hereby, without the prior written consent of the DIP Agent and the Prepetition First Lien Agent. For the avoidance of doubt, the foregoing limitations shall not (i) prevent or otherwise limit the Debtors and their professionals from being heard on whether a Termination Event has occurred and is continuing, (ii) be construed as a cap or limitation on the amount of Allowed Professional Fees due and payable by the Debtors or that may be allowed by the Court at any time (including on an interim basis), or (iii) prohibit the Debtors' use of the DIP Collateral, Prepetition First Lien Collateral, DIP Loans, Cash Collateral, proceeds of any of the foregoing, any portion of the Carve-Out or any other funds to respond to investigations by the Committee.

17. **Proofs of Claim**. The Prepetition First Lien Secured Parties, and the Prepetition Second Lien Secured Parties will not be required to file proofs of claim in any of the Chapter 11 Cases or Successor Cases for any claim allowed herein. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim for the Prepetition First Lien Secured Parties and the Prepetition Second Lien Secured Parties in respect of all Prepetition First

Lien Obligations and Prepetition Second Lien Obligations, respectively. In addition, the Prepetition First Lien Secured Parties, the Prepetition Second Lien Secured Parties, and the DIP Secured Parties will not be required to file any request for allowance and/or payment of any administrative expenses, and this Final Order shall be deemed to constitute a timely filed request for allowance and/or payment of any Prepetition First Lien Obligations or Prepetition Second Lien Obligations constituting administrative expenses or any DIP Obligations, as applicable. Notwithstanding any order entered by this Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or Successor Cases to the contrary, each of the Prepetition First Lien Agent, for the benefit of itself and the other Prepetition First Lien Secured Parties, the Prepetition Second Lien Trustee, for the benefit of itself and the other Prepetition Second Lien Secured Parties, and the DIP Agent, for the benefit of itself and the other DIP Secured Parties, is hereby authorized and entitled, in its sole discretion, but not required, to file (and amend and/or supplement, in its discretion) in each of the Chapter 11 Cases or Successor Cases (i) in the case of Prepetition First Lien Agent, a proof of claim and/or aggregate proofs of claim in respect of any Prepetition First Lien Obligations, (ii) in the case of the Prepetition Second Lien Trustee, a proof of claim and/or aggregate proofs of claim in respect of any Prepetition Second Lien Obligations, and (ii) in the case of each of the Prepetition First Lien Agent, Prepetition Second Lien Trustee, and the DIP Agent, a request or aggregate requests for allowance and/or payment of any portion of the Prepetition First Lien Obligations constituting administrative expenses or any DIP Obligations, as applicable.

18. **Preservation of Rights Granted Under the Final Order**.

(a) No Non-Consensual Modification or Extension of Final Order.

The Debtors shall not seek any amendment, modification, or extension of this Final Order (including through any chapter 11 plan of reorganization) without the prior written consent of the DIP Agent and the Prepetition First Lien Agent, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Secured Parties or any of the Prepetition First Lien Secured Parties. In the event any or all of the provisions of this Final Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, such modification, amendment, or vacatur shall not affect the validity, perfection, priority, allowability, enforceability, or non-avoidability of any advances, payments, or use of cash authorized or made hereby or pursuant to the DIP Loan Documents, or Lien, claim, priority or other DIP Protections authorized or created hereby or pursuant to the DIP Loan Documents, in each case incurred or arising prior to the actual receipt of written notice by the DIP Agent or the Prepetition First Lien Agent, as applicable, and in either case counsel thereto, of the effective date of such reversal, modification, vacatur, or stay. Based on the findings set forth in this Final Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility, in the event any or all of the provisions of this Final Order are hereafter reversed, modified, vacated, or stayed by a subsequent order of this Court or any other court, the DIP Secured Parties and the Prepetition First Lien Secured Parties shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code, and notwithstanding any such reversal, modification, vacatur, or stay, any use of Cash Collateral or any DIP Obligations or any DIP Protections (including the Prepetition First Lien Adequate Protection) incurred or granted by the Debtors prior to the actual receipt of written notice by the DIP Agent or the Prepetition First Lien Agent, as applicable, of the effective date of such reversal, modification, vacatur, or stay shall

remain in full force and effect and be binding on all parties in interest and be governed in all respects by the original provisions of this Final Order (and shall maintain their respective priorities as provided by this Final Order), and the DIP Secured Parties and the Prepetition First Lien Secured Parties shall be entitled to all of the DIP Protections (including the Prepetition First Lien Adequate Protection) and all other rights, remedies, Liens, priorities, privileges, protections, and benefits granted pursuant to section 364(e) of the Bankruptcy Code, this Final Order, or the DIP Loan Documents.

(b) Dismissal. If any order dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, then notwithstanding any such dismissal, (i) the DIP Protections (including the Prepetition First Lien Adequate Protection) and all other rights, remedies, Liens, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties and the Prepetition First Lien Secured Parties, respectively, shall remain in full force and effect and be binding on all parties in interest and be governed in all respects by the provisions of this Final Order (and shall maintain their respective priorities as provided by this Final Order) until all DIP Obligations and all Prepetition First Lien Obligations have been Paid in Full, and such order of dismissal shall so provide (in accordance with sections 105 and 349 of the Bankruptcy Code), and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such DIP Protections (including the Prepetition First Lien Adequate Protection) and all other rights, remedies, Liens, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties and the Prepetition First Lien Secured Parties, respectively.

(d) Survival of Final Order. The provisions of this Final Order and the DIP Loan Documents, any actions taken pursuant hereto or thereto, and all of the DIP

Protections (including the Prepetition First Lien Adequate Protection), and all other rights, remedies, Liens, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties and the Prepetition First Lien Secured Parties, respectively, pursuant to this Final Order and the DIP Loan Documents shall survive, and shall not be modified, impaired, or discharged by, the entry of any order confirming any plan of reorganization in any Chapter 11 Case or Successor Case, converting any Chapter 11 Case to a case under chapter 7, dismissing any of the Chapter 11 Cases, withdrawing of the reference of any of the Chapter 11 Cases or any Successor Cases or providing for abstention from handling or retaining of jurisdiction of any of the Chapter 11 Cases or any Successor Case in this Court, or terminating the joint administration of these Chapter 11 Cases or any Successor Case or by any other act or omission. The terms and provisions of this Final Order, including all of the DIP Protections (including the Prepetition First Lien Adequate Protection) and all other rights, remedies, Liens, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties and the Prepetition First Lien Secured Parties, respectively, pursuant to this Final Order and the DIP Loan Documents shall continue in full force and effect and be binding on all parties in interest notwithstanding the entry of any such order, and such DIP Protections (including the Prepetition First Lien Adequate Protection), and such other rights, remedies, Liens priorities, privileges, protections and benefits pursuant to this Final Order and the DIP Loan Documents, shall continue in full force and effect in these proceedings and in any Successor Cases and after dismissal of any thereof, and shall maintain their respective priorities as provided by this Final Order. Without the express written consent of the DIP Lenders, the DIP Obligations shall not be discharged by the entry of an order confirming any such chapter 11 plan, the Debtors having waived such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

19. **Insurance Policies**. Upon entry of this Final Order, the DIP Agent, the other DIP Secured Parties, the Prepetition First Lien Agent (with respect to the Prepetition First Lien Adequate Protection) and the other Prepetition First Lien Secured Parties (with respect to the Prepetition First Lien Adequate Protection) shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees, as applicable, on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral, and the Debtors shall take such actions as are reasonably requested by the DIP Agent or the Prepetition First Lien Agent from time to time to evidence or effectuate the foregoing.

20. **Other Rights and Obligations**.

(a) Expenses. To the extent provided in the DIP Loan Documents (and without limiting the Debtors' respective obligations thereunder), the applicable Debtors shall pay all reasonable expenses incurred by the DIP Agent (including the reasonable fees and disbursements of all counsel for the DIP Agent and any internal or third-party appraisers, consultants, advisors and auditors engaged by or for the benefit of the DIP Agent and/or its counsel) in connection with the preparation, execution, delivery, and administration of the DIP Loan Documents, the Interim Order, this Final Order, and any other agreements, instruments, pleadings, or other documents prepared or reviewed in connection with any of the foregoing, whether or not any or all of the transactions contemplated hereby or by the DIP Loan Documents are consummated.

(b) Notice of Professional Fees. Professionals for the DIP Agent and the Prepetition First Lien Agent (including professionals engaged by counsel to the DIP Agent or Prepetition First Lien Agent, as applicable) (collectively, the "Lender Professionals") shall not be required to comply with the United States Trustee fee guidelines or submit invoices to this Court,

United States Trustee, any Committee or any other party in interest. Copies of summary invoices submitted to the Debtors by such Lender Professionals shall be forwarded by the Debtors to the United States Trustee, counsel for any Committee, and such other parties as this Court may direct. If no objection to payment of the requested fees and expenses is made in writing (email being sufficient) by any of the Debtors, any Committee, or the United States Trustee within ten calendar days after delivery of such invoices, such invoices shall be promptly paid by the Debtors and, in any event, no later than three Business Days after expiration of such ten day period. The summary invoices shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses; provided, however, that such summary invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such summary invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine or other applicable privilege. If the Debtors, United States Trustee or any Committee object to the reasonableness of the fees and expenses of any of the Lender Professionals and cannot resolve such objection within ten days of receipt of such invoices, then the Debtors, United States Trustee, or the Committee, as the case may be, shall file with this Court and serve on such Lender Professionals an objection (the "Fee Objection") limited to the issue of the reasonableness of such fees and expenses, and any failure by any such party to file a Fee Objection within such ten day period shall constitute a waiver of any right of such party to object to the applicable invoice. Notwithstanding any provision herein to the contrary, any objection to, and any hearing on an objection to, payment of any fees, costs, and expenses set forth in a professional fee invoice in respect of Lender Professionals shall be limited to the reasonableness

of the particular items or categories of the fees, costs, and expenses that are the subject of such objection. The Debtors shall timely pay in accordance with the terms and conditions of this Final Order (a) the undisputed fees, costs, and expenses reflected on any invoice to which a Fee Objection has been timely filed and (b) all fees, costs and expenses on any invoice to which no Fee Objection has been timely filed. All such unpaid fees, costs, expenses, and charges of the DIP Agent that have not been disallowed by this Court on the basis of an objection filed by the Debtor, the United States Trustee or the Committee (or any subsequent trustee of the Debtors' estates) in accordance with the terms hereof shall constitute DIP Obligations and shall be secured by the DIP Collateral as specified in this Final Order. ~~Any and all fees, commissions, costs, and expenses paid prior to the Petition Date by any Debtor to the DIP Agent or the other DIP Secured Parties in connection with or with respect to the DIP Facility, the DIP Credit Agreement, or the other DIP Loan Documents are hereby approved in full and non-refundable and shall not otherwise be subject to any Challenge.~~

(c) Binding Effect. Subject only to Paragraph 6 above, the provisions of this Final Order, including all findings herein, and the DIP Loan Documents shall be binding upon all parties in interest in these Chapter 11 Cases and any Successor Cases, including the DIP Secured Parties, the Prepetition First Lien Secured Parties, any Committee, and the Debtors and their respective estates, successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary or responsible person appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors), whether in any of the Chapter 11 Cases, in any Successor Cases, or upon dismissal of any such Case or Successor Case; provided, however, that except to the extent

expressly provided in Paragraph 6, the DIP Secured Parties and the Prepetition First Lien Secured Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 or chapter 11 trustee or other responsible person appointed for the estates of the Debtors in any Chapter 11 Case or Successor Case.

(d) No Waiver. The failure of the Prepetition First Lien Secured Parties or the DIP Secured Parties to seek relief or otherwise exercise their rights and remedies under this Final Order, the Prepetition First Lien Loan Documents, the DIP Loan Documents or otherwise (or any delay in seeking or exercising same) shall not constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Nothing contained in this Final Order (including the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims, or defenses available in law or equity to any Prepetition First Lien Secured Party or any DIP Secured Party, including rights of a party to a swap agreement, securities contract, commodity contract, forward contract, or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of the Debtors to contest or object to such assertion). Except as provided by this Final Order, the entry of this Final Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, any right or ability of the Prepetition First Lien Secured Parties or the DIP Secured Parties under the Bankruptcy Code or under non-bankruptcy law to (i) request conversion of the Chapter 11 Cases or any Successor Cases to cases under chapter 7, dismissal of the Chapter 11 Cases or any Successor Cases, or the appointment of a trustee or examiner in the Chapter 11 Cases or any Successor Cases, or to oppose the use of Cash Collateral in any Successor Case, (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, any chapter 11 plan or plans with respect to any of the Debtors or seek early termination of the

Debtors' exclusive rights to propose a plan under the Bankruptcy Code, or (iii) exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Secured Parties or the Prepetition First Lien Secured Parties, respectively, under the DIP Loan Documents or the Prepetition First Lien Loan Documents, the Bankruptcy Code or otherwise, in each case with the rights of the Debtors to contest or object thereto reserved. Except to the extent otherwise expressly provided in this Final Order or by law, neither the commencement of the Chapter 11 Cases nor the entry of this Final Order shall limit or otherwise modify the rights and remedies of the Prepetition First Lien Secured Parties under the Prepetition First Lien Loan Documents or with respect to any non-Debtor entities or their respective assets, whether such rights and remedies arise under the Prepetition First Lien Loan Documents, applicable law, or equity.

(e) No Third Party Rights. Except as explicitly provided for herein or in any DIP Loan Document, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder, or direct, indirect, or incidental beneficiary. In determining to make any loan (whether under the DIP Credit Agreement or otherwise) or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Loan Documents, the DIP Secured Parties and the Prepetition First Lien Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any similar federal, state or local statute or regulation) or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders, or estates.

(f) ~~No Marshaling. Neither the DIP Secured Parties nor the Prepetition First Lien Secured Parties shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition First Lien Collateral, as applicable.~~Reserved.

(g) Amendments. The Debtors are authorized and empowered, without further notice and hearing or approval of this Court, to amend, modify, supplement, or waive any provision of the DIP Loan Documents in accordance with the provisions thereof, in each case unless such amendment, modification, supplement, or waiver is material; provided that the Committee shall be given at least three (3) business days' prior written notice of any such amendment with an opportunity to object and seek resolution by the Court of any such objection (which shall toll the effectiveness of such proposed amendment until resolved). No waiver, modification, or amendment of any of the provisions of the DIP Loan Documents shall be effective unless set forth in writing, signed by or on behalf of the Borrower and the DIP Agent (after having obtained the approval of the requisite DIP Secured Parties under the DIP Credit Agreement) and, except as provided herein, approved by this Court. Notwithstanding the foregoing, no waiver, modification or amendment of any of the provisions of this Final Order or the DIP Loan Documents that would directly and adversely affect the rights or interests of the Prepetition First Lien Secured Parties, as applicable, shall be effective unless also consented to in writing by the Prepetition First Lien Agent on behalf of the Prepetition First Lien Secured Parties (after obtaining the approval of the requisite Prepetition First Lien Secured Parties under the Prepetition First Lien Credit Agreement).

(h) Committee Reporting Obligations. The Debtors shall deliver to the Committee all information, reports, documents and other material that the Debtors provide to the DIP Secured Parties pursuant to the DIP Loan Documents.

(~~h~~i) Inconsistency. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents and of this Final Order, the provisions of this Final Order shall govern and control. In the event of any inconsistency between the terms or conditions of this Final Order and the terms or conditions of any other order entered by this Court in the nature of a "first day order", the provisions of this Final Order shall govern and control.

(~~i~~j) Enforceability. This Final Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Final Order.

(~~j~~k) Reservation of Rights. Nothing in this Final Order shall be deemed to constitute the consent of the DIP Secured Parties or the Prepetition First Lien Secured Parties, and except as expressly provided in the DIP Loan Documents, each of the foregoing expressly reserve the right to object, to entry of any Order of the Bankruptcy Court that provides for the sale or other disposition of all or substantially all of the assets of the Debtors (or any other sale or other disposition of assets of any of the Debtors outside the ordinary course of business) to any party unless, in connection and concurrently with any such event, the proceeds of such

sale are or will be sufficient to satisfy Payment in Full of the DIP Obligations and the Prepetition First Lien Obligations on the closing date of such sale.

(~~k~~l) Headings. Paragraph headings used herein are for convenience only and are not to affect the construction of, or to be taken into consideration in, interpreting this Final Order.

21. **Necessary Action**. The Debtors are authorized to take any and all such actions as are necessary, required or appropriate to implement and effectuate the terms of this Final Order, the DIP Loan Documents and the transactions contemplated hereunder and thereunder.

22. **Retention of Jurisdiction**. This Court has and will retain jurisdiction to enforce this Final Order according to its terms.

23. **Specific Provisions.**

(a) Chubb Reservation of Rights. For the avoidance of doubt, (i) the Debtors shall not grant liens and/or security interests in any property held by ACE American Insurance Company and Federal Insurance Company and each of their U.S.-based affiliates and predecessors (collectively, and solely in their roles as insurers, "Chubb") or any insurance policy issued by Chubb; (ii) this Final Order does not grant the Debtors any right to use any property (or the proceeds thereof) held by Chubb as collateral to secure obligations under any insurance policies and related agreements; (iii) the proceeds of any insurance policy issued by Chubb shall only be considered to be DIP Collateral to the extent such proceeds are paid to the Debtors pursuant to the terms of any such applicable insurance policy; and (iv) nothing in the Interim Order, this Final Order, or the DIP Loan Documents or any document related thereto (collectively, the "DIP

Documents") alters or modifies the terms and conditions of any insurance policies or related agreements.

(b) Statement Regarding Applied Surety Underwriters. Nothing in the DIP Documents shall waive, alter, limit, modify, and/or release any rights, claims, liens, and/or interest of Applied Surety Underwriters and/or any of the companies for which Applied Surety Underwriters underwrites surety bonds, including, without limitation, SiriusPoint America Insurance Company and Intact Insurance Group (collectively, "Applied") with respect to any bonds issued by Applied on behalf of the Debtors (the "Applied Bonds"), any of Applied's indemnity agreements relating to the Applied Bonds (the "Applied Indemnity Agreements"), and any and all collateral of Applied, or the proceeds thereof (the "Applied Collateral"). Nothing in the DIP Documents shall alter, limit, waive, and/or release any rights, liens, claims, and/or interests of the Debtors in respect of the Applied Bonds, the Applied Indemnity Agreements, and/or the Applied Collateral. For the avoidance of doubt, to the extent Applied has a Prepetition Prior Lien, Applied's rights and interests in the Applied Collateral shall not be a Primed Lien.

(c) Westchester Fire Insurance Company. Nothing in the DIP Documents, shall in any way prime, or negatively affect the rights of Westchester Fire Insurance Company and Federal Insurance Company or their past, present, or future parents, subsidiaries, and surety affiliates (individually and collectively referred to as the "Surety" (and in their capacities as such)) as to: (a) any funds it is holding and/or being held for it presently or in the future, whether in trust, as security, or otherwise, including, but not limited to, by any of the Debtors in relation to contracts or obligations bonded by the Surety; (b) any substitutions or replacements of said funds, including accretions to and interest earned on said funds; or (c) any letter of credit or cash

collateral, related to any indemnity, collateral trust, bond, or agreements, provided it/they are between, among, or involve the Surety and any of the Debtors (including both the Cash Collateral Agreement dated June 16, 2025 between the Surety and ModivCare, Inc. fka Providence Service Corporation, and the Cash Collateral Agreement dated September [●], 2025 between the Surety and ModivCare, Inc., whereby the Surety is holding approximately $7.3 million), (collectively (a) through (c), the "Surety Assets"). Nothing in the DIP Documents shall negatively affect the rights of the Surety under any current or future indemnity, collateral trust, or related agreements between or involving the Surety and any of the Debtors as to the Surety Assets, including but not limited to, the two Agreements of Indemnity executed by (a) non-debtor Charter LCI Corporation and LogisticCare, Inc. (now Debtor ModivCare Solutions, LLC), on or about February 6, 2009, in favor of the Surety, and (b) Providence Services Corporation (now Debtor ModivCare Inc.), on or about February 21, 2008 in favor of the Surety, as well as an agreement of indemnity executed by ModivCare Solutions, LLC and ModivCare Inc. in favor of the Surety, on [August 29, 2025]. In addition, nothing in the DIP Documents shall prime or affect: (x) current or future setoff and/or recoupment rights and/or the lien rights of the Surety or of any party to whose rights the Surety has or may become subrogated; and/or (y) any existing or future subrogation or other common law rights of the Surety.

(a) ~~(d)~~ Nothing herein is an admission by the Surety or the Debtors, or a determination by the Bankruptcy Court, regarding any claims against any bonds, and the rights, remedies, and defenses of the Surety and the Debtors (or any successors in interest to any of the Debtors), and any creditors in connection therewith, are expressly reserved and preserved. Notwithstanding anything in the DIP Documents to the contrary, and subject to the terms herein, the Debtors hereby agree that, during the pendency of these proceedings, the Debtors shall, in

accordance with and subject to applicable law and any current or future indemnity, collateral trust, or related agreements, reimburse the Surety for reasonable and documented attorneys' fees and costs incurred and to be incurred by the Surety, without the Surety having to file a fee application, proof of claim and/or request for payment. The Surety's right to object to any proposed assignment of any bonds issued by the Surety or any indemnity agreement signed by the Surety and any of the Debtors is hereby fully preserved.

Dated: _____, 2025
Houston, Texas

_____
UNITED STATES BANKRUPTCY JUDGE

SCHEDULE 1[4]

LIEN/CLAIM PRIORITIES

Priority	DIP Collateral	Priority Claims
First	Carve-Out	Carve-Out
Second	Permitted Prior Liens	DIP Superpriority Claims
Third	DIP Liens	First Lien Adequate Protection Superpriority Claims (subject to payment in full of the DIP Obligations)
Fourth	First Lien Adequate Protection Liens	Second Lien Adequate Protection Superpriority Claims (subject to payment in full of the DIP Obligations and the Prepetition First Lien Obligations)
Fifth	Prepetition First Liens	-
Sixth	Second Lien Adequate Protection Liens	-
Seventh	Prepetition Second Liens	-

[4] This schedule is for illustrative purposes only and, to the extent of any conflicts with the Final DIP Order, the Final DIP Order controls.

EXHIBIT A

CHAPTER 11 MILESTONES

1. As of 11:59 p.m. prevailing Eastern Time on ~~October 6, 2025~~[January 5, 2026], the Court shall have entered an order approving a disclosure statement with respect to solicitation of the Plan (as defined in the Restructuring Support Agreement);

2. As of the 11:59 p.m. prevailing Eastern Time on ~~November 18, 2025~~[February 16, 2026], the Court shall have entered a confirmation order providing for confirmation of the Plan; and

3. As of the 11:59 p.m. prevailing Eastern Time on ~~December 8, 2025~~[March 9, 2026], the effective date of the Plan shall have occurred.

Summary report: **Litera Compare for Word 11.8.0.56 Document comparison done on 9/19/2025 3:08:33 PM**	
Style name: 2_WC_StandardSet	
Intelligent Table Comparison: Active	
Original filename: ModivCare - Final DIP Order (LW Draft 09.09).docx	
Modified filename: ModivCare - Final DIP Order (W&C comments).docx	
Changes:	
Add	147
~~Delete~~	174
~~Move From~~	13
Move To	13
Table Insert	0
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	347

EXHIBIT B

Project Mountains
8/20 DIP Budget

CONFIDENTIAL
SUBJECT TO MATERIAL CHANGE

($ in 000's)	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	
Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	
Week Ending	*8/24/25*	*8/31/25*	*9/7/25*	*9/14/25*	*9/21/25*	*9/28/25*	*10/5/25*	*10/12/25*	*10/19/25*	*10/26/25*	*11/2/25*	*11/9/25*	*11/16/25*	*Total*
Beginning Cash	**$ 63,046**	**$ 87,507**	**$ 67,545**	**$ 75,848**	**$ 66,305**	**$ 107,286**	**$ 78,222**	**$ 61,883**	**$ 65,869**	**$ 82,586**	**$ 70,433**	**$ 67,177**	**$ 72,775**	**$ 63,046**
Collections	20,440	20,559	21,792	30,102	72,175	21,424	5,811	32,487	65,630	29,385	13,319	21,485	30,025	384,635
Contracts Receivable	-	3,059	-	17,592	4,337	-	3,427	-	113	-	-	-	176	28,703
Contracts Payable	-	(2,103)	-	(6,510)	-	-	(400)	-	-	-	(0)	-	(18)	(9,032)
Mobility	20,440	21,515	21,792	41,184	76,512	21,424	8,838	32,487	65,743	29,385	13,319	21,485	30,182	404,306
PCS	15,574	14,662	13,738	13,375	13,375	13,375	12,939	12,647	10,118	12,647	12,647	15,735	12,588	173,422
RPM	1,470	1,470	1,192	1,490	1,490	1,490	1,466	1,450	1,160	1,450	1,450	1,779	1,423	18,781
Collections - Other	70	70	390	70	70	70	390	70	70	70	70	390	70	1,870
Total Operating Receipts	37,554	37,717	37,111	56,119	91,447	36,359	23,632	46,655	77,092	43,553	27,487	39,389	44,263	598,379
Financing Receipts	42,500	-	12,500	-	-	-	-	12,500	-	-	7,500	25,000	-	100,000
Disbursements														
Payroll/Benefits	(19,188)	(11,646)	(17,831)	(11,646)	(17,851)	(11,646)	(17,855)	(11,646)	(17,858)	(11,646)	(17,895)	(11,646)	(17,905)	(196,260)
TP/MR Disbursements	(25,461)	(38,388)	(14,893)	(44,888)	(23,932)	(44,088)	(11,947)	(35,128)	(31,758)	(35,685)	(11,919)	(34,331)	(31,103)	(383,520)
Other Disbursements[1]	(4,763)	(5,356)	(6,467)	(7,186)	(6,740)	(6,830)	(7,622)	(6,864)	(7,129)	(6,974)	(6,121)	(11,239)	(11,664)	(94,955)
DIP Interest/Fees	(1,250)	(459)	-	-	-	(918)	(750)	-	-	-	(909)	-	-	(4,286)
Total Disbursements (excl. Restructuring Fees)	(50,663)	(55,849)	(39,191)	(63,720)	(48,524)	(63,482)	(38,173)	(53,638)	(56,745)	(54,306)	(36,843)	(57,216)	(60,672)	(679,021)
Restructuring Fees - Not Subject to Escrow	(3,251)	-	(175)	-	-	-	(269)	-	(2,100)	-	-	(175)	(975)	(6,945)
Restructuring Fees - Subject to Escrow	(1,680)	(1,830)	(1,942)	(1,942)	(1,942)	(1,942)	(1,530)	(1,530)	(1,530)	(1,400)	(1,400)	(1,400)	(1,400)	(21,468)
Total Disbursements	(55,594)	(57,679)	(41,308)	(65,662)	(50,466)	(65,424)	(39,972)	(55,168)	(60,375)	(55,706)	(38,243)	(58,791)	(63,047)	(707,434)
Net Cash Flow	24,461	(19,962)	8,303	(9,543)	40,981	(29,065)	(16,339)	3,987	16,717	(12,153)	(3,256)	5,598	(18,783)	(9,055)
Ending Cash	**$ 87,507**	**$ 67,545**	**$ 75,848**	**$ 66,305**	**$ 107,286**	**$ 78,222**	**$ 61,883**	**$ 65,869**	**$ 82,586**	**$ 70,433**	**$ 67,177**	**$ 72,775**	**$ 53,992**	**$ 53,992**
DIP Account Balance[2]	20,000	20,000	7,500	7,500	7,500	7,500	45,000	32,500	32,500	32,500	25,000	-	-	-
Ending Liquidity	**$ 107,507**	**$ 87,545**	**$ 83,348**	**$ 73,805**	**$ 114,786**	**$ 85,722**	**$ 106,883**	**$ 98,369**	**$ 115,086**	**$ 102,933**	**$ 92,177**	**$ 72,775**	**$ 53,992**	**$ 53,992**
Memo: Restructuring Fee Escrow														
Beginning Balance	**$ -**	**$ 1,680**	**$ 3,360**	**$ 5,102**	**$ 7,044**	**$ 8,986**	**$ 10,779**	**$ 12,108**	**$ 13,638**	**$ 5,700**	**$ 7,100**	**$ 8,350**	**$ 9,550**	**$ -**
Funding	1,680	1,830	1,942	1,942	1,942	1,942	1,530	1,530	1,530	1,400	1,400	1,400	1,400	21,468
Disbursement	-	(150)	(200)	-	-	(150)	(200)	-	(9,468)	-	(150)	(200)	(5,470)	(15,988)
Ending Balance	**$ 1,680**	**$ 3,360**	**$ 5,102**	**$ 7,044**	**$ 8,986**	**$ 10,779**	**$ 12,108**	**$ 13,638**	**$ 5,700**	**$ 7,100**	**$ 8,350**	**$ 9,550**	**$ 5,480**	**$ 5,480**

[1] Includes HSR, rent, operating and other disbursements.
[2] The remaining $37.5M of total $100.0M funds will not be funded into the DIP Account until approval of Final DIP order, expected ~45 days post filing.

Project Mountains
Restructuring Fees - Not Subject to Escrow Detail

CONFIDENTIAL
SUBJECT TO MATERIAL CHANGE

($ in 000's)	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	Fcst	
Week #	1	2	3	4	5	6	7	8	9	10	11	12	13	
Week Ending	8/24/25	8/31/25	9/7/25	9/14/25	9/21/25	9/28/25	10/5/25	10/12/25	10/19/25	10/26/25	11/2/25	11/9/25	11/16/25	Total
Company Professionals														
Latham Watkins	$ (2,000)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ (3,600)	$ -	$ -	$ -	$ (2,400)	$ (8,000)
Latham Watkins - Retainer	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Latham Watkins (holdback)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hunton	-	-	-	-	-	-	-	-	(240)	-	-	-	(160)	(400)
Hunton - Retainer	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Hunton (holdback)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FTI - RX	(500)	-	-	-	-	-	-	-	(2,400)	-	-	-	(1,600)	(4,500)
FTI - Rev Cycle	(0)	-	-	-	-	-	-	-	-	-	-	-	-	(0)
FTI - SG&A (Expense Reduction Support / Project Forward)	(2)	-	-	-	-	-	-	-	(168)	-	-	-	-	(170)
FTI - Healthcare	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FTI - CTO	-	(150)	-	-	-	(150)	-	-	-	-	(150)	-	-	(450)
FTI - Retainer	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FTI - RX (holdback)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FTI - Completion Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Claims Agent	-	-	-	-	-	-	-	-	(1,500)	-	-	-	(750)	(2,250)
Claims Agent - Retainer	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Moelis	-	-	(200)	-	-	-	(200)	-	-	-	-	(200)	-	(600)
Moelis - Success Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Moelis - DIP Fee	-	-	-	-	-	-	-	-	(1,000)	-	-	-	-	(1,000)
Total Company Restructuring Fees	**$ (2,503)**	**$ (150)**	**$ (200)**	**$ -**	**$ -**	**$ (150)**	**$ (200)**	**$ -**	**$ (8,908)**	**$ -**	**$ (150)**	**$ (200)**	**$ (4,910)**	**$ (17,371)**
Lender Professionals														
Paul Hastings	(515)	-	-	-	-	-	-	-	(1,125)	-	-	-	(750)	(2,390)
Paul Hastings - Retainer	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Chilmark	-	-	-	-	-	-	-	-	(225)	-	-	-	(225)	(450)
Chilmark - Retainer	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Lazard	-	-	(175)	-	-	-	(175)	-	-	-	-	(175)	-	(525)
Lazard - Success Fee	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Jefferies - Fronting Fee	(156)	-	-	-	-	-	(94)	-	-	-	-	-	-	(250)
Total Lender Restructuring Fees	**$ (671)**	**$ -**	**$ (175)**	**$ -**	**$ -**	**$ -**	**$ (269)**	**$ -**	**$ (1,350)**	**$ -**	**$ -**	**$ (175)**	**$ (975)**	**$ (3,615)**
UCC Professionals														
Counsel	-	-	-	-	-	-	-	-	(400)	-	-	-	(400)	(800)
Counsel (holdback)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Advisor	-	-	-	-	-	-	-	-	(160)	-	-	-	(160)	(320)
Advisor (holdback)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total UCC Restructuring Fees	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ (560)**	**$ -**	**$ -**	**$ -**	**$ (560)**	**$ (1,120)**
Other														
UST Fees	-	-	-	-	-	-	-	-	(750)	-	-	-	-	(750)
Wilmington Trust (DIP Agent)	(77)	-	-	-	-	-	-	-	-	-	-	-	-	(77)
Total Other Restructuring Fees	**$ (77)**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ (750)**	**$ -**	**$ -**	**$ -**	**$ -**	**$ (827)**
Total Restructuring Fees	**$ (3,251)**	**$ (150)**	**$ (375)**	**$ -**	**$ -**	**$ (150)**	**$ (469)**	**$ -**	**$ (11,568)**	**$ -**	**$ (150)**	**$ (375)**	**$ (6,445)**	**$ (22,933)**
Restructuring Fees - Not Subject to Escrow	**$ (3,251)**	**$ -**	**$ (175)**	**$ -**	**$ -**	**$ -**	**$ (269)**	**$ -**	**$ (2,100)**	**$ -**	**$ -**	**$ (175)**	**$ (975)**	**$ (6,945)**

Project Mountains
Restructuring Fees - Subject to Escrow Detail

CONFIDENTIAL
SUBJECT TO MATERIAL CHANGE

($ in 000's)	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	*Fcst*	
Week #	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**11**	**12**	**13**	
Week Ending	***8/24/25***	***8/31/25***	***9/7/25***	***9/14/25***	***9/21/25***	***9/28/25***	***10/5/25***	***10/12/25***	***10/19/25***	***10/26/25***	***11/2/25***	***11/9/25***	***11/16/25***	***Total***
Company Professionals														
Latham Watkins	$ (750)	$ (750)	$ (750)	$ (750)	$ (750)	$ (750)	$ (600)	$ (600)	$ (600)	$ (600)	$ (600)	$ (500)	$ (500)	$ (8,500)
Hunton	(50)	(50)	(50)	(50)	(50)	(50)	(40)	(40)	(40)	(40)	(40)	(50)	(50)	(600)
FTI - RX	(500)	(500)	(500)	(500)	(500)	(500)	(400)	(400)	(400)	(400)	(400)	(400)	(400)	(5,800)
FTI - Rev Cycle	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FTI - SG&A (Expense Reduction Support / Project Forward)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	(19)	-	-	-	-	(168)
FTI - Healthcare	-	-	-	-	-	-	-	-	-	-	-	-	-	-
FTI - CTO	-	(150)	(38)	(38)	(38)	(38)	(30)	(30)	(30)	(30)	(30)	(38)	(38)	(525)
Claims Agent	(250)	(250)	(250)	(250)	(250)	(250)	(150)	(150)	(150)	(150)	(150)	(188)	(188)	(2,625)
Moelis	-	-	(50)	(50)	(50)	(50)	(40)	(40)	(40)	(40)	(40)	(50)	(50)	(500)
Moelis - DIP Fee	(111)	(111)	(111)	(111)	(111)	(111)	(111)	(111)	(111)	-	-	-	-	(1,000)
Total Company Restructuring Fees	**$ (1,680)**	**$ (1,830)**	**$ (1,767)**	**$ (1,767)**	**$ (1,767)**	**$ (1,767)**	**$ (1,390)**	**$ (1,390)**	**$ (1,390)**	**$ (1,260)**	**$ (1,260)**	**$ (1,225)**	**$ (1,225)**	**$ (19,718)**
Lender Professionals														
Paul Hastings														-
Chilmark														-
Lazard														-
Total Lender Restructuring Fees	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**
UCC Professionals														
Counsel	-	-	(125)	(125)	(125)	(125)	(100)	(100)	(100)	(100)	(100)	(125)	(125)	(1,250)
Advisor	-	-	(50)	(50)	(50)	(50)	(40)	(40)	(40)	(40)	(40)	(50)	(50)	(500)
Total UCC Restructuring Fees	**$ -**	**$ -**	**$ (175)**	**$ (175)**	**$ (175)**	**$ (175)**	**$ (140)**	**$ (140)**	**$ (140)**	**$ (140)**	**$ (140)**	**$ (175)**	**$ (175)**	**$ (1,750)**
Other														
UST Fees														-
Wilmington Trust (DIP Agent)														-
Total Other Restructuring Fees	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**
Restructuring Fees - Subject to Escrow	**$ (1,680)**	**$ (1,830)**	**$ (1,942)**	**$ (1,942)**	**$ (1,942)**	**$ (1,942)**	**$ (1,530)**	**$ (1,530)**	**$ (1,530)**	**$ (1,400)**	**$ (1,400)**	**$ (1,400)**	**$ (1,400)**	**$ (21,468)**