

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

PARETEUM CORPORATION, et al.

Debtors.

Chapter 11

Case No. 22-10615 (LGB)

Related Docket Nos. 13, 39

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION
SENIOR SECURED, PRIMING AND SUPERPRIORITY FINANCING, (II)
AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING ADEQUATE
PROTECTION TO PREPETITION SECURED PARTIES,
AND (IV) GRANTING RELATED RELIEF**

This matter coming before the Court upon the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Senior Secured, Priming and Superpriority Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* (the “Motion”) of Pareteum Corporation (“Pareteum”) and its affiliates as borrowers (the “Borrowers” in their capacity as such, or the “Debtors”),¹ under sections 105, 361, 362, 363, 364 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), seeking entry of the Interim Order (as defined herein) and a final order (this “Final Order”), among other things:

- (i) authorizing the Borrowers to enter into that certain Senior Secured, Priming and Superpriority Debtor-in-Possession Credit Agreement, dated as of May 19, 2022 (as amended, supplemented or otherwise modified from time to time, the “DIP Facility Agreement”), among the Borrowers, Circles MVNE

¹ Capitalized terms used in this Final Order but not defined herein shall have the meanings ascribed to such terms in the Motion or the DIP Facility Agreement (as defined below), as applicable.



Pte. Ltd. (“Circles”) and each additional party that becomes a lender thereto (collectively, the “DIP Lender”), and Circles as administrative agent (in such capacity, the “DIP Agent” and together with the DIP Lender, the “DIP Secured Parties”) and authorizing the Borrowers to enter into all related documents, orders and agreements (together with the DIP Facility Agreement, the “DIP Facility Documents”);

- (ii) authorizing the Borrowers to obtain a senior secured, priming and superpriority multiple draw term loan facility (under and in accordance with the DIP Facility Agreement, as briefly described herein, the “DIP Facility”) in an aggregate principal amount of up to \$18,000,000 and such other financial accommodations, allocated as follows:
- (a) *New Money Loans.* A superpriority priming new money multi-draw term loan facility in the principal amount of \$6,000,000.00 (the “New Money Commitments” and the term loans made thereunder, the “New Money Loans”);
- (b) *Roll-Up Loans.* A roll-up of the obligations and amounts outstanding as of the Petition Date (the “Roll-Up Loans”) under that certain prepetition senior secured bridge note due 2022 between Pareteum Corporation as issuer and Circles as lender and holder (as amended, restated, supplemented or otherwise modified from time to time and together with all schedules and exhibits attached thereto, all agreements, documents, certificates, instruments and/or amendments executed by and/or delivered by or to any party thereto in connection therewith, the “Prepetition Bridge Loan”; and all obligations and amounts outstanding thereunder, the “Prepetition Bridge Loan Obligations”), owed to Circles MVNE Pte. Ltd. (in its capacity as lender under the Prepetition Bridge Loan), in each case, in accordance with the terms of the DIP Facility Agreement, the Interim Order, and this Final Order, whereby (i) in the Interim Period, one dollar of roll-up loans (up to an amount of \$3,000,000) was deemed made for every dollar of New Money Loans disbursed (or reserved, as applicable) following entry of the Interim Order and (ii) upon entry of this Final Order and disbursement of the remaining New Money Loans in respect of the unused New Money Commitments, Roll-Up Loans shall be deemed made in an amount equal to the outstanding Prepetition Bridge Loan Obligations and \$6 million of obligations under the Prepetition First Lien Note (as defined herein) without regard to the New Money Loans actually disbursed (such that upon entry of this Final Order, two dollars of Roll-Up Loans shall have been deemed made for every dollar of New Money Commitments); and
- (c) *Interim Availability Amount.* During the Interim Period (as defined in the Interim Order) the maximum amount available to be drawn was

\$3,000,000.00 of the New Money Commitments (the “Interim Availability Amount”), subject to compliance with the terms, conditions and covenants described in the DIP Facility Documents and in accordance with the Approved Budget (as defined below);

- (iii) authorizing the Debtors to use the proceeds of the DIP Facility as expressly provided in the DIP Facility Documents and solely in accordance with the revised budget attached hereto as **Exhibit A** (the “Approved Budget”);
- (iv) authorizing the Debtors to execute and deliver the DIP Facility Agreement and the other DIP Facility Documents and to perform such other acts as may be necessary or desirable in connection with the DIP Facility Documents;
- (v) in accordance with the relative priorities as set forth more fully below, and subject to the Carve-Out (as defined below), the following:
 - (a) pursuant to section 364(c)(1) of the Bankruptcy Code, authorizing the Debtors to grant, on a final basis, the DIP Lender superpriority allowed administrative expense claim status in the Cases and any Successor Case (as defined herein) in respect of all obligations, joint and several, owing under the DIP Facility Documents to the DIP Lender (including without limitation all “Obligations,” as defined in the DIP Facility Agreement , the “DIP Obligations”);
 - (b) pursuant to section 364(c)(2) of the Bankruptcy Code, authorizing the Debtors to grant, on a final basis, to the DIP Lender automatically perfected senior security interests in and liens on all of the DIP Collateral (as defined herein) not otherwise subject to a lien (as defined herein), in each case subject to the priorities set forth herein;
 - (c) pursuant to section 364(d) of the Bankruptcy Code, authorizing the Debtors to grant, on a final basis, a senior first-priority priming lien on, and security interest in, all of the DIP Collateral, in each case subject to the priorities set forth herein;
- (vi) authorization, on a final basis, for the DIP Lender to terminate (a) the funding commitments under the DIP Facility Agreement, and (b) the Debtors’ use of Cash Collateral (as defined below), each upon the occurrence and continuance of an “Event of Default” (as defined in the DIP Facility Agreement) on terms specified herein and in the DIP Facility Agreement;
- (vii) granting, on a final basis, liens to the DIP Agent, on the proceeds of the Debtors’ claims and causes of action arising under sections 502(d), 544, 545, 547, 548, 549, 550, and 553 of the Bankruptcy Code and any other avoidance or similar action under the Bankruptcy Code or similar state law (each, an “Avoidance Action”; and the proceeds thereof, the “Avoidance

Action Proceeds”) (excluding Avoidance Action Proceeds resulting from a successful Challenge of the Prepetition Lenders’ claims or liens);

- (viii) authorizing, on a final basis, the Debtors to use, among other things, solely in accordance with the Approved Budget and subject to the Carve-Out, any cash collateral (as that term is defined in section 363(a) of the Bankruptcy Code, the “Cash Collateral”) in which the Prepetition Secured Parties (as defined below) may have an interest and the granting of adequate protection to the Prepetition Secured Parties with respect to any post-petition diminution in value of their interests in the Prepetition Collateral (as defined below) arising from, *inter alia*, the Debtors’ sale, use, or lease of the Prepetition Collateral (including the Cash Collateral) and the priming of the liens of the Prepetition Secured Parties by the DIP Liens (as defined below);
- (ix) authorizing, on a final basis, the waiver of the Debtors’ right to assert (a) any claims to surcharge against the Prepetition Collateral or DIP Collateral pursuant to section 506(c) of the Bankruptcy Code, (b) any “equities of the case” claims under section 552(b) of the Bankruptcy Code, and (c) the equitable doctrine of “marshaling” or any similar doctrine with respect to the Prepetition Collateral or DIP Collateral other than DIP Collateral constituting Avoidance Action Proceeds; provided, however, nothing contained herein shall be deemed or interpreted as the DIP Lender or the Prepetition Secured Parties consenting to the application or the implementation of “marshaling” with respect to Avoidance Action Proceeds, for which such parties reserve all rights;
- (x) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Facility Documents, the Interim Order, and this Final Order;
- (xi) the waiver of any applicable stay (including under Rule 6004 of the Bankruptcy Rules) and the provision of immediate effectiveness of the Interim Order, and this Final Order; and
- (xii) granting the Debtors such other and further relief as is just and proper;

and the Court having considered the Motion, the exhibits attached thereto, the DIP Facility Documents, and the evidence submitted or adduced and the arguments of counsel made at the Interim Hearing, the *Declaration of Laura W. Thomas in Support of the Debtors’ Chapter 11 Petitions and First Day Pleadings*, and the final hearing held on June 7, 2022 (the “Final Hearing”); and the Court having entered the *Interim Order (I) Authorizing the Debtors to Obtain*

Postpetition Senior Secured, Priming and Superpriority Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief [Docket No. 39] (the “Interim Order”); and notice of the Final Hearing having been given in accordance with Bankruptcy Rules 4001(b), (c) and (d), 9014, and Local Rule 4001-2; and the Final Hearing to consider the relief requested in the Motion on a final basis having been held and concluded; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates, and their creditors and equity holders, and is essential for the continued operation of the Debtors’ business; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

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

A. *Petition Date.* On May 15, 2022, each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the “Court”) commencing the Cases.

B. *Debtors in Possession.* The Debtors are continuing in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Cases.

C. *Jurisdiction and Venue.* The Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief sought herein are sections 105, 361,

362, 363, 364, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and the applicable Local Rules.

D. Committee Formation. On May 24, 2022, the Office of the United States Trustee (the “U.S. Trustee”) appointed an official committee of unsecured creditors in these Cases pursuant to Section 1102 of the Bankruptcy Code (the “Creditors’ Committee”) in the Cases.

E. Debtors’ Stipulations. After consultation with their attorneys and financial advisors, and subject to paragraph 34 herein, the Debtors admit, stipulate, acknowledge and agree that (collectively, paragraphs E(i) through E(vii) below are referred to herein as the “Debtors’ Stipulations”):

(i) Prepetition Documents. As of the Petition Date, the Debtors were parties to the (A) Prepetition Bridge Loan Agreement, (B) the Prepetition First Lien Note, and (C) the second lien notes issued by Pareteum in favor of Channel Ventures Group LLC (“CVG” and, together with Circles, the “Prepetition Secured Parties” or the “Prepetition Lenders”) under the Securities Purchase Agreement dated February 22, 2021 (the “Prepetition Second Lien Notes”) (all related documents, guaranties and agreements of the foregoing, collectively, as the same may be amended, waived, supplemented or modified from time to time, the “Prepetition Documents”).

(ii) Prepetition First Lien Obligations. As of the Petition Date, the aggregate amount owed by the Debtors under the Prepetition Bridge Loan and that certain prepetition Senior Secured Convertible Note due 2025 among Pareteum, as issuer, and High Trail Investments SA LLC, as initial holder, subsequently sold to Circles, as holder (as amended, restated, supplemented or otherwise modified from time to time and together with all schedules and exhibits attached thereto, all agreements, documents, certificates,

instruments and/or amendments executed by and/or delivered by or to any party thereto in connection therewith, the “Prepetition First Lien Note” and, together with the Prepetition Bridge Loan, the “Prepetition Loans”), without defense, counterclaim or offset of any kind in respect of the Prepetition Documents was not less than \$27,754,263, made available to the Borrowers pursuant to the Prepetition Loans (together with any amounts paid or incurred or accrued but unpaid prior to the Petition Date in accordance with the Prepetition Documents, including but not limited to, accrued and unpaid interest, any fees, expenses and disbursements, treasury, cash management, derivative obligations, indemnification obligations, and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Debtors’ obligations pursuant to the Prepetition Documents, the “Prepetition Obligations”).

(iii) *Prepetition Second Lien Obligations.* As of the Petition Date, the Debtors also owed not less than \$26,253,904 under the Prepetition Second Lien Notes (the “Prepetition Second Lien Obligations” and, together with the Prepetition Obligations, the “Prepetition Lien Obligations”).

(iv) *Prepetition Collateral and Prepetition Liens.* As more fully set forth in the Prepetition Documents, prior to the Petition Date, the Debtors granted first-priority security interests in and liens (collectively, the “Prepetition Liens”) on substantially all of the property of the Debtors (collectively, the “Prepetition Collateral”) to the Prepetition Lenders.

(v) *Prepetition Secured Indebtedness and Prepetition Liens.* The Debtors acknowledge and agree that:

- a. the Prepetition Lien Obligations constitute legal, valid, binding, enforceable and non-avoidable obligations of the Debtors in an amount not less than \$60,008,167;
- b. the Prepetition Liens on the Prepetition Collateral are valid, binding, enforceable, non-avoidable and properly perfected; and
- c. As of the Petition Date, the Prepetition Liens have priority over any and all other liens, if any, on the Prepetition Collateral (except Permitted Priority Liens (as defined in the DIP Facility Agreement)).

(vi) *No Offsets or Claims.* The Debtors acknowledge and agree that:

- a. No offsets, recoupments, challenges, objections, defenses, claims or counterclaims of any kind or nature to, and no entitlements to equitable relief, adverse or with respect, to any of the Prepetition Lender, Prepetition Liens or the Prepetition Lien Obligations exist, no facts exist in support of any such claims or relief, and no portion of the Prepetition Liens or the Prepetition Lien Obligations is subject to any abatement, offsets, recoupments, challenge or defense, including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (whether equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law;
- b. the Debtors and their estates have no claims, objections, challenges, and/or causes of action, including without limitation, avoidance claims under chapter 5 of the Bankruptcy Code and applicable non-bankruptcy law, against any of the Prepetition Secured Parties or any of their affiliates, agents, transferees, attorneys, advisors, professionals, officers, directors or employees arising out of, based upon or related to the Prepetition Lien Obligations or the Prepetition Documents; and
- c. Circles has been appointed as the Senior Agent under the Prepetition First Lien Note pursuant to the Amendment No. 2 to Intercreditor Agreement, dated April 21, 2022, which modified the Intercreditor Agreement dated as of February 22, 2021, as amended by that Amendment No. 1 to Intercreditor Agreement, dated as of April 13, 2021, among Pareteum, High Trail Investments SA LLC, and CVG.

(vii) *Cash Collateral.* All of the Debtors' cash and cash equivalents,

including the cash in their deposit accounts, wherever located, whether as original collateral or proceeds of other Prepetition Collateral, constitutes Cash Collateral and is Prepetition

Collateral of the Prepetition Secured Parties except for cash and cash equivalents contained in certain “excluded accounts”.

F. *Findings Regarding Post-Petition Financing and the Use of Cash Collateral.*

(i) *Good cause.* Good cause has been shown for the entry of this Final Order.

(ii) *Request for Post-Petition Financing and Use of Cash Collateral.*

The Debtors seek authority, on a final basis, to enter into the DIP Facility Agreement. The DIP Lender shall have no obligation to make loans or advances under the DIP Facility except as set forth in the DIP Facility Agreement and no obligation to waive any conditions required thereunder. The Debtors also seek authority to use Cash Collateral on the terms described herein, and in accordance with the Approved Budget, to administer their Cases and fund their operations.

(iii) *Need for Post-Petition Financing and Use of Cash Collateral.* The Debtors’ need to use Cash Collateral and to obtain credit as set forth in the DIP Facility Agreement is immediate and critical in order to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to finance their operations, maintain business relationships, pay employees, protect the value of their assets and otherwise finance their operations requires the availability of working capital from the DIP Facility and the use of Cash Collateral, the absence of either of which would immediately and irreparably harm the Debtors, their estates, creditors and equity holders, and the possibility of maximizing the value of their businesses and assets. The Debtors do not have sufficient available sources of working capital and financing to operate their business or to maintain their properties in the ordinary course of business without the DIP

Facility and continued use of Cash Collateral. Consummation of the financing contemplated by the DIP Facility Documents and the use of the Prepetition Collateral, including without limitation, the Cash Collateral, pursuant to the terms of this Final Order, therefore, are in the best interests of the Debtors' estates.

(iv) *No Credit Available on More Favorable Terms.* Given their current financial condition, financing arrangements, and capital structure, the Debtors are unable to obtain post-petition financing from sources other than the DIP Lender on terms more favorable than those set forth in the DIP Facility Documents. The Debtors have been unable to obtain unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors have also been unable to obtain secured credit from other sources: (a) having priority over that of administrative expenses of the kind specified in sections 503(b), 507(a) and 507(b) of the Bankruptcy Code; (b) secured only by a lien on property of the Debtors and their estates that is not otherwise subject to a lien; or (c) secured solely by a junior lien on property of the Debtors and their estates that is subject to a lien. Financing on a post-petition basis is not otherwise available without granting the DIP Lender: (1) perfected security interests in and liens on (each as provided herein) all of the Debtors' existing and after-acquired assets with the priorities set forth herein, (2) superpriority claims, and (3) the other protections set forth in this Final Order.

(v) *Use of Proceeds.*

- a. As a condition to entry into the DIP Facility Agreement, the extensions of credit under the DIP Facility and the authorization to use Cash Collateral, the DIP Lender requires, and the Debtors have agreed, that proceeds of the DIP Facility and Cash Collateral shall be used in accordance with the terms of the DIP Facility Documents, including the Approved Budget, which shall be subject to (x) such variances as may be permitted by the DIP Facility Agreement

(including without limitation the Permitted Variance), (y) this Final Order, and (z) the Carve-Out.

- b. The Debtors shall not directly or indirectly pay any expense or other disbursement in terms of use or amount other than those set forth in the Approved Budget (other than the post-Trigger Date portion of the Carve-Out) outside of the Permitted Variance or otherwise permitted or directed by an order of the Court.
- c. The proceeds of the DIP Facility and Cash Collateral shall be used solely as provided in the DIP Facility Agreement, including, to the extent provided therein, (i) to exchange the Prepetition Loans for Roll-Up Loans up to an amount of \$6,000,000 of the Prepetition First Lien Notes and up to the full amount of the Prepetition Bridge Loan, in no case to exceed \$12,000,000 total Roll-Up Loans (the “Roll-Up”) (ii) to provide working capital from time to time to the extent set forth in the Approved Budget; (iii) for other general corporate purposes of the Debtors to the extent and for the purposes set forth in the Approved Budget; (iv) subject to the Approved Budget (other than with respect to the post-Trigger Date portion of the Carve-Out) or any order governing the compensation of professionals retained in these Cases, for payment of costs of administration of the Cases; and (v) for the payment of such other prepetition obligations in accordance with “first day” orders, which orders shall be in form and substance reasonably satisfactory to the DIP Lender and approved by the Court, in each case in a manner (use, amount and timing) consistent with the Approved Budget, the DIP Facility Agreement, and the terms and conditions contained herein.

(vi) *Willingness to Provide Financing.* The DIP Lender has indicated a willingness to provide financing to the Debtors subject to the entry of the Interim Order, and this Final Order, including findings that such financing is essential to the Debtors’ estates, that the DIP Lender is extending credit to the Debtors as set forth in the DIP Facility Agreement in good faith, and that the DIP Lender’s claims, superpriority claims, security interests, liens, rights, and other protections will have the protections provided in section 364(e) of the Bankruptcy Code and will not be affected by any subsequent reversal, modification, vacatur, amendment, reargument or reconsideration of the Interim Order, this Final Order, or any other order. As a condition to entry into the DIP Facility Documents,

the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the Debtors and the DIP Lender have agreed that proceeds of DIP Collateral and all payments and collections received by the Debtors shall be applied solely as set forth in the DIP Facility Documents.

(vii) *Business Judgment and Good Faith Pursuant to Section 364(e)*. The extension of credit under the DIP Facility and the DIP Facility Documents is on terms that are fair, reasonable, and the best available to the Debtors under the circumstances, reflects the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, is supported by reasonably equivalent value and consideration, and was entered into at arms'-length, under no duress, and without undue influence, negligence or violation of public policy or law. The DIP Facility Documents, the DIP Facility, and the provisions regarding the use of Cash Collateral were negotiated in good faith and at arms-length among the Debtors and the DIP Lender, under no duress, and without undue influence, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining the requisite approvals of the DIP Facility and the use of Cash Collateral, including the granting of the DIP Liens and the Adequate Protection Liens (as defined below), the Debtors' Stipulations, any challenges or objections to the DIP Facility or the use of Cash Collateral, and all documents related to any and all transactions contemplated by the foregoing. Use of Cash Collateral and any credit to be extended as set forth in the DIP Facility Documents shall be deemed to have been so allowed, advanced, made, used or extended in good faith, and for valid business purposes and uses, within the meaning of section 364(e) of the Bankruptcy Code and the DIP Lender is, therefore, entitled

to the protections and benefits of section 364(e) of the Bankruptcy Code and this Final Order.

(viii) *Priming of Prepetition Liens.* The priming of the Prepetition Liens on the Prepetition Collateral by the DIP Liens will enable the Debtors to obtain the DIP Facility and to continue to operate their business for the benefit of their estates and creditors. The Prepetition Secured Parties consent to such priming liens, subject to receipt of adequate protection of their respective interests in the Prepetition Collateral as set forth herein. The Prepetition Secured Parties have acted in good faith in consenting to the (i) Debtors' use of the Prepetition Collateral, including, without limitation, the Cash Collateral, pursuant to the terms of the Interim Order and this Final Order, (ii) priming of their Prepetition Liens by the DIP Liens on all Prepetition Collateral, and (iii) entry of the Interim Order and this Final Order, and the granting of the relief set forth herein, and their reliance on the assurances referred to herein is in good faith. The Prepetition Secured Parties would not consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens, and the DIP Lender would not be willing to provide the DIP Loan or extend credit to the Debtors under the DIP Facility without the inclusion of the Roll Up.

(ix) *Adequate Protection.* The Prepetition Secured Parties are entitled to, and the Debtors are authorized to provide, adequate protection in the form of (I) solely to the extent any portion of the Prepetition First Lien Notes remain outstanding, ongoing payment of interest and other amounts due under the Prepetition Documents, pursuant to the terms thereof and notwithstanding the stay resulting from the filing of these chapter 11 cases, through the indefeasible payment of Prepetition Obligations, including, without limitation, fees and expenses of counsel to Circles, (II) current cash reimbursement of actual and reasonable documented fees

and expenses and other disbursements of Circles, including, without limitation, the reasonable documented fees and expenses of DLA Piper LLP (US) whether incurred before, on or after the Petition Date in connection with the diligence and financings occurring in the Cases; and (III) the Adequate Protection Liens and the Adequate Protection Superpriority Claims (each as defined below), subject to the priorities set forth in paragraphs 14 and 15 below. This Court concludes that the adequate protection provided to the Prepetition Secured Parties hereunder for any post-petition diminution in value of the Prepetition Liens on the Prepetition Collateral due to, *inter alia*, the Debtors' sale, use or lease of the Prepetition Collateral, including the Cash Collateral, the imposition of the automatic stay, and the priming of the Prepetition Liens by the DIP Liens, is authorized by sections 361, 362, 363, 364, 503, and 507 of the Bankruptcy Code. For the avoidance of doubt, nothing herein shall limit any Prepetition Secured Party's ability to seek additional adequate protection (or other applicable relief under the Bankruptcy Code, or otherwise) following repayment or acceleration of the DIP Obligations.

(x) The Prepetition Agents (at the direction of the requisite lenders as set forth in the Prepetition Documents), on behalf and for the benefit of each of the Prepetition Secured Parties, has consented to, conditioned on the entry of the Interim Order and this Final Order, the Debtors' incurrence of the DIP Facility and proposed use of Cash Collateral on the terms and conditions set forth in the DIP Facility Documents, the Interim Order, and this Final Order, and the terms of the adequate protection provided for in the Interim Order and this Final Order, including that the Adequate Protection Liens and Adequate Protection Superpriority Claims are subject and subordinate to the Carve-Out.

(xi) *Sections 506(c) and 552(b)*. In light of (i) the agreement of the DIP Lender and the Prepetition Secured Parties to subordinate their liens and superpriority claims, as

applicable, to the Carve-Out, and (ii) the Prepetition Secured Parties' agreement to consent to the use of Cash Collateral and to subordinate their Adequate Protection Superpriority Claims and Adequate Protection Liens to the Carve-Out, the DIP Liens and the DIP Superpriority Claims (as defined herein), and (iii) the Approved Budget covering all administrative costs projected by the Debtors, the DIP Lender and the Prepetition Secured Parties are granted a waiver of (a) the provisions of section 506(c) of the Bankruptcy Code, (b) any "equities of the case" claims under section 552(b) of the Bankruptcy Code, and (c) the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral other than DIP Collateral constituting Avoidance Action Proceeds.

(xii) *Notice.* Notice of the Final Hearing and the emergency relief requested in the Motion has been provided by the Debtors in accordance with the terms of the Interim Order, whether by facsimile, email, overnight courier or hand delivery, to certain parties in interest, including: (a) the U.S. Trustee; (b) counsel to the DIP Agent, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com) and Nadia Saleem (Nadia.Saleem@us.dlapiper.com); (c) counsel to the administrative agent under the Prepetition Bridge Loan, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com) and Nadia Saleem (Nadia.Saleem@us.dlapiper.com); (d) counsel to the administrative agent under the Debtors' Prepetition Senior Notes, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com) and Nadia Saleem (Nadia.Saleem@us.dlapiper.com); (e) counsel to the administrative agent under the Prepetition Second Lien Notes, and

Montgomery McCracken, 437 Madison Avenue, 24th Floor, New York, NY 10022, Attn: Maura I. Russell (mrussell@mmwr.com) and David M. Banker (dbanker@mmwr.com); (f) counsel to the Stalking Horse Bidders, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, NY 10153, Attn: Jamila Justine Willis (jamila.willis@us.dlapiper.com) and Nadia Saleem (Nadia.Saleem@us.dlapiper.com) and Montgomery McCracken, 437 Madison Avenue, 24th Floor, New York, NY 10022, Attn: Maura I. Russell (mrussell@mmwr.com) and David M. Banker (dbanker@mmwr.com); (g) the parties identified on the Debtors' consolidated list of 50 largest unsecured creditors; (h) the United States Attorney's Office for the Southern District of New York; (i) the Internal Revenue Service; (j) the Taxing Authorities; (k) the Securities and Exchange Commission; (l) the attorneys general for the states where the Debtors conduct business operations; (m) the Federal Communications Commission; and (n) those parties that requested notice pursuant to Bankruptcy Rule 2002. In addition, counsel for the Creditors' Committee received notice of the Final Hearing and has had sufficient opportunity to review the DIP Motion, the Interim Order, and this Final Order.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Motion Approved. The Motion is granted on an interim basis in accordance with the terms of this Final Order.
2. Use of Prepetition Collateral Approved. Subject to the terms of the DIP Facility Documents, this Final Order, and the Approved Budget, the Debtors are hereby authorized to use the Prepetition Collateral (including Cash Collateral).

3. Objections Overruled. All objections to and reservations of rights with respect to the Motion and to the entry of this Final Order to the extent not withdrawn or resolved are hereby overruled on the merits in their entirety.

DIP Facility Authorization

4. Authorization of the DIP Facility Documents. The Debtors are hereby authorized to execute, issue, deliver, enter into, and adopt, as the case may be, the DIP Facility Agreement and the other DIP Facility Documents to be delivered pursuant hereto or thereto or in connection herewith or therewith. The Borrowers are hereby authorized to borrow money under the DIP Facility Documents, on a final basis, and request extensions of credit under the DIP Facility in accordance with the terms of this Final Order and the DIP Facility Documents, including the Roll-Up Loans.

5. Roll-Up Loans.

(a) Upon entry of this Final Order, the DIP Lender shall be deemed to have made Roll-Up Loans hereunder with the proceeds thereof being applied to the Prepetition Obligations and the DIP Lender's or its affiliate's then-outstanding Prepetition Obligations, in an amount equal to the outstanding Prepetition Bridge Loan Obligations and up to \$6 million of obligations under the Prepetition First Lien Note without regard to the New Money Loans actually disbursed (such that upon entry of this Final Order, a maximum of two dollars of Roll-Up Loans shall have been deemed made for every dollar of New Money Commitments).

(b) The Court reserves the right to fashion any remedy the Court deems appropriate, including to unwind or partially unwind, as the case may be, after notice and hearing, the postpetition protection provided to the Prepetition Lenders or the pay down of the Prepetition Bridge Loan Obligations with the Roll-Up Loans, whichever is applicable, in the event that there is a timely and successful Challenge to the validity, enforceability, extent, perfection or priority of

the Prepetition Lenders' claims or liens, or a determination that the prepetition debt was undersecured as of the Petition Date, and the Roll-Up contemplated herein unduly advantaged the Prepetition Lender.

(c) Subject to the reservation of rights of the Court in paragraph 5(b) of this Final Order, and upon expiration of the Challenge Period (as defined below) without a Challenge Proceeding (as defined below) having been brought, or the final resolution of a Challenge Proceeding brought in compliance with the provisions of this Final Order (where such Challenge Proceeding did not have the effect of successfully impairing any of the Prepetition Obligations or Prepetition Liens), the Debtors' Roll-Up of the Prepetition Obligations shall be deemed to be indefeasible, final and not subject to any challenge (excluding the Court's reservation of rights in paragraph 5(b) of this Final Order). Notwithstanding the foregoing, in the event that a Challenge Proceeding is initiated within the Challenge Period, only that portion of the Prepetition Obligations or Prepetition Liens that is successfully challenged shall be excluded from the Debtors' Roll-Up of the Prepetition Obligations (the "Roll-Up Exclusion Amount").

6. Authorized Action. In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized to perform all acts, to make, execute and deliver all instruments and documents that may be necessary or required for performance by the Debtors under the DIP Facility Documents and the creation and any additional action requested by DIP Lender for perfection of the DIP Liens described in (the DIP Liens granted hereby are automatically perfected), provided for and perfected by the Interim Order, this Final Order and the DIP Facility Documents. Subject to paragraph 16, the Debtors are hereby authorized to pay, in accordance with this Final Order, the principal, interest, fees, costs, expenses and other amounts described in the DIP Facility Documents as such become due and without need to obtain further

Court approval, including, without limitation, origination fees, collateral monitoring fees, commitment fees, maintenance fees, success fees, letter of credit fees, and the fees and disbursements of the DIP Lender's attorneys, advisers, accountants and other consultants, whenever accrued. All fees shall be fully earned and payable in accordance with the DIP Facility Documents.

7. Validity of DIP Obligations. Upon entry of this Final Order and execution and delivery, the DIP Facility Documents shall represent valid and binding obligations of the Debtors, enforceable against the Debtors and their estates in accordance with their terms, and subject to the terms of this Final Order. The DIP Facility Documents and this Final Order constitute and evidence the validity and binding effect of the DIP Obligations of the Debtors, which DIP Obligations shall be enforceable as of the Petition Date, jointly and severally, against the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Cases (each, a "Successor Case"). Except as set forth in paragraph 5(b), no obligation, payment, transfer, or grant of a security or other interest to the DIP Lender under the DIP Facility Documents or this Final Order shall be stayed, restrained, voidable, or recoverable under the Bankruptcy Code or any applicable law (including, without limitation, under section 502(d) of the Bankruptcy Code), or subject to any defense, reduction, set-off, recoupment, or counterclaim. The DIP Obligations include all loans and any other indebtedness or obligations, contingent or absolute, now existing or hereafter arising, which may from time to time be or become owing by the Debtors to the DIP Lender under the DIP Facility Documents, including without limitation all principal, interest, costs, fees, expenses and other amounts owed pursuant to the DIP Facility Documents.

8. No Obligation to Extend Credit. The DIP Lender shall have no obligation to make loans or advances under the DIP Facility until the conditions precedent to the closing and the making of such extensions of credit under the DIP Facility Documents have been satisfied in full.

9. Use of DIP Facility Proceeds. From and after the Petition Date, the Debtors are authorized to use extensions of credit under the DIP Facility only for the purposes specifically set forth in this Final Order, the DIP Facility Documents and in compliance with the Approved Budget. The Debtors are authorized, subject to the satisfaction of the conditions and terms set forth in the DIP Facility Documents and this Final Order, to use proceeds of the DIP Collateral and the Prepetition Collateral, subject to the Carve-Out, and to draw upon the DIP Facility (a) to exchange the Prepetition Obligations for Roll-Up Loans as set forth herein; (b) to pay fees, costs and expenses incurred in connection with the transactions contemplated by the DIP Facility Agreement; (c) to pay other administration costs incurred in connection with the Cases consistent with the Approved Budget; (d) to pay for other working capital and general corporate purposes of the Loan Parties consistent with the Approved Budget and the “first day” orders entered by the Court; and (e) after delivery of a Carve-Out Trigger Notice, to fund a reserve to pay the Post-Trigger Carve-Out (as defined below). The Roll-Up shall be subject to the Permitted Priority Liens set forth in the DIP Facility Agreement and the Carve-Out.

10. DIP Superpriority Claims. Subject to the Challenge Period solely with respect to the Roll-Up and subject to the Carve-Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed claims against the Debtors, jointly and severally, with priority over any and all administrative expenses, including, without limitation, any administrative expense claims on account of any postpetition Intercompany Transactions (as defined below), diminution claims (including all Adequate Protection Superpriority Claims) and

all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 552(b), 726, 1113, or 1114 of the Bankruptcy Code (the “DIP Superpriority Claims”), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and post-petition property of the Debtors and their estates and all proceeds thereof, subject only to liens secured thereby and the Carve-Out.

DIP Liens and Collateral.

11. Upon entry of this Final Order effective nunc pro tunc to the Petition Date, pursuant to sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code, and without the necessity of the execution by the Debtors (or recordation or other filing or notice) of security agreements, control agreements, pledge agreements, financing statements, mortgages, schedules or other similar documents, or the possession or control by a DIP Secured Party of any DIP Collateral, the Debtors grant, jointly and severally, to the DIP Lender, continuing valid, binding, enforceable, non-avoidable, priming and automatically and properly perfected post-petition security interests in and liens (collectively, the “DIP Liens”) on any and all property owned and hereafter acquired assets and real and personal property of the Debtors and the proceeds thereof in whatever form received (the “DIP Collateral”), including, without limitation, the following (a) all Prepetition Collateral; (b) all accounts, chattel paper, deposit accounts (including any deposit accounts subject to a control agreement, equipment, general intangibles, instruments, inventory, and investment property and support obligations); (c) commercial tort claims; (d) all books and records pertaining to the other property described in this paragraph; (e) all property of such Debtor held by any

secured party, including all property of every description, in the custody of or in transit to such secured party for any purpose, including safekeeping, collection or pledge, for the account of such Debtor or as to which such Debtor may have any right or power, including but not limited to cash; (f) all other goods (including but not limited to fixtures) and personal property of such Debtor, whether tangible or intangible and wherever located; (g) Avoidance Action Proceeds (excluding Avoidance Action Proceeds resulting from a successful Challenge of any Prepetition Secured Party's claims or liens); (h) to the extent not covered by the foregoing, all other assets or property of the Debtors, whether tangible, intangible, real, personal or mixed; (i) all rents, issues, proceeds and products of each of the foregoing; (j) all accessions to, substitutions and replacements for, and rents, profits and products of, each of the foregoing; (k) intellectual property; and (l) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to or recoverable by such Debtor from time to time with respect to any of the foregoing, and in each case to the extent of any Debtor's respective interest therein. Notwithstanding anything to the contrary contained herein, (i) with respect to non-residential real property leases, the DIP Collateral shall not include such non-residential real property leases and no liens or encumbrances shall be granted or extended to such leases under this Final Order, but rather the DIP Collateral and any liens granted under this Final Order shall include only the economic value of, proceeds of sale, subleasing, assignment or other full or partial disposition of, and any other proceeds or products of such leasehold interests and (ii) DIP Collateral shall not include (and the DIP Liens shall not extend to) assets held by the Debtors in trust and any "Excluded Property" (as defined in the DIP Facility Agreement).

12. All of the following agreements and other items related to the Prepetition Liens remain in full force and effect and shall inure to the DIP Lender and the Prepetition Secured Parties: any blocked account agreements, deposit account agreements, deposit account control

agreements, securities account agreements, credit card acknowledgments or notifications, credit card agreements, pledge agreements, document bailment agreements, landlord agreements, collateral access agreements, warehouse agreements, bailee agreements, customs broker agreements, carrier, consolidator or freight forwarder agreements or filings with the United States Patent and Trademark Office or the Library of Congress with respect to the recordation of an interest in intellectual property that were issued or filed by the Prepetition Secured Parties on any Debtor's assets (real or personal) in connection with the Prepetition Lien Obligations. Each of the security documents under the Prepetition Loans shall secure the DIP Obligations *mutatis mutandis*. Any liens, claims or interests subordinated to the Prepetition Liens as of the Petition Date and the Carve-Out shall likewise be subordinate to the DIP Liens and the Carve-Out.

13. DIP Lien Priority.

(a) *DIP Liens.* The DIP Liens shall be junior only to the (i) the Carve-Out and (ii) Permitted Priority Liens as set forth in the DIP Facility Agreement, and shall otherwise be senior in priority and superior to all other liens, encumbrances, rights of third parties and interests, including, without limitation, the Prepetition Liens, the Permitted Priority Liens, the Adequate Protection Liens, and Adequate Protection Superpriority Claims (each as defined herein) and any other security, mortgage, collateral interest, lien or claim on or to any of the DIP Collateral.

(b) *Treatment of DIP Liens.* Other than as set forth herein, the DIP Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereafter granted in the Cases or any Successor Case. The DIP Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Case, upon the conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Cases or any Successor Case. Except

during the Challenge Period with respect to the Roll-Up, the DIP Liens shall not be subject to challenge under sections 510, 549, or 550 of the Bankruptcy Code or other applicable law. No lien or interest avoided and preserved for the benefit of the Debtors' estates pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the DIP Liens.

Adequate Protection

14. Adequate Protection Liens.

(a) *Prepetition Secured Parties –Adequate Protection Lien.* Pursuant to sections 361, 363(e) and 364(d) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral, including Cash Collateral, against any diminution in value resulting from the Debtors' use, sale or lease (or other decline in value) of such collateral, the imposition of the automatic stay, the priming of the Prepetition Liens and the subordination to the Carve-Out (collectively, "Diminution in Value"), the Debtors hereby grant to the Prepetition Secured Parties, valid and perfected replacement and additional security interests in, and liens on (the "Adequate Protection Liens") all DIP Collateral solely to the extent and in the amount of any Diminution of Value. The Adequate Protection Liens are and shall be valid, binding, enforceable and fully perfected as of the Petition Date (without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements, or other agreements) and shall (i) be subject and subordinate only to the DIP Liens, the Carve-Out and the Permitted Priority Liens set forth in the DIP Facility Agreement, and the Carve-Out; and (ii) otherwise be senior to all other security interests in, liens on, or claims against any of the DIP Collateral.

(b) *Treatment of Adequate Protection Liens.* Other than as set forth herein, the Adequate Protection Liens shall not be made subject to or *pari passu* with any lien or security interest heretofore or hereinafter granted in the Cases or any Successor Case. The Adequate

Protection Liens shall be valid and enforceable against any trustee or other estate representative appointed in the Cases or any Successor Case upon conversion of such case to a case under chapter 7 of the Bankruptcy Code, and/or upon the dismissal of any such case.

15. Adequate Protection Superpriority Claim.

(a) *Superpriority Claim of Prepetition Secured Parties.* As further adequate protection of the interests of the Prepetition Secured Parties, the Prepetition Secured Parties are hereby granted, to the extent and in the amount of any Diminution of Value, allowed administrative claims against the Debtors' estates, joint and several, under section 503(b) of the Bankruptcy Code with superpriority pursuant to section 507(a) and (b) of the Bankruptcy Code (the "Adequate Protection Superpriority Claims") to the extent that the Adequate Protection Liens are insufficient to protect the Prepetition Secured Parties' interests in the Prepetition Collateral.

(b) *Priority of Adequate Protection Superpriority Claims.* Except as set forth herein, the Adequate Protection Superpriority Claims shall have priority over all administrative expense claims and priority general unsecured claims against the Debtors or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 506(c), 507(a), 546(c), 546(d), 552(b), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code (including, without limitation, any administrative expense claims on account of any postpetition Intercompany Transactions); *provided, however*, that the Adequate Protection Superpriority Claims shall be junior to (i) the Carve-Out and (ii) DIP Superpriority Claims.

16. Costs, Fees, Expenses, and Indemnification.

(a) *DIP Lender.* The Debtors are authorized to pay any and all reasonable out-of-pocket expenses of DIP Lender in connection with the DIP Facility and these Cases, whether incurred before, on or after the Petition Date and whether or not the transactions contemplated hereby or thereby are consummated or such fees and expenses are set forth in the Approved Budget, including, without limitation, fees and expenses, subject to the Carve-Out, incurred in connection with (i) the preparation, negotiation and execution of the DIP Facility Documents; (ii) the funding of the DIP Facility and negotiation of the Approved Budget; (iii) the creation, perfection or protection of the DIP Liens under the DIP Facility Documents (including all search, filing and recording fees); (iv) the on-going administration of the DIP Facility and DIP Facility Documents (including the preparation, negotiation and execution of any amendments, consents, waivers, assignments, restatements or supplements thereto) and the Cases; (v) the enforcement of the DIP Facility Documents and foreclosure or other disposition of DIP Collateral; (vi) any refinancing or restructuring of the DIP Facility in the nature of a “work-out”; and (vii) any legal proceeding relating to or arising out of the DIP Facility or the other transactions contemplated by the DIP Facility Documents, including the Cases. Payment of all such professional and consulting fees and expenses shall not be subject to allowance by the Court. At the time such invoices are delivered to the Debtors, the professionals and consultants for the DIP Lender shall deliver a copy of their respective invoices to counsel for the Creditors’ Committee and the U.S. Trustee. The invoices for such fees and expenses shall contain time records, categorized expenses, and sufficient information for the Creditors’ Committee and the U.S. Trustee to review each for reasonableness, but shall not be required to comply with any particular format and shall not be subject to application or allowance by the Court. Any objections raised by the Debtors, the U.S. Trustee or

the Creditors' Committee with respect to such invoices within fourteen (14) calendar days of receipt thereof will be resolved by the Court (absent prior consensual resolution thereof). Pending such resolution, the undisputed portion of any such invoice shall be promptly paid by the Debtors.

(b) *Indemnification of DIP Lender.* The Debtors shall indemnify and hold harmless (i) the DIP Agent and the DIP Lenders in accordance with the terms and conditions of the DIP Facility Agreement and (ii), the Prepetition Secured Parties in accordance with the terms and conditions of the Prepetition Documents; provided, however, that the Debtors shall not (x) use Avoidance Action Proceeds obtained from a timely and successful Challenge against a Prepetition Secured Party to indemnify such Prepetition Secured Party or (y) indemnify any Prepetition Secured Party in respect of any indemnity claim resulting from a successful Challenge against such Prepetition Secured Party's claims or liens; provided that, for the avoidance of doubt, nothing herein shall limit the ability of the Debtors to use Avoidance Action Proceeds to indemnify any Prepetition Secured Party whose claims or liens are not subject to a timely and successful Challenge.

(c) *Prepetition Secured Parties.* As additional adequate protection of the Prepetition Secured Parties' security interests in and liens on the Prepetition Collateral, the Debtors are authorized to provide adequate protection in the form of (i) solely to the extent any portion of the Prepetition First Lien Notes remain outstanding after giving effect to the Roll-Up, ongoing payment of interest and other amounts due under the Prepetition Loan Documents, (ii) current cash reimbursement of actual and documented fees and expenses and other disbursements of Circles whether or not incurred before, on or after the Petition Date or set forth in the Approved Budget and (iii) continued maintenance and insurance of the Prepetition Collateral and the DIP Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Documents, the

DIP Facility Agreement and this Final Order. For the avoidance of doubt, nothing herein shall limit any Prepetition Secured Party's ability to seek, upon motion and notice and subject to any party in interest's right to object, additional adequate protection following repayment or acceleration of the DIP Obligations.

Provisions Common to DIP Financing and Use of Cash Collateral Authorizations

17. Carve-Out.

(a) *Carve-Out.* The DIP Liens and DIP Obligations of the DIP Lender shall be subject to (a) the payment of fees under 28 U.S.C. § 1930, (b) all reasonable fees and expenses up to \$50,000 incurred by a trustee under Section 726(b) of the Bankruptcy Code, (c) the payment of any fees and expenses owing to the clerk of the Court or any agent thereof, subject to the Approved Budget, (d)(i) the payment of unpaid and outstanding reasonable fees and disbursements of attorneys and other professionals retained by the Debtors, the Creditors' Committee, and any other statutory committees appointed in the chapter 11 cases under sections 327 or 1103(a) of the Bankruptcy Code (the "Professionals") actually incurred from the Petition Date through the occurrence of an Event of Default or other Termination or Maturity Date, whether allowed prior to or after delivery by the DIP Lender of a Carve-Out Trigger Notice (defined below), solely to the extent allowed and payable under sections 326, 328, 330 and 331 of the Bankruptcy Code (but excluding success, completion, or other transaction fees) and any interim procedures order, but subject in all respects to the Approved Budget (the "Budgeted Professional Fees"), on a line by-line and professional-by-professional basis, and (ii) allowed professional fees of retained professionals of the Debtors in an aggregate amount of \$300,000 and allowed professional fees of retained professionals of the Creditors' Committee and any other statutory committees in an amount not to exceed \$125,000, in each case incurred after the first day following delivery by the DIP Lender of the Carve-Out Trigger Notice, to the extent allowed at any time (the "Post-Trigger

Carve-Out”). The foregoing provisions (a), (b), (c) and (d), shall be collectively referred to as the “Carve-Out”. “Carve Out Trigger Notice” shall mean a written notice delivered by the DIP Lender to lead restructuring counsel to the Debtors, the U.S. Trustee, and counsel to the Creditors’ Committee, stating that (a) the Post-Trigger Carve-Out has been invoked due to the occurrence of and during the continuation of an Event of Default under the DIP Loan Agreement, and (b) acceleration of the DIP Obligations under the DIP Facility Agreement has occurred. Any payment or reimbursement made on or after the occurrence of the Trigger Date in respect of any Allowed Budgeted Professional Fees (whether out of the Carve-Out Escrow Account (as defined below) or otherwise) shall permanently reduce the Carve-Out on a dollar-for-dollar basis. The Debtors submit that the Budgeted Professional Fees and Post-Trigger Carve-Out are higher than those provided for the Creditors’ Committee because it is anticipated that the Debtors’ Professionals will need to incur significantly greater professional fees and expenses in connection with representing the Debtors in these Cases, including the DIP financing process, sale process and formulating and confirming a plan of liquidation.

(b) Unless a Carve-Out Trigger Notice has been delivered in accordance with (a) above, the Debtors shall, on a weekly basis, transfer cash proceeds from the DIP Facility or cash on hand in an amount equal to the aggregate Budgeted Professional Fees for such week into a segregated account not subject to the control of the DIP Agent, any DIP Lender, or any Prepetition Secured Party (the “Carve Out Escrow Account”). The Debtors shall use funds held in the Carve Out Escrow Account exclusively to pay Budgeted Professional Fees as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any interim or final orders of the Court; *provided that* when all allowed Budgeted Professional Fees have been paid in full (regardless of when such Budgeted Professional Fees are

allowed by the Court), any funds remaining in the Carve-Out Escrow Account shall revert to the DIP Lender; and *provided further* that the Debtors' obligations to pay allowed Professional Fees shall not be limited or be deemed limited to funds held in the Carve-Out Escrow Account. Funds transferred to the Carve-Out Escrow Account (1) shall not be subject to any liens or claims granted to the DIP Lender herein, except the DIP Lender shall have a first and only lien on the reversionary interest in any funds in the Carve-Out Escrow Account that are not disbursed in accordance with this Final Order and (2) automatically upon expiration of the Remedies Notice Period and Termination of the DIP Obligations as set forth in this Final Order or the DIP Credit Agreement, shall revert to the DIP Lender; *provided however* that the Carve Out shall not revert to the DIP Lender.

(c) *No Direct Obligation to Pay Allowed Fees; No Waiver of Right to Object to Fees.* Other than the funding of the Carve-Out with the proceeds of the DIP Facility and use of Cash Collateral as provided herein and in the DIP Facility Documents and the Approved Budget, the DIP Lender shall not be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with these Cases, any Successor Cases, or otherwise. Nothing in this Final Order or otherwise shall be construed: (i) to obligate the DIP Lender, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement, other than the Carve-Out; (ii) to increase the Carve-Out or the Carve-Out Escrow Amount if incurred or Allowed Fees are higher in fact than the fees and disbursements of Professional Person set forth in the Approved Budget under (1) of this section, or under (2) of this section after the occurrence of the Trigger Date; (iii) as consent to the allowance of any fees and expenses of Professional Persons; or (iv) to affect the rights of the DIP Lender, the Prepetition

Secured Parties or any other party-in-interest to object to the allowance and payment of such fees and expenses.

(d) *Payment of Carve-Out on or after the Triggering Event Date.* Any funding of the Carve-Out shall be added to, and made a part of, the DIP Obligations secured by the DIP Collateral and shall otherwise be entitled to the protections granted under this Final Order, the DIP Facility Documents, the Bankruptcy Code, and applicable law.

(e) *Payment of Compensation.* Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any Professional Persons or shall affect the right of the DIP Lender and the Prepetition Secured Parties to object to the allowance and payment of such fees and expenses. So long as no Termination Event has occurred and is continuing, the Debtors shall be permitted to pay fees and expenses allowed and payable by order (that has not been vacated or stayed, unless the stay has been vacated) under sections 330 and 331 of the Bankruptcy Code, as the same may be due and payable, solely to the extent set forth in the Approved Budget and not to exceed the amounts set forth in the Approved Budget, *provided* that any such payment shall be subject to entry of a final order of the Court on final application for allowance of fees and expenses to be filed for each Case Professional (including ordinary course professionals).

18. Modification of DIP Facility Documents. The DIP Facility Documents may from time to time be amended, modified, or supplemented by the parties thereto without further order of this Court if (a) such amendment, modification, or supplement (i) is in accordance with the DIP Facility Documents and (ii) a copy (which may be provided through electronic mail or facsimile) of the amendment, modification, or supplement is provided to counsel to the Creditors' Committee, any other statutory committee appointed in the Chapter 11 Cases, and the U.S. Trustee

(collectively, the “Notice Parties”); and (c) notice of the amendment, modification or supplement is filed with the Court; *provided*, that neither consent of the Notice Parties nor approval of the Court will be necessary to effectuate any such amendment, modification, or supplement; and *provided, further*, that such amendment, modification, or supplement shall be without prejudice to the right of any party in interest to be heard regarding such proposed amendment; provided, further, that material modifications adverse to the Debtors’ estates cannot be effectuated without notice to parties in interest and an opportunity for a hearing.

19. Use of Proceeds; Budget Maintenance. The proceeds of the DIP Facility and Cash Collateral shall be used solely in accordance with the terms of the DIP Facility Documents, including the Approved Budget (subject to the Permitted Variance and the Carve-Out), and this Final Order, and such use shall be reported to the DIP Lender in accordance with the DIP Facility Agreement. The Approved Budget shall be updated, modified or supplemented (with the consent of and/or at the request of the DIP Lender) from time to time, solely in accordance with the DIP Facility Agreement.

20. Modification of Automatic Stay. The automatic stay imposed under Bankruptcy Code section 362(a) is hereby modified as necessary to effectuate all of the terms and provisions of this Final Order, including, without limitation, to (a) permit the Debtors to grant the DIP Liens, the DIP Superpriority Claim, the Adequate Protection Liens, and the Adequate Protection Superpriority Claims, (b) authorize the Debtors to pay, and the DIP Lender and Prepetition Secured Parties to retain and apply, payments made in accordance with this Final Order, (c) permit the DIP Lender to perfect all security interests granted under the DIP Facility and the DIP Facility Documents, and (d) permit the DIP Lender to give notices and to exercise rights and remedies consistent with this Final Order and the DIP Facility Documents.

21. Right to Credit Bid. Subject to Section 363(k) of the Bankruptcy Code, the DIP Lender shall have the right to “credit bid” up to the full allowed amount of the DIP Obligations in connection with any sale of all or any portion of the DIP Collateral, including, without limitation, a sale occurring pursuant to section 363 of the Bankruptcy Code or included as part of a restructuring plan subject to confirmation under section 1129(b)(2)(A)(ii) of the Bankruptcy Code or a sale or disposition by the DIP Lender liquidating the DIP Collateral or by a chapter 7 trustee for any Debtor under section 725 of the Bankruptcy Code.

22. Automatic Perfection of DIP Liens and Adequate Protection Liens.

(a) This Final Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, taking possession of or control over, or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement, customs broker agreement or freight forwarding agreement) to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens, or to entitle the DIP Lender or the Prepetition Secured Parties to the priorities granted herein.

(b) Notwithstanding the foregoing, the Prepetition Secured Parties each are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, take possession of or control over, or take any other action, as they may elect, in addition to the perfection provided by sub-section (a) above to validate and perfect the liens and security interests granted to them hereunder. Whether or not the Prepetition Secured Party chooses to file such financing statements,

intellectual property filings, mortgages, notices of lien or similar instruments, take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to it hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination immediately upon entry of this Final Order effective nunc pro tunc to the Petition Date.

(c) The Debtors are authorized to, and shall, execute and deliver promptly upon demand to the Prepetition Secured Parties all such financing statements, mortgages, control agreements, notices and other documents as the Prepetition Secured Parties may reasonably request. The Debtors are authorized to, and shall, execute and deliver to the Prepetition Secured Parties such agreements, financing statements, mortgages, instruments and other documents as the Prepetition Secured Parties may reasonably request to evidence, confirm, validate, or perfect the DIP Liens or the Adequate Protection Liens; and the failure by the Debtors to execute any documentation relating to the DIP Liens or the Adequate Protection Liens shall in no way affect the validity, enforceability, nonavoidability, perfection, or priority of such liens.

(d) The Prepetition Secured Parties, each in its discretion, may file a photocopy of this Final Order as a financing statement with any filing or recording office or with any registry of deeds or similar office, and accordingly, each officer is authorized to accept and record the photocopy of this Final Order, in addition to or in lieu of such financing statements, notices of lien or similar instrument.

(e) Subject to section 1146(a) of the Bankruptcy Code, except as otherwise provided herein, any provision of any lease or other license, contract or other agreement that requires the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge any such leasehold interest as DIP Collateral, or transfer the proceeds thereof in

connection with such pledge or other Prepetition Collateral constituting a pledge of a lease or other license, contract or other agreement, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the granting of post-petition liens on such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor in favor of the DIP Lender or the Prepetition Secured Parties in accordance with the terms of this Final Order.

23. Other Automatic Perfection Matters. To the extent that any Prepetition Lender is the secured party under any account control agreement, listed as loss payee or additional insured under any of the Debtors' insurance policies, or is the secured party under the Prepetition Loans on behalf of the DIP Lender, is also deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies, and the secured party under the Prepetition Loans, and shall have all rights and powers in each case attendant to that position (including, without limitation, rights of enforcement), and shall act in that capacity and distribute any proceeds recovered or received in accordance with the terms of this Final Order and the DIP Facility Documents.

24. Proceeds of Sale or Subsequent Financing. If the Debtors, any trustee, any examiner with enlarged powers, any responsible officer or any other estate representative subsequently appointed in the Cases or any Successor Case, shall sell and DIP Collateral or obtain credit or incur debt in breach of the DIP Facility Documents at any time prior to the repayment in full of all DIP Obligations, then all cash proceeds derived from such sale or other disposition, or from any such credit or debt shall immediately be turned over to the DIP Lender to be applied in accordance with this Final Order and the DIP Facility Documents.

25. Maintenance of DIP Collateral/Cash Management. Until the indefeasible payment in full in cash of all DIP Obligations (and funding of an adequate reserve to secure Debtors' indemnity obligations), and the termination of the obligation of the DIP Lender to extend credit under the DIP Facility, the Debtors are authorized and directed to (a) maintain and insure the DIP Collateral in amounts, for the risks, and by the entities as required under the DIP Facility Documents and in accordance with this Final Order and (b) maintain their cash management system as in effect as of the Petition Date, (i) subject to the DIP Facility Documents and (ii) subject to the Cash Management Order, as may be modified, with the prior written consent of the DIP Lender, by any order that may be entered by this Court and (iii) in a manner which, in any event, shall be reasonably satisfactory to the DIP Lender. Other than as expressly required pursuant to the DIP Facility Agreement, the Cash Management Order or this Final Order, no modifications to the Debtors' cash management system existing as of the Petition Date may be made without the prior approval of the DIP Lender.

26. Application of Proceeds of Collateral, Payments and Collections. As a condition to the entry of the DIP Facility Documents, the extension of credit under the DIP Facility and the authorization to use Cash Collateral, the Debtors have agreed that as of and commencing on the date of the Closing Date, the Debtors shall apply all net proceeds of DIP Collateral in accordance with the DIP Facility Agreement.

27. [Reserved].

28. Rights and Remedies Following Termination Event.

(a) *Termination.* Immediately upon the occurrence and during the continuation of an Event of Default under the DIP Facility Agreement (a "Termination Event"), the DIP Lender, with no further action of this Court, may notify the Debtors in writing that a Termination Event

has occurred and is continuing (such notice, a “Termination Notice” and the date of any such notice, the “Termination Notice Date”).

(b) *Notice of Termination.* Any Termination Notice shall be given by electronic mail (or other electronic means) to counsel to the Debtors, counsel to the Creditors’ Committee, and the U.S. Trustee. The Remedies Notice Period shall commence on the Termination Notice Date and shall expire seven (7) calendar days after the Termination Notice Date (the “Remedies Notice Period”, and the date of the expiration of the Remedies Notice Period, the “Termination Date”).

(c) Without limiting the rights and remedies of the DIP Lender under the DIP Facility Agreement, the DIP Lender may immediately (I) upon the occurrence of and during the continuation of a Termination Event following the issuance of a Termination Notice or (II) upon the Termination Date, *inter alia*, subject to the occurrence of the expiration of the Remedies Notice Period and, if applicable, the conclusion of a Termination Hearing (as defined below) if requested, (A) (x) declare all obligations owing under the DIP Facility Documents to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Debtors, (y) declare the termination, reduction or restriction of any further commitment to extend credit to the Borrowers to the extent any such commitment remains, and (z) terminate the DIP Facility and the DIP Facility Documents as to any future liability or obligation of, any DIP Lender, or any other DIP Secured Party, but without affecting any of the liens or the obligations (any of the actions set forth in the foregoing (x), (y) and (z), a “Termination”); and (B) unless the Court orders otherwise during the Remedies Notice Period, declare a termination, reduction or restriction on the ability of the Borrowers to use any Cash

Collateral and exercise all other rights and remedies provided in the DIP Facility Documents and applicable law.

(d) During the Remedies Notice Period, any party in interest shall be entitled to seek an emergency hearing (a “Termination Hearing”) with this Court for the purpose of contesting a Termination, including whether a Termination Event has occurred and/or is continuing. During the Remedies Notice Period, the Debtors may continue to use the DIP Collateral, including Cash Collateral, solely to make payroll and fiduciary tax payments in the ordinary course of business and consistent with the most recent Approved Budget (subject to the Permitted Variance, and to fund the Carve-Out), but may not enter into any transactions or arrangements involving DIP Collateral (including, without limitation, the incurrence of indebtedness or liens, investments, restricted payments, asset sales, or transactions with non-Debtor affiliates) that are not in the ordinary course of business or otherwise in furtherance of the administration of the Cases; *provided, however* that the Debtors may enter into a transaction or arrangement for the repayment in full of all DIP Obligations during the Remedies Notice Period, subject to requisite approval by the Court and notice to interested parties, including the Creditors’ Committee, and the opportunity to object to such proposed transaction or arrangement.

29. Good Faith.

(a) *Good Faith Under Section 364 of the Bankruptcy Code; No Modification or Stay of this Final Order.* The DIP Lender has acted in good faith in connection with this Final Order and its reliance on this Final Order is in good faith. Based on the findings set forth in this Final Order and the record of these cases and the record made during the Final Hearing, and in accordance with section 364(e) of the Bankruptcy Code, in the event any or all of the provisions of this Final Order are hereafter modified, amended or vacated by a subsequent order of the Court,

or any other court, the DIP Lender is entitled to the protections provided in section 364(e) of the Bankruptcy Code. Any such modification, amendment or vacatur shall not affect the validity and enforceability of the DIP Obligations, or any lien, claim or priority authorized or created hereby, *provided* that this Final Order was not stayed by court order after due notice had been given to the DIP Lender at the time such obligations were incurred or the liens, claims or priorities were authorized and/or created. Any liens or claims granted to the DIP Lender hereunder arising prior to the effective date of any such modification, amendment or vacatur of this Final Order shall be governed in all respects by the original provisions of this Final Order, including entitlement to all rights, remedies, privileges and benefits granted herein, *provided* that the Final Order was not stayed by court order after due notice had been given to the DIP Lender at the time the obligations were incurred or the liens, claims or priorities were authorized and/or created.

(b) *Prepetition Secured Parties.* The Prepetition Secured Parties have acted in good faith in connection with this Final Order and their reliance on this Final Order is in good faith.

30. Proofs of Claim. Any order entered by the Court establishing a bar date for any claims (including without limitation administrative claims) in any of the Cases or any Successor Case shall not apply to any DIP Lender or the Prepetition Secured Parties. The DIP Lender and the Prepetition Secured Parties shall not be required to file proofs of claim or requests for approval of administrative expenses authorized by this Final Order in any of the Cases or any Successor Case, and the provisions of this Final Order, and, upon the entry thereof, the Final Order, relating to the amount of the DIP Obligations, the Prepetition Lien Obligations, the Adequate Protection Superpriority Claims, the Adequate Protection Liens, the Prepetition Liens, the DIP Liens and the DIP Superpriority Claim shall constitute a timely filed proof of claim and/or administrative

expense request. For the avoidance of doubt, the books and records of the Prepetition Lenders shall be deemed conclusive as to the amount of the claims of each such party.

31. Rights of Access and Information. Without limiting the Debtors' reporting obligations or rights of access and information afforded the DIP Lender under the DIP Facility Documents, the Debtors shall be, and hereby are, required to afford representatives, agents and/or employees of the DIP Lender and the Prepetition Secured Parties, reasonable access to the Debtors' premises, knowledgeable officers of the Debtors, and their books and records in accordance with the DIP Facility Documents, and shall reasonably cooperate, consult with, and provide to such persons all such information as may be reasonably requested.

32. Intercompany Obligations. To the extent any Debtor owes any obligation or indebtedness to any other Debtor or any subsidiary or affiliate of any Debtor (the "Intercompany Obligations"), such Intercompany Obligations shall be subordinated to the DIP Obligations and Adequate Protection Superpriority Claims, and the guarantees (if any) thereof, until the DIP Obligations and Adequate Protection Superpriority Claims are indefeasibly repaid in full (and funded indemnity reserve).

33. Prohibited Use of DIP Facility, DIP Collateral, Cash Collateral, Carve-Out, Etc. Without the prior written consent of the DIP Lender, the DIP Facility, the DIP Collateral, and the Cash Collateral may not be used:

(a) for the payment of interest and principal with respect to the Prepetition Indebtedness (as defined in the DIP Facility Agreement) of the Debtors (Borrowers or any other Loan Party (as defined in the DIP Facility Agreement)), except for: (i) Roll-Up Loans; (ii) the Carve-Out; (iii) prepetition employee wages, benefits and related employee taxes as of the Petition Date as authorized by the Court; (iv) prepetition sales, use and real property taxes as authorized

by the Court; (v) prepetition amounts due in respect of insurance financings, premiums and brokerage fees as authorized by the Court; (vi) payment of fees and expenses (including fees and expenses of professionals) of the DIP Lender; (vii) other “first day” interim and final orders permitting payment of prepetition claims as authorized by the Court; ; (viii) the Prepetition Obligations solely to the extent of current cash interest and expenses; and (ix) other Prepetition Indebtedness to the extent authorized by the Court and set forth in the Approved Budget;

(b) subject to this Final Order, in connection with or to finance in any way any action, suit, arbitration, proceeding, application, motion or other litigation (excluding an investigation by the Creditors’ Committee related to the foregoing limited to \$75,000 of such Creditors’ Committee’s line item Approved Budget) of any type adverse to (i)(x) the rights, remedies, claims or defenses of DIP Lender under the DIP Facility Agreement, the other DIP Facility Documents, this Final Order including preventing, hindering or otherwise delaying the exercise of any rights, remedies, claims or defenses by the DIP Lender under the DIP Facility Agreement, the other DIP Facility Documents, this Final Order or (y) the rights, remedies, claims or defenses of the Prepetition Secured Parties under the Prepetition Loans including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or the Creditors’ Committee in connection with the assertion of or joinder in any claim, counterclaim, action, proceeding, application, motion, objection, defense or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment determination, declaration or similar relief (A) invalidating, setting aside, avoiding or subordinating, in whole or in part, the DIP Obligations, DIP Liens, the Prepetition Obligations, Prepetition Liens (as set forth in the DIP Facility Agreement), (B) for monetary, injunctive or other affirmative relief against the DIP Lender or the Prepetition Secured Parties or their respective

collateral; or (C) preventing, hindering or otherwise delaying the exercise by the DIP Lender or the Prepetition Secured Parties of any rights and remedies under this Final Order, the DIP Facility Documents, the Prepetition Loans or applicable law, or the enforcement or realization (whether by foreclosure, credit bid, further order of the Court or otherwise) by the DIP Lender, the Prepetition Secured Parties upon any of their respective collateral;

(c) to make any distribution under a plan of reorganization in any Case;

(d) to make any payment in settlement of any claim, action or proceeding, before any court, arbitrator or other governmental body, without prior written consent of the DIP Lender, unless otherwise set forth in the Approved Budget and ordered by the Court;

(e) to pay any fees or similar amounts to any person who has proposed or may propose to purchase interests of or otherwise invest in the Debtors (including so-called “Topping Fees,” “Exit Fees” and other similar amounts) without prior written consent by the DIP Lender, unless otherwise set forth in accordance with the Approved Budget;

(f) Subject to (j) below, to object to, contest, or interfere with, in any way, the DIP Lender’s or the Prepetition Secured Parties’ enforcement or realization upon any of the Prepetition Collateral or DIP Collateral once a Termination Event has occurred, except as provided for in this Final Order, or seek to prevent the DIP Lender or the Prepetition Secured Parties from credit bidding in connection with any proposed plan of reorganization or liquidation or any proposed transaction pursuant to section 363 of the Bankruptcy Code;

(g) During the Remedies Notice Period, to use or seek to use Cash Collateral while the DIP Obligations, the Prepetition Lien Obligations and/or any of the DIP Lender’s commitments under the DIP Facility Documents remain outstanding, without the consent of the DIP Lender or the Prepetition Secured Parties;

(h) to use or seek to use any insurance or tax refund or any related cash collateral or bond proceeds constituting DIP Collateral other than solely in accordance with the Approved Budget and the DIP Facility Documents;

(i) to incur indebtedness other than in accordance with the DIP Facility Documents without the prior consent of the DIP Lender (other than for the purpose of repayment in full of the DIP Facility);

(j) to prosecute an objection to, contest in any manner, or raise any defenses to, the validity, extent, amount, perfection, priority, or enforceability of, or seek equitable relief from, any of the DIP Obligations, the DIP Liens, the Prepetition Obligations, the Prepetition Liens, any other rights or interests of the DIP Lender or the Prepetition Secured Parties;

(k) to sell or otherwise dispose of the DIP Collateral other than as contemplated by the DIP Facility Documents and fail to turnover to the DIP Lender all proceeds or any such sale or other disposition; or

(l) for any purpose otherwise limited by the DIP Facility Agreement.

34. Reservation of Certain Third-Party Rights and Bar of Challenges and Claims. The stipulations, releases, good faith findings in, but not limited to, paragraph 29 of this Order, and admissions contained in this Final Order, including the Debtors' Stipulations and the Debtors' Releases, shall be binding on the Debtors in all circumstances. The Debtors' Stipulations and the Debtors' Releases, and the good faith findings in, but not limited to, paragraph 29 of this Order, shall be binding on the Debtors' estates and each other party in interest, including, without limitation, the Creditors' Committee, unless, and solely to the extent that (a) any such party in interest, including the Creditors' Committee, with standing and requisite authority, has timely commenced an adversary proceeding or contested matter under Bankruptcy Rule 9014 (subject to

the limitations set forth in paragraph 35 hereof) against the Prepetition Secured Parties in connection with any matter related to the Prepetition Loans or the Prepetition Collateral (a “Challenge Proceeding”) by no later than on or before each of (i) for the Creditors’ Committee, 60 days after the date of entry of the Final Order and (ii) for any other party in interest with the requisite standing (other than the Debtors), 75 days after the date of entry of the Final Order (the “Challenge Period”). If the Creditors’ Committee or any other party in interest files a motion for standing to bring a Challenge Proceeding by the Challenge Period, such Challenge Period shall be tolled pending further order of the Court with respect to the motion for standing solely with respect to the claims presented by the Challenge Proceeding. The Challenge Period may only be extended with the written consent of the Prepetition Secured Parties, or by order of the Court. Upon the expiration of the Challenge Period (the “Challenge Period Termination Date”):

- a. without the filing of a Challenge Proceeding, the Debtors’ Stipulations shall be binding on the Debtors’ estates and each other party in interest, and any and all such Challenge Proceedings and objections by any party in interest (including, without limitation, the Creditors’ Committee, any other statutory committee appointed in these Cases, any chapter 11 trustee, and/or any examiner or other estate representative appointed in the Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed in any Successor Case), shall be deemed to be forever waived, released and barred;
- b. all matters not subject to the Challenge Proceedings, including, without limitation, all findings, the Debtors’ Stipulations, the Debtors’ Releases, all waivers, releases, affirmations and other stipulations as to the priority, extent, and validity as to the Prepetition Secured Parties’ claims, liens, and interests shall be of full force and effect and forever binding upon the Debtors, the Debtors’ estates and all creditors, interest holders, and other parties in interest in the Cases and any Successor Case;
- c. without the filing of a Challenge Proceeding, any and all prepetition claims or causes of action against the Prepetition Secured Parties relating in any way to the Debtors or the Prepetition Loans shall be forever waived and released by the Debtors, the Debtors’ estates, all creditors, interest holders and other parties in interest in the Cases and any Successor Case;

- d. without the filing of a Challenge Proceeding, to the extent not theretofore repaid, the Prepetition Lien Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, recharacterization, reduction, defense or avoidance, for all purposes in these Cases and any subsequent chapter 7 case;
- e. without the filing of a Challenge Proceeding, the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected, not subject to defense, counterclaim, recharacterization, subordination or avoidance and full Roll-Up approved on final basis; and
- f. without the filing of a Challenge Proceeding, the obligations under the Prepetition Lien Documents shall not be subject to any other or further challenge by the Debtors, Creditors' Committee, any other statutory committee appointed in these Cases, or any other party in interest, each of whom shall be enjoined from seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any estate representative or a chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors with respect thereto).

35. If any Challenge Proceeding is timely commenced, the admissions and stipulations contained in this Final Order, shall nonetheless remain binding and preclusive (as provided in this paragraph) on the Debtors, any committee appointed in these cases, and any other person or entity, except as to any such findings and admissions that were expressly and successfully challenged (pursuant to a final order) in such Challenge Proceeding. Nothing in this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Creditors' Committee, any other statutory committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, claims and defenses with respect to the Prepetition Liens on the Prepetition Collateral; standing needs to be obtained for any Challenge Proceeding for which standing on behalf of the estate is required to be obtained prior to expiration of challenge period or standing forever barred. For the avoidance of doubt, any trustee appointed or elected in these Cases shall, until the expiration of the periods provided herein for asserting claims and thereafter for the duration of any adversary proceeding or contested matter commenced

pursuant to this paragraph 35 (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtors' estates), be deemed to be a party other than the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgments, admissions, confirmations, stipulations and waivers of the Debtors in this Final Order.

36. No Third-Party Rights. Except as explicitly named and provided for herein, this Final Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect, or incidental beneficiary.

37. Limitations on Charging Expenses. To give full effect to the applicable waivers, no costs or expenses of administration which have been or may be incurred in the Cases at any time shall be charged against the DIP Lender or the DIP Collateral or the Prepetition Secured Parties or the Prepetition Liens pursuant to sections 105 or 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code, or any other legal or equitable doctrine (including, without limitation, unjust enrichment) or any similar principle of law, without the prior written consent of each of the DIP Secured Party, and/or any Prepetition Secured Party that is adversely affected thereby, and no such consent shall be implied from any other action, inaction, or acquiescence by any such agents or lenders.

38. Section 552(b). The "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the DIP Lender or the Prepetition Secured Parties, with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral or the DIP Collateral.

39. No Marshaling/Applications of Proceeds. Neither the DIP Lender nor the Prepetition Secured Parties shall be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the DIP Collateral other than DIP Collateral constituting

Avoidance Action Proceeds; provided, however, nothing contained herein shall be deemed or interpreted as the DIP Lender or the Prepetition Secured Parties consenting to the application or the implementation of “marshaling” with respect to Avoidance Action Proceeds, for which such parties reserve all rights.

40. Discharge Waiver. The Debtors expressly stipulate, and the Court finds and adjudicates that, none of the DIP Obligations, the DIP Superpriority Claims or the DIP Liens shall be discharged by the entry of an order confirming any plan of reorganization, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless the DIP Obligations have been indefeasibly paid in full in cash (with funded indemnity reserve) on or before the effective date of a confirmed plan of reorganization.

41. Rights Preserved. Other than as expressly set forth in this Final Order, any other rights, claims or privileges (whether legal, equitable or otherwise) of the DIP Lender and the Prepetition Secured Parties are preserved. Nothing contained herein shall be deemed to be a finding by this Court or an acknowledgement by the Prepetition Secured Parties that the adequate protection granted herein does in fact adequately protect the Prepetition Secured Parties against any post-petition Diminution in Value.

42. Release. Subject to of paragraphs 34 and 35, and as further set forth in the DIP Facility Documents, the Debtors, on behalf of themselves and their estates (including any successor trustee or other estate representative in these Cases or any Successor Case) and any party acting on behalf of any of the Debtors or any of their estates, hereby stipulate and agree that they forever and irrevocably (a) release, discharge, waive, and acquit any other, current DIP Lender, and the former, current Prepetition Secured Parties, and each of their respective participants and co-lenders, and each of their respective affiliates, and each of their respective former, current, or

future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, successors, assigns and predecessors in interest (collectively, and in each case in their capacities as such, the “Released Parties”), from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys’ fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute or regulation or by contract, of every nature and description, arising out of, in connection with, or relating to the DIP Facility, the DIP Facility Documents, the Prepetition Loans, or the transactions and relationships contemplated hereunder or thereunder, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, perfection, or avoidability of the liens or secured claims of the Prepetition Secured Parties, and the DIP Lender, and (b) waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, and nonavoidability of the Prepetition Obligations, the Prepetition Liens, the DIP Obligations, and the DIP Liens. For the avoidance of doubt, the foregoing release shall not constitute a release of any rights arising under the DIP Facility Documents (the releases provided as set forth in this paragraph, collectively, the “Debtors’ Releases”).

43. No Waiver by Delay or Failure to Seek Relief or Exercise Rights. The failure or delay of the DIP Lender or the Prepetition Secured Parties to seek relief or otherwise exercise their

respective rights and remedies under this Final Order, the Prepetition Loans, the DIP Facility Agreement, the DIP Facility Documents, or applicable law, as the case may be, shall not constitute a waiver of any of the rights hereunder, thereunder, or otherwise of the DIP Lender or the Prepetition Secured Parties.

44. Binding Effect of Final Order. Immediately upon entry by the Court (notwithstanding any applicable law or rule to the contrary) and Closing, the terms and provisions of this Final Order, including the liens granted herein shall, *nunc pro tunc* to the Petition Date, become valid and binding upon and inure to the benefit of the Debtors, the DIP Lender, the Prepetition Secured Parties, all other creditors of the Debtors, the Creditors' Committee or any other court appointed or statutory committee appointed in the Cases, the U.S. Trustee and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in the Cases, any Successor Case, or upon dismissal of the Cases or any Successor Case.

45. No Modification of Final Order. The Debtors irrevocably waive the right to seek and shall not seek or consent to, directly or indirectly: (a) without the prior written consent of the DIP Lender, (i) any modification, stay, vacatur or amendment to this Final Order; or (ii) a priority claim for any administrative expense or unsecured claim against the Debtors (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation any administrative expense of the kind specified in sections 503(b), 507(a) or 507(b) of the Bankruptcy Code) in the Cases or any Successor Case, equal or superior to the Adequate Protection Superpriority Claims, other than the Carve-Out and the DIP Superpriority Claims; (b) without the prior written consent of the DIP Lender, (i) any order allowing use of Cash Collateral other than this Final Order; and (ii) any lien on any of the DIP Collateral with priority equal or superior to the Adequate Protection

Liens (other than the DIP Liens); and (c) without the prior written consent of the DIP Lender, any lien on any of the Prepetition Collateral with priority equal to or superior to the Adequate Protection Liens (other than the DIP Liens, the Permitted Priority Liens, the Carve-Out, and the Prepetition Liens). The Debtors irrevocably waive any right to seek any material amendment, modification or extension of this Final Order without the prior written consent, as provided in the foregoing, of the DIP Lender no such consent shall be implied by any other action, inaction or acquiescence of the Prepetition Secured Parties or the DIP Lender.

46. Final Order Controls. This Final Order shall constitute this Court's findings of fact and conclusions of law based upon the record of these Chapter 11 Cases at the Final Hearing and shall upon its entry by this Court take effect and be fully enforceable *nunc pro tunc* to the Petition Date. There shall be no stay of execution or effectiveness of this Final Order, notwithstanding anything to the contrary in the Bankruptcy Rules or other applicable law; any applicable stay is hereby waived. In the event of any inconsistency between the terms and conditions of the DIP Facility Documents or this Final Order, the provisions of this Final Order shall govern and control.

47. Survival. The provisions of this Final Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in the Cases; (b) converting any of the Cases to a case under chapter 7 of the Bankruptcy Code; (c) dismissing the Cases or any Successor Case; or (d) pursuant to which the Court abstains from hearing the Cases or any Successor Case. The terms and provisions of this Final Order, including the claims, liens, security interests and other protections granted to the Prepetition Secured Parties and the DIP Lender pursuant to this Final Order and/or the Prepetition Loans (other than as modified hereby), notwithstanding the entry of any such order, shall continue in the Cases, in any Successor Case, or following dismissal of the Cases or any Successor Case, and shall maintain

their priority as provided by this Final Order until all DIP Obligations and all Prepetition Obligations have been paid in full.

48. Cooperation Among the Parties. Except in the event not reasonably practicable, the Debtors shall provide copies of all substantive motions, applications, other pleadings, and proposed forms of order with respect thereto (all of which shall be in form and substance reasonably acceptable to the DIP Lender) to the DIP Lender not less than two (2) business days prior to the filing of any such substantive motions, applications, other pleadings, and proposed forms of order with respect thereto with the Court.

49. Preservation of Rights Granted Under this Final Order.

(a) Except as expressly provided herein or in the DIP Facility Documents, no claim or lien having a priority senior to or *pari passu* with that granted by this Final Order to the DIP Lender shall be granted while any portion of the DIP Obligations remains outstanding, and the DIP Liens shall not be subject to or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under section 551 of the Bankruptcy Code or subordinate to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

(b) Unless all DIP Obligations and the Prepetition Obligations shall have been indefeasibly paid in full (indemnity funded), the Debtors shall not seek, and it shall constitute an Event of Default under the DIP Facility Agreement if any of the Debtors seek, or if there is entered (i) any stay, vacatur, rescission or modification of this Final Order without the prior written consent of the DIP Lender and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Lender (ii) an order converting these Cases to cases under chapter 7 of the Bankruptcy Code or dismissing any of these Cases, or (iii) unless otherwise approved by the

DIP Lender, an order granting a change of venue with respect to these Cases or any related adversary proceeding. If an order dismissing any of these Cases under section 1112 of the Bankruptcy Code or otherwise is at any time entered, (x) the Adequate Protection Superpriority Claims and other administrative claims granted under this Final Order, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations and all Prepetition Obligations shall have been paid and satisfied in full (and that such DIP Superpriority Claims, Adequate Protection Superpriority Claims, the other administrative claims granted under this Final Order, the DIP Liens and the Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest), and (y) this Court shall retain jurisdiction, to the extent it has jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in clause (x) above.

(c) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect (i) the validity, priority or enforceability of any DIP Obligations or the adequate protection incurred prior to the actual receipt of written notice by the DIP Lender, of the effective date of such reversal, stay, modification or vacatur, or (ii) the validity, priority, or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of Collateral (including, without limitation, Cash Collateral), any DIP Obligations, or any adequate protection incurred by the Debtors to the other DIP Lender and/or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Lender and/or the Prepetition Lender, as the case may be, of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Final Order, and the DIP Lender and the

Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Final Order, and pursuant to the DIP Facility Documents with respect to all such uses of the DIP Collateral (including, without limitation, the Cash Collateral), all DIP Obligations, and all adequate protection.

(d) Nothing contained in this Final Order shall limit the Debtors' fiduciary duties.

50. Retention of Jurisdiction. The Court shall retain jurisdiction to enforce this Final Order according to its terms to the fullest extent permitted by applicable law.

END OF ORDER

Dated: June 21, 2022

New York, New York

/s/ Lisa G. Beckerman

United States Bankruptcy Judge

Exhibit A – Revised Approved Budget

PARETEUM CORPORATION

Weekly Cash Flow Forecast

(\$ thousands)

Company Week:	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Post-Close	Total Forecast
	76	77	78	79	80	81		
Month:	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast		
Year:	6	6	6	7	7	7		
Week Ending (Friday):	2022	2022	2022	2022	2022	2022		
	10-Jun	17-Jun	24-Jun	01-Jul	08-Jul	15-Jul		
Total Operating Receipts	113	233	351	1,956	126	2,244	-	5,023
Payroll & Benefits	(141)	-	(306)	(378)	-	(200)	-	(1,024)
Contractors	(275)	(45)	(47)	(463)	(36)	(31)	-	(898)
Network Costs	(99)	(205)	(31)	(562)	(14)	(33)	-	(944)
Trade AP	(37)	(47)	(28)	(261)	(42)	(96)	-	(511)
Other	(79)	(92)	(1)	(126)	(79)	(31)	-	(407)
Remaining Accrued AP	-	-	-	-	-	(482)	-	(482)
Total Operating Disbursements	(631)	(390)	(413)	(1,790)	(171)	(873)	-	(4,267)
Net Operating Cash Flow	\$ (518)	\$ (157)	\$ (62)	\$ 167	\$ (45)	\$ 1,371	\$ -	\$ 756
Professional Fees - Escrow Funding	(1,170)	(940)	(575)	(565)	(445)	(995)	(336)	(5,026)
US Trustee Fees	-	-	-	-	-	(90)	-	(90)
Board Fees	(12)	(12)	(12)	(12)	(12)	(12)	-	(71)
Total Non-Operating Cash Flow	(1,182)	(952)	(587)	(577)	(457)	(1,097)	(336)	(5,187)
Net Cash Flow	\$ (1,700)	\$ (1,109)	\$ (649)	\$ (410)	\$ (501)	\$ 274	\$ (336)	\$ (4,431)
Liquidity								
Beginning Cash Balance	3,960	2,260	1,152	1,503	2,093	2,591	2,865	3,960
Net Cash Flow	(1,700)	(1,109)	(649)	(410)	(501)	274	(336)	(4,431)
DIP Loan	-	-	1,000	1,000	1,000	-	-	3,000
Total Funding	-	-	1,000	1,000	1,000	-	-	3,000
Ending Cash Balance/(Deficit)	2,260	1,152	1,503	2,093	2,591	2,865	2,529	2,529
Professional Fee Escrow								
Beginning Balance	\$ 1,220	\$ 2,200	\$ 3,140	\$ 3,715	\$ 2,922	\$ 3,367	\$ -	\$ 1,220
Funding From DIP	1,170	940	575	565	445	995	336	5,026
Payments	(190)	-	-	(1,358)	-	(600)	(4,098)	(6,246)
Ending Balance	2,200	3,140	3,715	2,922	3,367	3,762	(3,762)	-

Note: Includes MVNE and Shared working capital. All other working capital is assumed by buyers under the APA.