

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
) Chapter 11
PLASTIQ INC., *et al.*,¹)
) Case No. 23-10671 ()
Debtors.)
) (Joint Administration Requested)
)

**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING,
(II) AUTHORIZING DEBTORS TO USE CASH COLLATERAL, (III) GRANTING
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS,
(IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING AUTOMATIC STAY,
(VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (each, a “Debtor” and collectively, the “**Debtors**”) hereby file this motion (the “**Motion**”) for entry of an interim order, substantially in the form attached hereto as Exhibit A (the “**Interim Order**”), and a final order (the “**Final Order**”² and, together with the Interim Order, the “**DIP Orders**”); pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2), 364(c)(3), 364(d), 503 and 507 of Title 11 of the United States Code (the “**Bankruptcy Code**”), rules 2002, 4001(b) and (c), 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”):³

(i) authorizing the Borrower (as defined in the DIP Loan Agreement) to obtain postpetition financing pursuant to the DIP Facility, and for each of the Guarantors (as defined in the DIP Loan Agreement) to guarantee unconditionally on a joint and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PlastiQ Inc. (6125), PLV Inc. d/b/a/ PLV TX Branch Inc. (5084), and Nearside Business Corp. (N/A). The corporate headquarters and the mailing address for the Debtors is 1475 Folsom Street, Suite 400, San Francisco, California 94103.

² The Debtors will file the Final Order in advance of the Final Hearing (as defined below).

³ Capitalized terms used but not otherwise defined in this section have the meaning ascribed to such terms elsewhere in the Motion or Interim Order, as applicable.



several basis, and subject to the terms and limitations set forth in the Debtor in Possession Secured Term Promissory Note in all respects, the Borrower's obligations under the DIP Facility, consisting of a senior secured super-priority term loan facility (the "**DIP Facility**"), on the terms and conditions substantially in the form annexed hereto as Exhibit A (as the same may be amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, the "**DIP Loan Agreement**" and together with any other related agreements (including the escrow agreement), documents, security agreements, or pledge agreements, including this Interim Order and (when entered) the Final Order, collectively, the "**DIP Loan Documents**"), by and among the Borrower, the Guarantors, Blue Torch Finance, LLC ("**Blue Torch**"), as administrative agent and collateral agent (in such capacities, the "**DIP Agent**"), and the lenders party thereto from time to time (the "**DIP Lenders**" and together with the DIP Agent, the "**DIP Secured Parties**"), in an aggregate principal amount of up to \$7.1 million in term loan commitments, which shall be available as term loans (the "**DIP Loans**") to the Borrowers upon entry of the Interim Order and satisfaction of the other conditions set forth therein in an interim amount not to exceed \$1 million (the "**Interim DIP Loan**") prior to the entry of the Final Order, and the remainder of the DIP Facility available upon entry of the Final Order to the extent set forth therein;

(ii) authorizing the Debtors to execute, deliver, and enter into the DIP Loan Documents and perform all of the Debtors' respective obligations thereunder;

(iii) authorizing the Debtors to pay the principal, interest, fees, expenses, and other amounts payable to the DIP Secured Parties pursuant to the DIP Loan Documents, including, without limitation, any principal, interest, fees, commitment fees, administrative agent fees, escrow agent fees, audit fees, closing fees, service fees, facility fees, or other fees, costs, expenses, charges, and disbursements of the respective DIP Secured Parties (including the reasonable and documented fees and expenses of each of the DIP Secured Parties' attorneys, advisors, accountants, and other consultants), any obligations in respect of indemnity claims, whether contingent or absolute, in each case, to the extent constituting Debtor and/or Guarantor obligations of any kind under the DIP Loan Documents (such obligations, the "**DIP Obligations**");

(iv) authorizing the Debtors to use proceeds of the DIP Facility as expressly provided in the DIP Loan Documents and solely in accordance with the terms of the Interim Order and the applicable Approved Budget (as defined below), subject to permitted variances and other exclusions set forth in the DIP Loan Documents, to: (A) pay costs, premiums, fees, and expenses (including professional fees and expense of the Debtors and any official committee of unsecured creditors that may be appointed in accordance with the Approved Budget) related to the chapter 11 cases and in connection with the DIP Facility; (B) make permitted adequate protection payments in respect of the Prepetition Obligations as provided for the Interim Order and the Approved Budget; and (C) provide financing for working capital and for other general corporate purposes of the Debtors;

(v) granting and approving superpriority administrative expense claim status to the DIP Agent for the benefit of itself and the other DIP Secured Parties in respect of all DIP Obligations, subject and subordinate only to the Carve-Out (as defined in the Interim Order);

(vi) granting the DIP Secured Parties valid, enforceable, non-avoidable, automatically and fully perfected DIP Liens in all DIP Collateral, including, without limitation, all property constituting Prepetition Collateral and all Cash Collateral (as that term is defined in section 363(a) of the Bankruptcy Code and further defined below), to secure the DIP Obligations, which DIP Liens shall be subject and subordinate to the Carve-Out and Permitted Liens; and

(vii) authorizing the Debtors to use, solely in accordance with the Approved Budget (subject to permitted variances and other exclusions set forth in the DIP Loan Documents) and the limitations provided herein and in the DIP Loan Documents, any Cash Collateral in which any of the Prepetition Secured Parties may have an interest, and the granting of adequate protection solely to the extent of any diminution in value of their respective interests in the Prepetition Collateral, including, without limitation, the Cash Collateral, as a result of (a) the incurrence of the DIP Obligations, (b) the Debtors' use of Cash Collateral, (c) the subordination of the Prepetition Obligations to the DIP Obligations and the Carve-Out, (d) any other diminution in value of the Prepetition Collateral arising from the Debtors' use, sale, or disposition of such Prepetition Collateral or the proceeds thereof, (e) the priming of the Prepetition Liens by the DIP Liens, and (f) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, "**Diminution in Value**");

(viii) 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 Interim Order and the other DIP Loan Documents;

(ix) waiving the Debtors' ability to surcharge pursuant to section 506(c) of the Bankruptcy Code against any DIP Collateral, and subject to entry of the Final Order, the Prepetition Collateral, and any right of the Debtors under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

(x) waiving any applicable stay;

(xi) scheduling a final hearing on the Motion to consider entry of the Final Order granting the relief requested in the Motion on a final basis (the "**Final Hearing**"), and approving the form of notice with respect to the Final Hearing; and

(xi) granting such other and related relief as is just and proper.

In support of this Motion, the Debtors submit the *Declaration of Steve Bremer in Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief*, (the "**Bremer Declaration**"), attached hereto as Exhibit B. The Debtors' initial budget reflecting the anticipated disbursements for each calendar week during the period from the Petition Date through and including the end of the thirteenth calendar week following the Petition Date is attached as Exhibit C to the Interim Order (the "**Approved Budget**").

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the "**Court**") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are sections 105, 361, 362, 363, 364, and 507 of title 11 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Local Rules 2002-1, 4001-1, 4001-2, and 9013-1.

BACKGROUND

2. On the date hereof (the "**Petition Date**"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a)

and 1108 of the Bankruptcy Code. No official committees have been appointed in the chapter 11 cases and no request has been made for the appointment of a trustee or examiner.

3. Additional information regarding the Debtors' businesses, capital structure, and the circumstances leading to the filing of the chapter 11 cases is set forth in detail in the *Declaration of Vladimir Kasparov In Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**"),⁴ which was filed contemporaneously herewith and is incorporated herein by reference.

PRELIMINARY STATEMENT

4. The Debtors commenced these chapter 11 cases to maximize the value of their estates through a court-supervised sale for the benefit of all parties in interest. As part of that effort, by this Motion, the Debtors seek authorization to access the DIP Facility and to use Cash Collateral, which will, among other things, (a) ensure the continued, uninterrupted operation of their business, (b) assure their customers, employees, and business partners that they are well-capitalized during the pendency of these chapter 11 cases, and (c) make available sufficient funding to pay necessary expenses incurred in connection with the chapter 11 cases.

5. As described more fully in the First Day Declaration, the Debtors provide a leading software payment platform for business-to-business payment automation that powers all aspects of accounts payables and accounts receivables operations for small and medium businesses ("**SMBs**"). The Debtors' software allows their clients to automate payments, workflows, and processes, and access new credit sources. Thus, the Debtors services solve two primary needs of SMBs: (i) automation at an affordable price and (ii) assistance with maintaining a healthy cash flow. In addition, the Debtors facilitate one-time or recurrent payments for their customers to

⁴ Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the First Day Declaration.

allow them to make rent payments, and to pay, *inter alia*, their mortgages, utility bills, day care costs, homeowners' association fees, and other expenses.

6. In early 2023, the Debtors began exploring a strategic alternatives process to maximize the value of their assets for the benefit of all stakeholders. In connection therewith, in February 2023 the Debtors retained Triple P RTS, LLC ("**Portage Point**") to provide a chief restructuring officer and other associated personnel. Additionally, on February 17, 2023, the Board authorized the formation of a special restructuring committee (the "**Restructuring Committee**") and delegated to the Restructuring Committee the authority to approve a recapitalization, refinancing, restructuring, or other alternative strategic transaction (each, a "**Transaction**") involving all or substantially all of the Company's assets.

7. Throughout the strategic alternatives process, the Debtors remained in close communication with the Prepetition Secured Parties to determine, among other things, their interest in participating in, or approving, a Transaction. When it became clear that an acceptable out-of-court transaction might not materialize on the required timeline, the Debtors quickly pivoted toward negotiating the terms of a chapter 11 process, while simultaneously continuing to pursue all available out-of-court options. Over the course of many weeks, the Debtors and their advisors engaged in arms'-length negotiations to finalize the terms of the DIP Facility with their Prepetition Secured Parties.

8. As demonstrated by the First Day Declaration and the Bremer Declaration, the DIP Facility will provide necessary and adequate liquidity during the chapter 11 cases, at rates, which were negotiated at arm's length and are, taken as a whole, reasonable under the circumstances of the chapter 11 cases. Furthermore, as noted in the Bremer Declaration, more favorable or comparable financing was not available in light of the Debtors thorough evaluation of strategic

alternatives prepetition, weak liquidity position and need to move quickly when it was determined that an out-of-court solution was unavailable. The Debtors believe that the DIP Facility is the best available financing package.

9. Immediate access to the DIP Facility and use of Cash Collateral is necessary to avoid immediate and irreparable harm that would otherwise result if the Debtors were denied incremental liquidity. The Debtors had minimal cash on hand to operate their businesses upon commencement of the chapter 11 cases—they estimate approximately \$3 million in liquidity—and that position will be further strained after the Petition Date by, among other things, continued operation of the Debtors’ business, the costs of administering the chapter 11 cases, and payments expected (and needed) to be made under the Debtors’ requested “first day” relief. The Debtors believe that access to the DIP Facility and use of Cash Collateral are critical to ensuring that they are able to achieve their goals in the chapter 11 cases for the benefit of all parties in interest and should be approved.

CONCISE STATEMENT PURSUANT TO BANKRUPTCY RULE 4001

10. Pursuant to Bankruptcy Rules 4001(b), (c), and (d), the following is a concise statement and summary of the proposed material terms of the DIP Documents and DIP Orders:⁵

Summary of Material Terms	
<p>Parties to the DIP Facility <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i></p>	<p><u>Borrower:</u> PlastiQ Inc.</p> <p><u>Guarantors:</u> PLV Inc. and Nearside Business Corp.</p> <p><u>DIP Agent:</u> Blue Torch Finance, LLC</p> <p><u>DIP Lenders:</u> Blue Torch Credit Opportunities Fund II LP, Blue Torch Credit Opportunities Fund III LP, BTC Holdings Fund II LLC, BTC Holdings SBAF Fund LLC, and BTC Holdings KRS Fund LLC</p>

⁵ This statement is qualified in its entirety by reference to the applicable provisions of the DIP Documents. To the extent, there exists any inconsistency between this concise statement and the provisions of the DIP Documents or the DIP Orders, the provisions of the DIP Documents or the DIP Orders, as applicable, will control. Capitalized terms used but not otherwise defined in this section have the meaning ascribed to such terms in the Interim Order or the DIP Loan Agreement.

Summary of Material Terms	
Purpose <i>Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)</i>	The ability of the Debtors to obtain sufficient working capital and liquidity through the proposed postpetition financing arrangements with the DIP Secured Parties and the use of Cash Collateral as set forth in the Interim Order, the DIP Loan Agreements and the other DIP Loan Documents, is vital to the preservation, maximization, and maintenance of the going concern value of each Debtor. See Interim Order ¶ F(ii).
Borrowing Limits <i>Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)A</i>	Aggregate amount of up to \$7.1 million in term loan commitments, which shall be available as term loans to the Borrowers upon entry of the Interim Order, and up to \$1.00 available upon entry of a Final Order. See Interim Order ¶ 1.2(a).
Approved Budget <i>Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(iii)</i>	A copy of the Approved Budget is attached as <u>Exhibit C</u> to the Interim Order.
Interest Rates <i>Fed. R. Bankr. P. 4001(c)(1)(B)</i>	Adjusted Term SOFR plus 12.0%. See DIP Loan Agreement §4
Maturity Date <i>Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)</i>	The DIP Loan Facility will mature on the earliest to occur of: (i) September 20, 2023 , or if such date is not a Business Day the immediately following Business Day, (ii) June 27, 2023 , if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, or if such date is not a Business Day the immediately following Business Day, (iii) the consummation of a sale of all or substantially of the Debtors' assets pursuant to the Sale Motion or otherwise; (iv) the substantial consummation of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order of the Bankruptcy Court, or (v) the date on which the Term Loans are accelerated See DIP Loan Agreement § 17.
Repayment Features / Roll-Up <i>Local Rule 4001-2(a)(i)(E) & (O)</i>	None.
Conditions Precedent to Closing and Lending <i>Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)(E)</i>	The effectiveness of the DIP Loan Agreement and the occurrence of the Closing Date are subject to the satisfaction, or waiver by the Required DIP Lenders, of conditions precedent customary for financings of this type, which are set forth in § 2 of the DIP Loan Agreement.
Events of Default <i>Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)(M)</i>	The DIP Loan Agreement contains customary events of default for financings of this type, which are set forth in § 16 of the DIP Loan Agreement.

Summary of Material Terms	
<p>Carve-Out <i>Fed. R. Bankr. P. 4001(c)(1)(B); Local Rule 4001-2(a)(i)(F)</i></p>	<p>Subject to the terms and conditions contained in the Interim Order, each of the DIP Liens, DIP Superpriority Claims, Prepetition Liens, Adequate Protection Liens, and Adequate Protection Claims shall be subject and subordinate to the Carve-Out.</p> <p>As used in the Interim Order, the “Carve-Out” means (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below) (collectively, the “Statutory Fees”); plus the sum of (ii) all reasonable fees and expense up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below) (the “Chapter 7 Trustee Carve-Out”); (iii) to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise, subject to the Approved Budget, all unpaid fees (excluding any success or transaction fees) costs, disbursements and expenses (the “Allowed Professional Fees”) incurred or earned by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) or the Committee pursuant to section 327, 328, or 1103 of the Bankruptcy Code (the “Committee Professionals” and together with the Debtor Professionals, the “Professional Persons”) at any time before or on the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below) whether allowed by the Court prior to, on or after the delivery of a Carve-Out Trigger Notice (the “Pre-Trigger Carve-Out Cap”); and (iv) Allowed Professional Fees of the Professional Persons in an aggregate amount not to exceed \$250,000 (inclusive of any prepetition retainer held by the applicable Professional Person to the extent not previously applied or returned) incurred after the first business day following delivery by the DIP Agent of the Carve-Out Trigger Notice (such date, the “Trigger Date”), to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve-Out Trigger Notice Cap” and such amounts set forth in clauses (i) through (iv), the “Carve Out Cap”).</p> <p><i>See Interim Order ¶ 2.3(a).</i></p>
<p>Priority of Claims and Liens; Collateral <i>Fed. R. Bankr. P. 4001(c)(1)(B)(i)</i></p>	<p>“DIP Collateral” means all property and assets of the Debtors, including, but not limited to, a valid and perfected security interest and lien upon all of the following now existing or hereafter arising or acquired property and assets: (i) all property and assets comprising the Prepetition Collateral and (ii) all other property and assets of the Debtors, including any property or assets consisting of “Excluded Property” under any of the Prepetition Term Loan Documents (collectively hereinafter referred to as the “DIP Collateral” which, for avoidance of doubt, shall (subject to the entry of the Final Order) include, the proceeds (the “Avoidance Proceeds”) of any claim or cause of action arising under or pursuant to chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law (including any other avoidance actions under the Bankruptcy Code) (collectively, the “Avoidance Actions”). <i>See Interim Order ¶ F(vi).</i></p> <p><u>First Priority Liens on Unencumbered Property.</u> The DIP Liens on the DIP Collateral securing the DIP Obligations shall be first and senior in priority to all other interests and liens of every kind, nature, and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or security interests granted in favor of third parties, in conjunction with sections 363, 364, or any other section of the Bankruptcy Code or other applicable law; <i>provided, however</i>, that the DIP Liens on (A) the Prepetition Collateral (whether in existence on the Petition Date or hereafter arising) shall be subject to the Carve-Out and Permitted Liens; (B) assets of the Debtors (the “Non-Lender Encumbered Assets”) that were subject to validly perfected liens or security interests as of the Petition Date other than the Prepetition Liens (the “Non-Lender Existing Liens”) shall be subject to such Non-Lender Existing Liens and the Carve-Out; and (C) any other assets of the Debtors (“Unencumbered Assets”) that were not subject to any validly perfected liens or security interest as of the Petition Date (including, subject to the entry of a Final Order, Avoidance Proceeds) shall be subject and subordinate to the Carve-Out. <i>See Interim Order ¶ 2.1(b).</i></p>

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	<p><u>Priming DIP Liens.</u> For the avoidance of doubt, the DIP Liens shall prime and be senior to the Prepetition Liens of the Prepetition Secured Parties on the Prepetition Collateral. <i>See</i> Interim Order ¶ 2.1(b).</p> <p><u>DIP Superpriority Claims.</u> Subject to the priorities set forth in the Carve-Out, on account of all DIP Obligations now existing or hereafter arising pursuant to the Interim Order, the DIP Loan Documents, or otherwise, the DIP Agent, for the benefit of itself and the DIP Lenders, is granted Superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities, and indebtedness of the Debtors, whether now in existence or hereafter incurred by the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, <i>inter alia</i>, sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503(b), 507(a), 507(b), 546(c), 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which allowed Superpriority administrative claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (including subject to entry of the Final Order, proceeds of Avoidance Actions) (such Superpriority administrative expense claims, the “DIP Superpriority Claim”).</p> <p><i>See</i> Interim Order ¶¶ 2.2(a).</p>
<p>Adequate Protection / Identity of Each Entity with Interest in Cash Collateral</p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)(ii); (b)(1)(B)(i), (iv); Local Rule 4001-2(a)(i)(K) & (P)</i></p>	<p>The Prepetition Secured Parties shall be granted the following adequate protection, subject in all cases to the Carve-Out:</p> <ol style="list-style-type: none"> 1. <u>Adequate Protection Liens.</u> Subject to section 4.1 of the Interim Order, the Prepetition Secured Parties are hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of any Perfection Act) valid and perfected postpetition replacement security interests in and liens upon the DIP Collateral (the “Prepetition Adequate Protection Liens”), which liens shall be, with respect to: (A) the Prepetition Collateral (whether in existence on the Petition Date or hereafter arising), subject and subordinate only to the Carve-Out, Permitted Liens and the DIP Liens; (B) the Non-Lender Encumbered Assets, subject to the Non-Lender Existing Liens, the Carve-Out and the DIP Liens; and (C) the Unencumbered Assets, subject to the Carve-Out and the DIP Liens, in each case as such priorities are set forth in Exhibit B to the Interim Order. <i>See</i> Interim Order ¶ 2.4(a)(i). 2. <u>Adequate Protection Claims.</u> To the extent of any Diminution in Value, the Prepetition Secured Parties are hereby granted allowed Superpriority administrative expense claims pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code (the “Prepetition Secured Parties Adequate Protection Claims”), which shall be allowed claims against each of the Debtors (jointly and severally), with priority (except as otherwise provided herein) over any and all administrative expenses and all other claims against the Debtors now existing or hereafter arising of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 327, 328, 330, 331, 365, 503(b), 507(a), 507(b), or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment. The Prepetition Secured Parties Adequate Protection Claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors, subject to the Carve-Out, Permitted Liens, the DIP Superpriority Claims and the rankings and priorities set forth in Exhibit B to the Interim Order. <i>See</i> Interim Order ¶ 2.4(a)(iii). 3. <u>Adequate Protection Payments.</u> Subject to the Approved Budget, the Debtors are authorized to pay to the Prepetition Lenders, commencing on the first business day the calendar month following entry of this Interim Order, an amount equal to all accrued and unpaid prepetition

Summary of Material Terms	
	<p>or postpetition interest (at the non-default rate), fees, and costs under and in accordance with the Prepetition Term Loan Documents. For the avoidance of doubt, the payment of interest pursuant to this paragraph shall be without prejudice to the rights of the Prepetition Secured Parties to assert claims for payment of interest at the default rate in accordance with the Prepetition Term Loan Documents. <i>See</i> Interim Order ¶ 2.4(a)(ii).</p> <p>4. Reporting Requirements. The Debtors shall timely provide the Prepetition Secured Parties with (x) reasonable access to the Debtors’ facilities, management, books, and records required under the Prepetition Term Loan Documents and (y) copies of all financial reporting provided to the Dip Agent and DIP Lenders pursuant to the DIP Loan Documents substantially simultaneously with such delivery to the DIP Lenders. <i>See</i> Interim Order ¶ 2.4(b).</p>
<p>Debtors’ Stipulations <i>Fed. R. Bankr. P. 4001(c)(1)(B)(iii); Local Rule 4001-2(a)(i)(B)</i></p>	<p>The stipulations, releases, agreements, and admissions contained in the Interim Order, including, without limitation, paragraph E thereof, and the releases contained in clause (vii) thereof (collectively, the “Prepetition Lien and Claim Matters”), shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative and all creditors and parties-in-interest, and all of their successors in interest and assigns, including without limitation the Committee, unless, and solely to the extent that (a) a party-in-interest has sought standing and requisite authority to commence a Challenge (as defined below) (other than the Debtors, as to which the ability to commence any Challenge is irrevocably waived and relinquished) by timely filing an appropriate pleading (which shall include as an attachment or exhibit any applicable adversary complaint) under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 4.1) challenging all or any portion of the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing an adversary proceeding or other contested matter, a “Challenge”) by no later than (i) the date which is 75 calendar days after entry of this Interim Order, (ii) any such later date as has been agreed to, in writing, by the Prepetition Agent (with the consent of the applicable Prepetition Secured Parties) or (iii) such later date as set by an order of the Court for cause shown (such time period established by the foregoing clauses (i) through (iii), the “Challenge Period”); provided that a motion to extend the Challenge Period and an accompanying request for an expedited hearing on such motion shall extend the Challenge Period through the date on which the Court resolves such motion to extend the Challenge Period; provided further, that if a chapter 11 trustee is appointed or the Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period, the chapter 11 or chapter 7 trustee, as applicable, shall have until the later of (1) the expiration of the Challenge Period, and (2) the thirtieth (30th) day after the appointment of the chapter 11 trustee or conversion of the Cases to cases under chapter 7, as applicable, to commence a Challenge; provided further, if any adversary proceeding or contested matter is timely filed and is pending on the date, if any, on which any of the Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such adversary proceeding or contested matter on behalf of the Debtors’ estates, without any further authorization or order of the Court.</p> <p><i>See</i> Interim Order ¶ 4.1.</p>
<p>Waiver or Modification of Automatic Stay <i>Fed. R. Bankr. P. 4001(c)(1)(B)(iv)</i></p>	<p>The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified without further notice, application, or order of the Court to the extent necessary to (i) permit the DIP Agent and Prepetition Agent to perform any act authorized or permitted under or by virtue of this Interim Order, the DIP Loan Agreement, or the other DIP Loan Documents, as applicable, including, without limitation, (i) to implement the postpetition financing arrangements authorized by the Interim Order, (ii) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the DIP Collateral, (iii) to assess, charge, collect, advance, deduct and receive payments with respect to the Prepetition Obligations and DIP Obligations (or any portion thereof), including, without limitation, all interests, fees, costs, and expenses permitted under any of the DIP Loan Documents</p>

Summary of Material Terms	
	and apply such payments to the Prepetition Obligations, and (iv) subject to the Remedies Notice Period and provided that the Debtors, the Committee, if any, or the U.S. Trustee or any party in interest with requisite standing has not obtained an order from this Court to the contrary prior to the expiration of the Remedies Notice Period, to take any action and exercise all rights and remedies provided to it by the Interim Order, the DIP Loan Documents, or applicable law. <i>See</i> Interim Order ¶ 3.4.
Milestones <i>Fed. R. Bankr. P. 4001(c)(1)(B)(vi); Local Rule 4001-2(i)(a)(H)</i>	<p>Exhibit D of the Interim Order contains the following milestones:</p> <ol style="list-style-type: none"> 1. No later than 3 Business Days after the Petition Date, the Interim Order approving the DIP Facility and the adequate protection of the Prepetition Liens shall be entered by the Bankruptcy Court; 2. No later than 3 Business Days following the Petition Date, the Debtors shall file the Sale Motion, which motion shall be in form and substance acceptable to the DIP Agent; 3. No later than 35 days after the Petition Date, the Final Order approving the DIP Facility and the adequate protection of the Prepetition Liens shall be entered by the Bankruptcy Court; 4. No later than 35 days after the Petition Date the Bankruptcy Court shall have entered an order approving bid and auction procedures, in form and substance reasonably acceptable to the DIP Secured Parties, which procedures shall establish a bid deadline of not later than 60 days following the Petition Date; 5. No later than 70 days after the Petition Date the Bankruptcy Court shall have entered one or more orders authorizing and approving the sale of all or substantially all of the Debtors' assets pursuant to one or a series of related or unrelated transactions; and 6. No later than 75 days after the Petition Date the approved sale(s) of all or substantially all of the Debtors' assets shall have been consummated.
Indemnification <i>Fed. R. Bankr. P. 4001(c)(1)(B)(ix)</i>	<p>The Debtors are authorized to indemnify and hold harmless the DIP Agent, each DIP Lender, and, solely in their capacities as such, each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders and employees, past, present and future, and their respective heirs, predecessors, successors and assigns (each, an “Indemnified Party”) in accordance with, and subject to, the DIP Loan Documents.</p> <p><i>See</i> Interim Order ¶ 1.5.</p>
Section 506(c) Waiver / Section 552(b) Waiver <i>Fed. R. Bankr. P. 4001(c)(1)(B)(x)</i> <i>Local Rule 4001-2(a)(i)(C)</i>	<p>The Debtors have agreed as a condition to obtaining financing under the DIP Facility and the use of Cash Collateral as set forth in the Interim Order that as a material inducement to the DIP Secured Parties to provide the DIP Facility and the Prepetition Secured Parties' consent to the priming by the DIP Facility and to the use of Cash Collateral as set forth in the Interim Order, and in exchange for (a) the DIP Secured Parties' willingness to provide the DIP Facility to the extent set forth in the Interim Order, (b) the DIP Secured Parties' and the Prepetition Secured Parties' agreement to subordinate their liens and Superpriority claims to the Carve-Out, and (c) the consensual use of Cash Collateral consistent with the Approved Budget, the terms of the DIP Loan Agreement, and the terms of the Interim Order, each of the DIP Secured Parties and, subject to the entry of the Final Order, the Prepetition Secured Parties are entitled to receive (1) a waiver of any equities of the case exceptions or claims under section 552(b) of the Bankruptcy Code, and (2) a waiver of the provisions of section 506(C) of the Bankruptcy Code.</p> <p><i>See</i> Interim Order ¶ F(viii).</p>

Summary of Material Terms	
<p>Liens on Avoidance Actions</p> <p><i>Fed. R. Bankr. P. 4001(c)(1)(B)(xi)</i></p>	<p>“DIP Collateral” as defined in the Interim Order and the DIP Loan Agreement includes Avoidance Proceeds of any Avoidance Actions.</p> <p>See Interim Order ¶ F(vi).</p>
<p>Fees</p> <p><i>Fed. R. Bankr. P. 4001(c)(1);</i></p> <p><i>Local Rule 4001-2(a)(i)(B)</i></p>	<p>Facility Fee. The Borrower shall pay to the Agent, for the account of the DIP Lenders, an upfront fee in an aggregate amount equal to 5.0% of the aggregate principal amount of the Commitments, which fee shall be fully earned upon the entry of the Interim Order and non-refundable when paid. The upfront fee will be netted against the initial Borrowing Request.</p> <p>Agent Fee. On the Closing Date, the Borrower shall pay to the Agent an annual agent administration fee equal to \$100,000 per annum. The first annual agent administration fee will be fully earned upon the entry of the Interim Order and non-refundable when paid. Thereafter, the annual agent administration fee shall be due on the anniversary of the Closing Date to the extent that the Obligations have not been repaid in full prior to such date.</p> <p>Exit Fee. On the earlier of (i) the date that all of the Obligations under this Note are paid in full and (ii) the Maturity Date, the Borrower shall pay to the Agent, for the account of the DIP Lenders, an exit fee equal to 4.0% of the aggregate principal amount of the Commitments, which shall be earned upon the entry of the Interim Order and non-refundable when paid.</p> <p>See DIP Loan Agreement § 8.</p>
<p>Cross-Collateralization</p> <p><i>Local Rule 4001-2(a)(i)(N)</i></p>	<p>No provision of the DIP Loan Agreement or the Interim Order grants cross-collateralization protection of the type contemplated by Local Rule 4001-2(a)(i)(N).</p>
<p>Provisions Governing Joint Liability</p> <p><i>Local Rule 4001-2(a)(i)(J)</i></p>	<p>To the extent of any Diminution in Value, the Prepetition Secured Parties are hereby granted allowed superpriority administrative expense claims pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code (the “Prepetition Secured Parties Adequate Protection Claims”), which shall be allowed claims against each of the Debtors (jointly and severally), with priority (except as otherwise provided in the Interim Order) over any and all administrative expenses and all other claims against the Debtors now existing or hereafter arising, of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 327, 328, 330, 331, 365, 503(b), 507(a), 507*b), or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment.</p> <p>See Interim Order ¶ 2.4(iii).</p>

PREPETITION CAPITAL STRUCTURE

11. Plastiq Inc., as borrower, and certain of its affiliates designated therein as “**Guarantors**” (such parties, collectively, the “**Prepetition Obligors**”), and certain lenders (each, a “**Lender**” and collectively, the “**Prepetition Lenders**”), and Blue Torch, as administrative agent and collateral agent (in such capacities, the “**Prepetition Agent**” and together with the Prepetition

Lenders, the “**Prepetition Secured Parties**”) are parties to that certain *Financing Agreement*, dated as of November 14, 2022 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “**Prepetition Term Loan Agreement**” and, together with all other agreements, documents, and instruments executed and/or delivered with, to, or in favor of the Prepetition Secured Parties, including, without limitation, all security agreements, deposit account control agreements (including, without limitation, the Control Agreements (as defined below), control agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements, documents, and instruments, including any fee letters, executed and/or delivered in connection therewith or related thereto, the “**Prepetition Term Loan Documents**”). Pursuant to the Prepetition Term Loan Agreement, the Prepetition Lenders made term loans in the aggregate principal amount of \$40 million, \$35 million of which was funded directly to the Debtors and \$5 million of which was funded into an escrow account (the “**Prepetition Term Loans**”).

12. Certain of the Prepetition Lenders held warrants to purchase common stock, which contained a put right that could be exercised upon an event of default under the Prepetition Term Loan Agreement. Those put rights were exercised on February 17, 2023, and the warrants were due to be paid on March 6, 2023. The Debtors did not make this payment. On March 8, 2023, the Prepetition Lenders delivered a default and acceleration notice to the Debtors. On March 17, 2023, the Debtors and the Prepetition Lenders entered into an amendment to a forbearance agreement, which extended the forbearance period through and including March 24, 2023. The amendment also provided that the warrants, in the amount of \$3.5 million, would be considered Prepetition Obligations under the Prepetition Term Loan Agreement.

13. As of the Petition Date, approximately \$43,334,584.39 million of indebtedness under the Prepetition Term Loan Agreement was outstanding, which amount is comprised of

\$41,301,734.15⁶ in principal amount, and accrued and unpaid interest in the amount of \$2,032,850.24 (and, together with any other amounts outstanding under the Prepetition Term Loan Documents, including interest, fees, and expenses, the “**Prepetition Obligations**”). The Prepetition Term Loans are secured by first priority security interests in and liens (subject only to certain of the liens permitted under the Prepetition Term Loan Documents) on the Collateral (as such term is defined in the Prepetition Loan Documents) (the “**Prepetition Collateral**” and such liens and security interests on such Prepetition Collateral, the “**Prepetition Liens**”).

14. To secure the Prepetition Obligations, the Debtors entered into certain guaranty and collateral agreements and certain other security documents governing the Prepetition Secured Parties’ security interests in the Prepetition Collateral (such agreements, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, and together with any ancillary collateral documents, including, without limitation, any related mortgages and deeds of trust, the “**Prepetition Collateral Documents**”). Pursuant to the Prepetition Collateral Documents, and on the terms set forth therein, the Debtors granted to the Prepetition Secured Parties the Prepetition Liens on the Prepetition Collateral.

LIQUIDITY NEEDS AND FINANCING EFFORTS

I. DEBTORS HAVE AN IMMEDIATE NEED TO ACCESS DIP FACILITY AND USE CASH COLLATERAL

15. The Debtors require access to the DIP Facility and the use of Cash Collateral to ensure sufficient liquidity to operate their business and administer their estates during the chapter 11 cases. Access to the DIP Facility will provide the Debtors with immediate access to liquidity

⁶ On March 8, 2023, the Prepetition Lenders notified the Debtors that the Obligations under the Prepetition Term Loan Agreement were being accelerated and an Event of Default has occurred. The principal amount outstanding under the Prepetition Term Loan Agreement is inclusive of the Applicable Premium (as such term is defined in the Prepetition Term Loan Agreement) in the amount of \$372,713.81. Furthermore, as described more fully in the First Day Declaration, the principal amount is also inclusive of put rights for warrants held by the Prepetition Lenders.

and to the Cash Collateral, which will permit the Debtors to, among other things: (a) continue to provide goods and services to their customers and generate revenue during the chapter 11 cases; (b) provide working capital for their business; (c) fund payments to their workforce; (d) fund other general corporate purposes; (e) fund the payments authorized by the Court pursuant to the “first-day motions” filed contemporaneously with the DIP Motion; (f) operate their cash management system; (g) pursue a Court-approved sale and marketing process; and (h) satisfy administrative costs and expenses incurred in the chapter 11 cases.

16. Absent authority to enter into and access the DIP Facility and use Cash Collateral, even for a limited period of time, the Debtors will be unable to continue operating their business, resulting in a deterioration of value and immediate and irreparable harm to the Debtors’ estates. Further, in order to pursue a value-maximizing marketing and sale process during the chapter 11 cases, the Debtors require sufficient funding to administer the chapter 11 cases. Immediate access to the DIP Facility and use of Cash Collateral is essential so the Debtors can assure their employees, customers, vendors, and other parties that they have sufficient capital to continue operating “business as usual” during the pendency of the chapter 11 cases. Even with access to Cash Collateral, the Debtors do not believe it would be prudent, or even possible, to administer the chapter 11 cases solely on a “cash collateral” basis.

17. The Debtors have worked closely with their advisors to evaluate their cash requirements for their business. As part of such evaluation, the Debtors and their advisors reviewed and analyzed the Debtors’ near-term weekly and long-term cash flow forecasts and prepared the Approved Budget. These forecasts take into account anticipated cash receipts and disbursements during the projected periods and consider a number of factors, including, but not limited to, the effect of the chapter 11 filing on the operations of the business, fees and interest

associated with postpetition financing, professional fees, and customer and vendor obligations, as well as the operational performance of the Debtors' business. The Debtors believe that the Approved Budget provides an accurate reflection of the Debtors' funding requirements over the identified period and is reasonable and appropriate under the circumstances.

II. THE PROPOSED DIP FACILITY REPRESENTS THE BEST POSTPETITION FINANCING OPTION CURRENTLY AVAILABLE TO THE DEBTORS UNDER THE CIRCUMSTANCES

18. Given the Debtors' prepetition capital structure and the challenges facing their business, the DIP Facility represents the best available postpetition financing. Before the commencement of the chapter 11 cases, the Debtors, in consultation with their advisors, implemented internal cost reductions and carefully considered a number of other potential options to address the Debtors' capital structure and liquidity challenges. Prior to the Petition Date, the Debtors and their advisors worked with the Prepetition Secured Parties and their counsel to negotiate the DIP Facility. Further, the Debtors and their advisors executed an asset purchase agreement with an acquisition vehicle formed by Priority Technology Holdings, Inc. to serve as a stalking horse purchaser (the "APA"). The Debtors and their advisors intend to continue to work to identify parties interested in submitting competing offers to the APA during the pendency of the chapter 11 cases.

19. Ultimately, the Debtors and their advisors were unable to identify viable, actionable out of court alternatives that would provide sufficient liquidity to the Debtors to continue operations in the ordinary course. Therefore, the Debtors began preparing for a potential chapter 11 filing, including by engaging with the DIP Lenders regarding terms of a potential postpetition financing.

20. The Debtors vigorously negotiated the terms of the DIP Facility with the DIP Lenders. As further discussed in the Bremer Declaration, (i) throughout this iterative process, both

the Debtors and the DIP Lenders were represented by experienced advisors, all participating in arm's-length negotiations; and (ii) the DIP Facility's pricing is the product of arm's-length negotiation and, taken as a whole, reasonable under the present circumstances. Importantly, the Bremer Declaration provides that the Debtors do not believe that they would be able to obtain third-party financing on unsecured, junior, or even priming basis on better and more executable terms, taken as a whole, than the DIP Facility.

21. Ultimately, the Debtors and their advisors believe the DIP Facility, which provides \$7.1 in new money for the Debtors' estates and access to necessary Cash Collateral, is on terms that were negotiated and are, taken as a whole, reasonable and is the only postpetition financing option currently available to the Debtors under the circumstances.

BASIS FOR RELIEF REQUESTED

I. THE DEBTORS SHOULD BE AUTHORIZED TO ACCESS DIP FACILITY

22. Section 364(c) of the Bankruptcy Code requires a finding, made after notice and a hearing, that a debtor seeking postpetition financing on a secured basis cannot "obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense." 11 U.S.C. § 364(c).

23. In addition, under section 364(d)(1) of the Bankruptcy Code, courts may, after notice and a hearing, authorize a debtor to obtain postpetition credit secured by a "priming" lien from affected secured parties if (a) the debtor obtains the consent of such parties or (b) the debtor cannot obtain credit elsewhere and the interests of existing lienholders are adequately protected. 11 U.S.C. § 364(d)(1). Specifically, section 364(d)(1) provides, in relevant part, that a court may, after notice and a hearing:

authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if-

(A) the [debtor] is unable to obtain credit otherwise; and

(B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

24. In evaluating proposed postpetition financing under sections 364(c) and 364(d)(1) of the Bankruptcy Code, courts perform a qualitative analysis and generally consider various factors including whether:

- a. unencumbered credit or alternative financing without superpriority status is available to the debtor;
- b. the credit transactions are necessary to preserve assets of the estate;
- c. the terms of the credit agreement are fair, reasonable, and adequate;
- d. the proposed financing agreement was negotiated in good faith and at arm's length and entry thereto is an exercise of sound and reasonable business judgment and in the best interest of the debtors' estate and their creditors; and
- e. the proposed financing agreement adequately protects prepetition secured creditors.

See, e.g., In re Aqua Assoc., 123 B.R. 192 (Bankr. E.D. Pa. 1991) (applying the first three factors in making a determination under section 364(c)); *In re Crouse Group, Inc.*, 71 B.R. 544 (Bankr. E.D. Pa. 1987) (same); *Bland v. Farmworker Creditors*, 308 B.R. 109, 113-14 (S.D. Ga. 2003) (applying all factors in making a determination under section 364(d)).

25. Section 364 of the Bankruptcy Code also allows for postpetition financing secured by a priming lien. Section 364(d)(1) provides that the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt if:

(A) the trustee is unable to obtain such credit otherwise; and

- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1).

26. For the reasons discussed herein, including the terms of the DIP Facility as well as the unavailability of actionable alternative sources of financing, the Debtors satisfy the standards required to access postpetition financing on a superpriority claim and priming lien basis under sections 364(c) and 364(d) of the Bankruptcy Code.

A. The Debtors Cannot Obtain Postpetition Financing on More Favorable Terms

27. In demonstrating that credit is not available without the protections afforded by section 364(c) or 364(d) of the Bankruptcy Code, a debtor need only make a good faith effort. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) to obtain less onerous terms where debtor approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders); *see also In re Snowshoe Co.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (holding “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable”); *In re Phoenix Steel Corp.*, 39 B.R. 218, 222 (D. Del. 1984) (holding the debtor satisfied its burden to show an inability to obtain credit on other terms through its time and effort spent trying to obtain credit on alternative terms and conditions).

28. Moreover, where few lenders likely can or will extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom., Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (holding that bankruptcy

court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met).

29. As set forth above and in the Bremer Declaration, given their current financial condition, financing arrangements, and capital structure, the Debtors were unable to identify actionable alternative sources of interim and long-term financing other than the DIP Lenders, and were not able to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code.

30. Among other issues, the Debtors have few, if any, unencumbered assets that could otherwise be used to collateralize postpetition financing. Such unencumbered assets are insufficient to secure the magnitude of financing required to meet the Debtors' working capital needs. Furthermore, the DIP Lenders hold a majority of the obligations and commitments under the Prepetition Term Loan Agreement. The DIP Lenders hold substantially all of the Debtors' prepetition funded debt, with first liens on the collateral securing such funded debt.

31. In addition, the Prepetition Term Loan Agreement contains restrictive language limiting the Debtors' ability to raise postpetition financing absent consent from certain of the Prepetition Lenders. Therefore, absent such consent, the Debtors are unable to raise sufficient postpetition financing to meet the working capital needs of their business. This language effectively grants the Prepetition Lenders a blocking position over the Debtors' ability to raise sufficient postpetition financing to satisfy their working capital needs and, more broadly, over the Debtors' ability to comprehensively restructure their balance sheet without such lenders' support.

32. The Prepetition Secured Parties would not consent to the Debtors' incurrence of priming financing by any other party than the DIP Lenders. Absent receiving such consent from the Prepetition Secured Parties, the Debtors would have faced a potentially costly and difficult

non-consensual priming dispute between any potential postpetition priming lenders and the Prepetition Secured Parties at a time when the Debtors' liquidity is severely limited. Any such dispute would erode the value of the Debtors' estates to the detriment of all stakeholders. In short, the dearth of unencumbered assets and, therefore, the prospect of a priming fight with the Prepetition Secured Parties, would be a deterrent to potential third-party postpetition lenders other than the DIP Lenders.

33. The Debtors believe that new credit is unavailable to the Debtors without providing the DIP Superpriority Claims and the DIP Liens on the DIP Collateral, as provided herein and in the DIP Documents.

B. The DIP Facility is Necessary to Preserve the Value of the Debtors' Estates

34. As debtors in possession, the Debtors have a fiduciary duty to protect and maximize the value of their estates. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004). The DIP Facility, if approved, will provide working capital critical to funding the Debtors' day-to-day operations and the chapter 11 cases, which provide a path for the Debtors' to sell their assets as a going concern pursuant to section 363 of the Bankruptcy Code. Without access to the DIP Facility, the Debtors would be forced to cease operations, which would result in immediate and irreparable harm to their business and deplete the going concern value of such business. The Debtors would also be unable to administer their chapter 11 cases. The Debtors' ability to maintain business relationships with their vendors, suppliers, and customers, to make capital expenditures, and to satisfy other working capital and operational needs and otherwise finance their operations during the chapter 11 cases is essential to the Debtors' continued viability and to ensure that the most value-maximizing chapter 11 process can be pursued. Because the Debtors' available and projected Cash Collateral is insufficient to fund their operations during the chapter 11 cases, the

credit to be provided under the DIP Facility is necessary to preserve the value of the Debtors' estates for the benefit of all stakeholders.

C. The Terms of the DIP Facility are Reasonable under the Circumstances

35. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the proposed lender. *In re L.A. Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (stating that approval of DIP financing requires terms that are “fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender”); *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See Transcript of Record* at 740:4-6, *In re Lyondell Chem. Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009) (“[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the provisions [of a DIP that included a roll-up of prepetition secured debt] reasonable here and now.”).

36. As described above and in the First Day Declaration and the Bremer Declaration, the Debtors require immediate access to additional financing to operate their businesses and fund the chapter 11 cases. Moreover, before the Petition Date, the Debtors engaged in a thorough evaluation of strategic alternatives before it was determined that an out-of-court solution was unavailable. Ultimately, the Debtors engaged with the DIP Lenders and successfully negotiated the DIP Facility. The Debtors believe that the DIP Facility provides, among other things, (a) necessary liquidity for the Debtors to pursue a value-maximizing process for the benefit of all parties in interest and (b) economic terms that (i) were the subject of arm's-length negotiations

with the DIP Lenders, (ii) are an integral component of the overall terms of the DIP Facility, and (iii) were required by the DIP Lenders as consideration for the DIP Facility.

37. Given the Debtors' urgent need to obtain financial stability for the benefit of all parties in interest, the terms of the DIP Facility are reasonable, and in the best interests of the Debtors, their estates, and their creditors. As described in the First Day Declaration and the Bremer Declaration, the DIP Documents were negotiated extensively by the Debtors and the DIP Lenders, in good faith and at arm's-length as required by section 364(e) of the Bankruptcy Code, with all parties represented by experienced advisors.

D. The Debtors' Entry into the DIP Documents Reflects the Debtors' Reasonable Business Judgment

38. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del 1994) (noting that the interim loan, receivable facility and asset based facility were approved because they "reflect[ed] sound and prudent business judgment [were] reasonable under the circumstances and in the best interests of TWA and its creditors"); *Ames Dep't Stores, Inc.*, 115 B.R. at 40 ("cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest"); *Group of Institutional Holdings v. Chicago Mil. St. P. & Pac. Ry.*, 318 U.S. 523, 550 (1943); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985) ("Business judgments should be left to the board room and not to the Court."); *In re Lifeguard Indus., Inc.*, 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (same).

39. Bankruptcy courts typically defer to the debtors' business judgment on the decision to borrow money unless such decision is arbitrary and capricious. *See In re Trans World Airlines, Inc.*, 163 B.R. at 974. In fact, "[m]ore exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

40. For the reasons set forth above, the Debtors submit that the entry into the DIP Facility is a reasonable exercise of their business judgment.

E. The Proposed Adequate Protection is Appropriate Under the Circumstances.

41. To the extent a secured creditor's interests in the collateral constitute valid and perfected security interests and liens as of the Petition Date, section 364(d)(1)(B) of the Bankruptcy Code requires that adequate protection be provided where the liens of such secured creditor are being primed to secure the obligations under a debtor in possession financing facility. Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, replacement liens, and other forms of relief. What constitutes adequate protection must be decided on a case-by-case basis. *See In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985). The focus of the requirement is to protect a secured creditor from the diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) ("The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.") (internal citations omitted).

42. The proposed adequate protection provided to the Prepetition Lenders comprises the following: (a) valid and perfected security interests in and liens on the DIP Collateral subject

and subordinate only to the Carve-Out, Permitted Liens and the DIP Liens, (b) valid and perfected security interests and liens on the Non-Lender Encumbered Assets, subject to the Non-Lender Existing Liens, the Carve-Out, and the DIP Liens; and (c) valid and perfected security interests and liens on the Unencumbered Assets, subject to the Carve-Out and the DIP Liens, (d) payment of an amount equal to all accrued and unpaid prepetition or post-petition interest (at the non-default rate), fees, and costs under and in accordance with the Prepetition Term Loan Documents, (e) to the extent of any Diminution in Value, superpriority administrative expense claims pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code (the “**Prepetition Secured Parties Adequate Protection Claims**”), which shall be allowed claims against each of the Debtors (jointly and severally), with priority over any and all administrative expenses and all other claims against the Debtors now existing or thereafter arising, of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, and (f) the reasonable and documented fees and expenses of counsel and other professionals, (f) as set forth in the DIP Orders.

F. The Debtors Should be Authorized to Pay Any Fees and Payments Required Under the DIP Documents

43. In addition to the various Adequate Protection Payments (as defined in the Interim Order) and other reimbursement obligations, in each case, specified under the DIP Documents and the Interim Order, the Debtors have agreed, subject to Court approval, to pay certain fees and other payments to the DIP Agent and the DIP Lenders.

44. It is understood and agreed by all parties, including the Debtors that such fees are an integral component of the overall terms of the DIP Facility and were required by the DIP Agent and DIP Lenders as consideration for the extension of postpetition financing after arm’s-length and good faith negotiations.

II. THE APPROVAL OF USE OF THE DEBTORS' USE OF CASH COLLATERAL IS APPROPRIATE

45. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use, sell, or lease cash collateral unless “(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.”

46. The Debtors have an urgent need for the immediate use of the Collateral, including the Cash Collateral, and seek to use all Cash Collateral existing on or after the Petition Date pursuant to the terms of the DIP Documents. The Debtors need the Cash Collateral to pay operating expenses, as well as fund the chapter 11 cases so they can pursue a value-maximizing sale and chapter 11 process. Indeed, absent such relief, the Debtors' business will be brought to an immediate halt, with damaging consequences for the Debtors and their estates and creditors.

47. The Debtors believe that the terms and conditions of their use of the Cash Collateral (including the provision of adequate protection described above) are appropriate and reasonable and that such adequate protection is sufficient to secure any adequate protection obligations under the circumstances. Furthermore, the Prepetition Secured Parties have consented (or are deemed to consent) to the Debtors' use of the Cash Collateral subject to the terms and conditions of the DIP Documents and the Interim Order. Therefore, the Debtors submit that they should be authorized to use the Cash Collateral on the terms set forth in the DIP Documents.

III. THE DIP LENDERS SHOULD BE DEEMED GOOD-FAITH LENDERS

48. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

49. As explained herein, the First Day Declaration, and the Bremer Declaration, the DIP Documents are the result of: (a) the Debtors' reasonable judgment that the DIP Lenders provided the only actionable postpetition financing alternative available under the circumstances; and (b) extended arm's-length, good-faith negotiations between the Debtors and the DIP Lenders. The Debtors submit that the terms and conditions of the DIP Documents are reasonable under the circumstances, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

IV. MODIFICATION OF AUTOMATIC STAY

50. The Interim Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default under the DIP Loan Agreement, all rights and remedies provided in the DIP Loan Agreement without further order of or application to the Court. However, the DIP Agent must provide the Debtors and various other parties with five business days' notice before exercising any enforcement rights or remedies in respect of their collateral. During such period, the Debtors and other parties in interest may contest whether an Event of Default has occurred and is continuing.

51. Stay modification provisions of this sort are common features of postpetition financing facilities and, in the Debtors' business judgment, are reasonable under the circumstances. Accordingly, the Debtors request that the Court modify the automatic stay solely to the extent contemplated by the DIP Loan Agreement and the Interim Order and Final Order.

V. APPROVAL OF INTERIM RELIEF.

52. Bankruptcy Rules 4001(b)(2) and 4001(c)(2) provide that a final hearing on a motion to use cash collateral or obtain credit, respectively, may not be commenced earlier than 14 days after the service of such motion. Upon request, however, the court may conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit on an interim basis "to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2); (c)(2).

53. As described above, the Debtors have an urgent and immediate need for cash in order to maintain business relationships with their vendors, suppliers, customers, and other parties, to make capital expenditures, and to satisfy other working capital and operational needs and otherwise finance their operations and the chapter 11 cases. Given the immediate and irreparable harm to be suffered by the Debtors, their estates and their creditors absent interim relief, the Debtors request that, pending the Final Hearing, the Court schedule an interim hearing within two days of the Petition Date or as soon thereafter as practicable to consider the interim relief requested in this Motion.

VI. REQUEST FOR A FINAL HEARING

54. The DIP Loan Agreement requires that a Final Order approving this Motion be entered within 35 days after the Petition Date. As such, pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon

as practicable, but in no event later than 35 days following the Petition Date, and fix the time and date before the Final Hearing for parties to file objections to this Motion.

**BANKRUPTCY RULE 6003 HAS BEEN SATISFIED
AND BANKRUPTCY RULE 6004 SHOULD BE WAIVED**

55. Certain aspects of the relief requested herein may, if granted, be subject to Bankruptcy Rule 6003, which governs the availability of certain types of relief within 21 days after the Petition Date. Pursuant to Bankruptcy Rule 6003, a court may grant such relief if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein and in the First Day Declaration demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

56. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a), to the extent not satisfied, and of the 14-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their business and preserve the value of their estates. Accordingly, the Debtors submit that the requested waiver of the notice requirements of Bankruptcy Rule 6004(a) and of the 14-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

RESERVATION OF RIGHTS

57. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors or the existence of any lien against the Debtors' property; (b) a waiver of the Debtors' rights to dispute any claim or lien on any grounds; (c) a promise to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) an assumption or rejection of any executory contract or unexpired lease

pursuant to section 365 of the Bankruptcy Code; or (f) a limitation on the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract with any party subject to the DIP Orders once entered. Nothing contained in the DIP Orders will be deemed to increase, reclassify, elevate to an administrative expense status, or otherwise affect any claim to the extent it is not paid.

NOTICE

58. Notice of this Motion has been or will be provided to: (a) the U.S. Trustee (Attn: Richard L. Schepacarter); (b) counsel to the DIP Lender; (c) the holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; (d) all persons known or reasonably believed to have asserted an interest in the Assets within the last six (6) months; (e) all parties who have asserted liens against the Assets; and (f) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE the Debtors respectfully request entry of the DIP Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: May 24, 2023
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Joseph M. Mulvihill

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Proposed Counsel for Debtors and Debtors in Possession

EXHIBIT A

Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	§	Chapter 11
	§	
PLASTIQ INC. <i>et al.</i> , ¹	§	Case No. 23-10671 (___)
	§	
Debtors.	§	Jointly Administered
	§	
	§	RE: Docket No. ___

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 AND 507 (I) AUTHORIZING THE DEBTORS TO OBTAIN SENIOR SECURED SUPERPRIORITY POSTPETITION FINANCING; (II) GRANTING (A) LIENS AND SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS AND (B) ADEQUATE PROTECTION TO CERTAIN PREPETITION LENDERS; (III) AUTHORIZING USE OF CASH COLLATERAL; (IV) SCHEDULING A FINAL HEARING; AND (V) GRANTING RELATED RELIEF

Upon the *Debtors’ Emergency Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection To Certain Prepetition Lenders; (III) Authorizing Use Of Cash Collateral; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* (the “Motion”)² of *Plastiq Inc., et al.* (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”), for entry of an interim order (this “Interim Order”) and a final order (the “Final Order”), pursuant to sections 105, 361, 362, 363, 364(c)(1), 364(c)(2) 364(c)(3), 364(d), 364(e), 503 and 507 of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001(b) and (c), 6004, and 9014 of the Federal Rules of Bankruptcy

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: *Plastiq Inc.* (6125), *PLV Inc. d/b/a/ PLV TX Branch Inc.* (5084), and *Nearside Business Corp.* (N/A). The corporate headquarters and the mailing address for the Debtors is 1475 Folsom Street, Suite 400, San Francisco, California 94103.

² Each capitalized term used but not defined herein shall have the meaning ascribed to it in the applicable DIP Loan Documents (as defined below).

Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Bankruptcy Rules (the “Local Rules”) for the United States Bankruptcy Court for the District of Delaware (this “Court”), requesting, among other things:

(1) authorization for the Borrower (as defined in the DIP Loan Agreement (as defined below)) to obtain postpetition financing pursuant to the DIP Facility (as defined below), and for each of the Guarantors (as defined in the DIP Loan Agreement) to guarantee unconditionally on a joint and several basis, and subject to the terms and limitations set forth in the DIP Loan Agreement in all respects, the Borrower’s obligations under the DIP Facility, consisting of a senior secured super-priority term loan facility (the “DIP Facility”), on the terms and conditions substantially in the form annexed hereto as **Exhibit A** (as the same may be amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, the “DIP Loan Agreement” and, together with any other related agreements (including the escrow agreement), documents, security agreements, or pledge agreements, including this Interim Order and (when entered) the Final Order, collectively, the “DIP Loan Documents”), by and among the Borrower, the Guarantors, Blue Torch Finance, LLC (“Blue Torch”), as administrative agent and collateral agent (in such capacities, the “DIP Agent”), and the lenders party thereto from time to time (the “DIP Lenders” and, together with the DIP Agent, the “DIP Secured Parties”), in an aggregate principal amount of up to \$7.1 million in term loan commitments, which shall be available as term loans (the “DIP Loans”) to the Borrowers upon entry of this Interim Order and satisfaction of the other conditions set forth therein in an interim amount not to exceed \$1 million (the “Interim DIP Loan”) prior to entry of the Final Order, and the remainder of the DIP Facility available upon entry of the Final Order to the extent set forth therein.

(2) authorization for the Debtors to execute, deliver, and enter into the DIP Loan Documents and to perform all of the Debtors' respective obligations thereunder, and such other and further acts as may be required in connection with the DIP Loan Documents;

(3) authorization for the Debtors to pay the principal, interest, fees, expenses and other amounts payable to the DIP Secured Parties pursuant to the DIP Loan Documents, including, without limitation, any principal, interest, fees, commitment fees, administrative agent fees, escrow agent fees, audit fees, closing fees, service fees, facility fees, or other fees, costs, expenses, charges, and disbursements of the respective DIP Secured Parties (including the reasonable and documented fees and expenses of each of the DIP Secured Parties' attorneys, advisors, accountants and other consultants), any obligations in respect of indemnity claims, whether contingent or absolute, in each case, to the extent constituting Debtor and/or Guarantor obligations of any kind under the DIP Loan Documents (such obligations, the "DIP Obligations");

(4) authorization for the Debtors, immediately upon entry of this Interim Order, to use proceeds of the DIP Facility as expressly provided in the DIP Loan Documents and solely in accordance with this Interim Order and the applicable Approved Budget (as defined below), subject to permitted variances and other exclusions set forth in the DIP Loan Documents, to: (A) pay costs, premiums, fees, and expenses (including professional fees and expenses of the Debtors and any official committee of unsecured creditors that may be appointed in accordance with the Approved Budget) related to the Chapter 11 Cases and in connection with the DIP Facility; (B) make permitted adequate protection payments in respect of the Prepetition Obligations (as defined below) as provided for in this Interim Order and the Approved Budget; and (C) provide financing for working capital and for other general corporate purposes of the Debtors;

(5) the grant and approval of superpriority administrative expense claim status, pursuant to sections 364(c)(1), 503(b)(1) and 507(b) of the Bankruptcy Code, to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, in respect of all DIP Obligations, subject and subordinate only to the Carve-Out (as defined below);

(6) granting the DIP Secured Parties valid, enforceable, non-avoidable, automatically and fully perfected DIP Liens (as defined below) in all DIP Collateral (as defined below), including, without limitation, all property constituting Prepetition Collateral (as defined below) and all Cash Collateral (as that term is defined in section 363(a) of the Bankruptcy Code and further defined below), to secure the DIP Obligations, which DIP Liens shall be subject and subordinate to the Carve-Out and Permitted Liens (as defined below) and the relative rankings and priorities set forth herein and in **Exhibit B**;

(7) authorization for the Debtors to use, solely in accordance with the Approved Budget (subject to permitted variances and other exclusions set forth in the DIP Loan Documents) and the limitations provided herein and in the DIP Loan Documents, any Cash Collateral in which any of the Prepetition Secured Parties (as defined below) may have an interest, and the granting of adequate protection solely to the extent of any diminution in the value of their respective interests in the Prepetition Collateral, including, without limitation, the Cash Collateral, as a result of (i) the incurrence of the DIP Obligations, (ii) the Debtors' use of Cash Collateral, (iii) the subordination of the Prepetition Obligations to the DIP Obligations and the Carve-Out, (iv) any other diminution in value of the Prepetition Collateral arising from the Debtors' use, sale, or disposition of such Prepetition Collateral or the proceeds thereof, (v) the priming of the Prepetition Liens by the DIP Liens, and (vi) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (collectively, "Diminution in Value");

(8) the modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order and the other DIP Loan Documents to the extent hereinafter set forth;

(9) subject to entry of the Final Order, a waiver of the Debtors' ability to surcharge pursuant to section 506(c) of the Bankruptcy Code against any DIP Collateral and the Prepetition Collateral, and any right of the Debtors under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;

(10) this Court's waiver of any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Interim Order;

(11) the scheduling of a final hearing on the Motion (the "Final Hearing") to consider entry of the Final Order granting the relief requested in the Motion on a final basis, and approving the form of notice with respect to the Final Hearing; and

(12) granting the Debtors such other and further relief as is just and proper.

The initial hearing on the Motion having been held by this Court on May __, 2023 (the "Interim Hearing"), and the Court having found that, under the circumstances, due and sufficient notice of the Motion and Interim Hearing was provided by the Debtors as set forth in Paragraph D of this Interim Order, and upon the record made by the Debtors at the Interim Hearing, including the Motion, the *Declaration of Vladimir Kasparov in Support of the Debtors' Chapter 11 Petitions and First Day Pleadings* [Doc. No. __] (the "First Day Declaration") and the *Declaration of Steven Bremer in Support of Debtors' Emergency Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503 and 507 (I) Authorizing the Debtors to Obtain Senior Secured Superpriority Postpetition Financing; (II) Granting (A) Liens and Superpriority Administrative Expense Claims and (B) Adequate Protection to Certain Prepetition Lenders; (III)*

Authorizing Use Of Cash Collateral; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief (the “Bremer DIP Declaration”), [Doc. No. _____]; any exhibits in connection with the foregoing, and the filings and pleadings in these Chapter 11 Cases, the Court having found that the interim relief requested in the Motion is fair and reasonable and is in the best interests of the Debtors, the Debtors’ bankruptcy estates (as defined under section 541 of the Bankruptcy Code, the “Estates”), their stakeholders and other parties in interest, and represents a sound exercise of the Debtors’ business judgment and is essential for the continued operation and maintenance of the Debtors’ businesses; it appearing to the Court that granting the interim relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their Estates pending the Final Hearing; and all objections, if any, to the relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and after due deliberation sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:³

(A) Petition Date. On May 23, 2023 (the “Petition Date”), each Debtor filed a voluntary petition for relief (each, a “Petition”) under chapter 11 of the Bankruptcy Code. The Debtors continue to operate and maintain their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No chapter 11 trustee or examiner has been appointed in any of the Chapter 11 Cases.

(B) Jurisdiction and Venue. This Court has jurisdiction over these Cases, the Debtors, property of the Debtors’ Estates and this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended*

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Pursuant to Rule 9013-1(f) of the Local Rules, the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 503 and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001, 9013 and 9014 and Local Rules 7007-1, 9013-1, 9013-4, and 9014-2.

(C) Committee Formation. As of the date hereof, no official committee of unsecured creditors under section 1102 of the Bankruptcy Code (the “Committee”) or any other statutory committee has been appointed in the Chapter 11 Cases.

(D) Notice. Good and sufficient notice of the Motion under the circumstances has been provided in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

(E) Parties’ Acknowledgments, Agreements, and Stipulations. In requesting the DIP Facility and use of Cash Collateral, and in exchange for and as a material inducement to the DIP Secured Parties and the Prepetition Secured Parties to agree to provide, or consent to, the DIP Facility, access to the Cash Collateral, and subordination of the Prepetition Liens (as defined below) to the DIP Obligations and Carve-Out, as provided herein, and as a condition to providing financing under the DIP Facility and consenting to the use of Cash Collateral as set forth herein, subject to the rights of parties in interest (other than the Debtors) set forth in Section 4.1 of this Interim Order, the Debtors admit, stipulate, acknowledge, and agree, as follows:

(i) Prepetition Obligations. PlastiQ Inc., as borrower, and certain of its affiliates designated therein as “Guarantors” (such parties, collectively, the “Prepetition Obligors”), each “Lender” from time to time party thereto (collectively, the “Prepetition Lenders”), and Blue Torch, as administrative agent and collateral agent (in such capacities, the “Prepetition Agent” and, together with the Prepetition Lenders, the “Prepetition Secured Parties”), are parties to that certain Financing Agreement, dated as of November 14, 2022 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “Prepetition Term Loan Agreement” and, together with all other agreements, documents, and instruments executed and/or delivered with, to or in favor of the Prepetition Secured Parties, including, without limitation, all security agreements, deposit account control agreements (including, without limitation, the Control Agreements (as defined below)), control agreements, notes, guarantees, mortgages, Uniform Commercial Code financing statements, documents, and instruments, including any fee letters, executed and/or delivered in connection therewith or related thereto, the “Prepetition Term Loan Documents”). Pursuant to the Prepetition Term Loan Agreement, the Prepetition Lenders made term loans in the aggregate principal amount of \$40 million, of which amount \$5 million was funded into an escrow that would only be made available to the Prepetition Obligors subject to the satisfaction of certain conditions precedent (which did not occur) (the “Prepetition Term Loans”). As of the Petition Date, approximately \$43,334,584.39 million of indebtedness under the Prepetition Term Loan Agreement was outstanding, which amount is comprised of \$41,301,734.15⁴ in principal amount, and accrued and unpaid interest in the amount of

⁴ On March 8, 2023, the Prepetition Lenders notified the Debtors that the Obligations under the Prepetition Term Loan Agreement were being accelerated and an Event of Default has occurred. The principal amount outstanding under the Prepetition Term Loan Agreement is inclusive of the Applicable Premium (as such term is defined in the Prepetition Term Loan Agreement) in the amount of \$372,713.81. Furthermore, as described more fully in the First Day Declaration, the principal amount is also inclusive of put rights for warrants held by the Prepetition Lenders.

\$2,032,850.24 (and, together with any other amounts outstanding under the Prepetition Term Loan Documents, including interest, fees, and expenses, the “Prepetition Obligations”). The Prepetition Term Loans are secured by first priority security interests in and liens (subject only to certain of the liens permitted under the Prepetition Term Loan Documents) on the Collateral (as such term is defined in the Prepetition Loan Documents) (the “Prepetition Collateral” and such liens and security interests on such Prepetition Collateral, the “Prepetition Liens”).

(ii) Prepetition Collateral. To secure the Prepetition Obligations, the Debtors entered into certain guaranty and collateral agreements and certain other security documents governing the Prepetition Secured Parties’ security interests in the Prepetition Collateral (such agreements, as amended, restated, amended and restated, supplemented or otherwise modified from time to time, and together with any ancillary collateral documents, including, without limitation, any related mortgages and deeds of trust, the “Prepetition Collateral Documents”). Pursuant to the Prepetition Collateral Documents, and on the terms set forth therein, the Debtors granted to the Prepetition Secured Parties the Prepetition Liens on the Prepetition Collateral.

(iii) Prepetition Obligations. The Prepetition Obligations owing to the Prepetition Secured Parties constitute legal, valid, and binding obligations of the Debtors and the other Prepetition Obligors, enforceable against them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and no portion of the Prepetition Obligations owing to the Prepetition Secured Parties is subject to avoidance, recharacterization, reduction, set-off, offset, counterclaim, cross-claim, recoupment, defenses, disallowance, impairment, recovery, subordination, or any other challenges pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity, including in any Successor Cases (as defined below).

(iv) Prepetition Liens. The Prepetition Liens granted to the Prepetition Secured Parties constitute legal, valid, binding, enforceable (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and perfected security interests in and liens on the Prepetition Collateral, were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value, and are not subject to defense, counterclaim, recharacterization, subordination, avoidance, or recovery pursuant to the Bankruptcy Code or applicable non-bankruptcy law or regulation by any person or entity.

(v) No Challenges/Claims. No offsets, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Obligations exist, and no portion of the Prepetition Liens or Prepetition Obligations is subject to any challenge or defense including, without limitation, avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtors and their Estates have no valid Claims (as such term is defined in section 101(5) of the Bankruptcy Code) objections, challenges, causes of action, and/or choses in action against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors or employees with respect to the Prepetition Term Loan Documents, the Prepetition Obligations, the Prepetition Liens, or otherwise, whether arising at law or at equity, including, without limitation, any challenge, recharacterization, subordination, avoidance, recovery, disallowance, reduction, or other claims arising under or pursuant to sections 105, 502, 510, 541, 542 through 553, inclusive, or 558 of the Bankruptcy Code or applicable state law equivalents. The Prepetition Obligations constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(vi) Indemnity. The DIP Agent, the DIP Lenders and the Prepetition Secured Parties have acted in good faith, and without negligence or violation of public policy or law, 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 in respect of the granting of the DIP Liens and the Prepetition Secured Parties Adequate Protection Liens (as defined below), 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. Accordingly, the Prepetition Secured Parties, the DIP Agent and the DIP Lenders shall be and hereby are indemnified and held harmless by the Debtors in respect of any claim or liability incurred in respect thereof or in any way related thereto, provided that no such parties will be indemnified for any cost, expense, or liability to the extent determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted primarily from such parties' gross negligence or willful misconduct. No exception or defense exists in contract, law, or equity as to any obligation set forth, as the case may be, in this paragraph E(vi), in the Prepetition Term Loan Documents, or in the DIP Loan Documents, to the Debtors' obligation to indemnify and/or hold harmless the Prepetition Secured Parties, the DIP Agent or the DIP Lenders, as the case may be.

(vii) Release. Subject to Section 4.1 of this Interim Order, each of the Debtors, their Estates and the Prepetition Obligors, on their own behalf and on behalf of each of their past, present and future predecessors, successors, heirs, subsidiaries, and assigns have agreed to provide releases to each of the Released Parties (as defined below) as provided in Section 5.17 of this Interim Order.

(viii) Cash Collateral. The Debtors admit, stipulate, acknowledge, and agree that all of the cash of the Debtors, wherever located, and all cash equivalents, including any cash in deposit accounts of the Debtors, as income, proceeds, products, rents or profits of other Prepetition Collateral, or otherwise, constitutes “cash collateral” of the Prepetition Secured Parties within the meaning of section 363(a) of the Bankruptcy Code (the “Cash Collateral”).

(F) Findings Regarding the Postpetition Financing and Use of Cash Collateral.

(i) Request for Postpetition Financing. The Debtors have requested from each of the DIP Secured Parties, and the DIP Secured Parties are willing, subject to the terms of this Interim Order and satisfaction of the conditions set forth in the DIP Loan Agreements, to extend the DIP Loans on the terms and conditions set forth in this Interim Order and the DIP Loan Documents, respectively.

(ii) Need for Postpetition Financing and Use of Cash Collateral. The Debtors do not have sufficient liquidity, including Cash Collateral, to operate and maintain their businesses in the ordinary course of business without the financing requested in the Motion. The Debtors’ ability to maintain business relationships with their vendors, suppliers, and customers, to pay their employees, pay certain fees and expenses as set forth herein, and to otherwise fund their operations and other efforts and activities is essential to the Debtors’ continued viability as the Debtors seek to maximize the value of the assets of the Estates for the benefit of all creditors of the Debtors. The ability of the Debtors to obtain sufficient working capital and liquidity through the proposed postpetition financing arrangements with the DIP Secured Parties and the use of Cash Collateral as set forth in this Interim Order, the DIP Loan Agreements and the other DIP Loan Documents, as applicable, is vital to the preservation, maximization and maintenance of the going concern value of each Debtor. Accordingly, the Debtors have an immediate need to obtain the postpetition

financing and to use Cash Collateral as set forth in this Interim Order to, among other things, permit the orderly continuation of the operation and maintenance of their businesses, minimize the disruption of their business operations and other efforts and activities, implementation and pursuit of a comprehensive marketing and sale process, and preserve and maximize the value of the assets of the Debtors' Estates to maximize the recovery to all creditors of the Estates.

(iii) No Credit Available on More Favorable Terms. The Debtors are unable to procure financing (x) in the form of unsecured credit allowable as an administrative expense under sections 364(a), 364(b), or 503(b)(1) of the Bankruptcy Code, (y) in exchange for the grant of a superpriority administrative expense under section 364(c)(1) of the Bankruptcy Code, or (z) in exchange for the grant of liens on property of the Estates pursuant to sections 364(c)(2) or 364(c)(3) of the Bankruptcy Code. The Debtors assert in the Motion, the First Day Declaration, and in the Bremer DIP Declaration, and demonstrated at the Interim Hearing, that it would be futile under the circumstances for the Debtors to undertake further efforts to seek, and they would not obtain, the necessary postpetition financing, let alone on terms more favorable, taken as a whole, than the financing offered by the DIP Secured Parties pursuant to the DIP Loan Documents. In light of the foregoing, and considering the futility of all other alternatives, the Debtors have reasonably and properly concluded, in the exercise of their sound business judgment, that the DIP Facility represents the best financing available to the Debtors at this time, and are in the best interests of the Debtors, their Estates, and all of their stakeholders.

(iv) Budget. The Debtors have prepared and delivered to the DIP Agent an initial budget (the "Initial Budget"), a copy of which is attached hereto as **Exhibit C**. The Initial Budget reflects the Debtors' anticipated cash receipts and anticipated disbursements for each calendar week during the period from the Petition Date through and including the end of the thirteenth

(13th) calendar week following the Petition Date (the Initial Budget and each subsequent budget approved by the DIP Agent and then in effect, the “Approved Budget”), in each case, subject to (i) permitted variances with respect to maximum cumulative collection and disbursement variances (“Permitted Variances”; which variances shall be tested on a weekly basis), in each case, of (a) in respect of the aggregate amount of actual Total Operating Disbursements, (x) 20% for the Initial Two Week Disbursements Period, (y) 20% for the Initial Three Week Disbursements Period, and (z) 15% for the Initial Four Week Disbursements Period and each Four Week Disbursements Period thereafter, and (b) in respect of actual cash receipts (as determined by reference to the “Total Collected” line of the Approved Budget), (x) 15% for the Initial Two Week Receipts Period, (y) 15% for the Initial Three Week Receipts Period, and (z) 15% for the Initial Four Week Receipts Period and each Four Week Receipts Period thereafter; and (ii) other exclusions set forth in the DIP Loan Documents.⁵ The Debtors believe that the Initial Budget is reasonable under the facts and circumstances. The DIP Secured Parties are relying upon the Debtors’ agreement to comply with the terms set forth in the DIP Loan Agreements, the other DIP Loan Documents and this Interim Order, and with the Approved Budget, in determining to enter into the postpetition financing arrangements provided for herein and to consent to the Debtors’ use of Cash Collateral as set forth herein. The Debtors shall provide the DIP Agent a revised proposed budget every two (2) weeks beginning on June 8, 2023, and continuing each 2 week period thereafter (each, a “Proposed Budget”). If a Proposed Budget is approved by the DIP Agent, it shall become the Approved Budget. If the DIP Agent does not approve a Proposed Budget, the

⁵ For the avoidance of doubt, fees and expenses of the professionals retained by the Debtors, any Committee, the Prepetition Secured Parties and the DIP Secured Parties shall not be included for purposes of testing of compliance with the Budget or the calculation of Permitted Variances.

last Approved Budget prior to the delivery of the applicable Proposed Budget shall remain the Approved Budget as provided herein.

(v) Sale Process. The DIP Lenders' willingness to make the DIP Loans and the Prepetition Secured Parties' willingness to consent to the use of Cash Collateral (each on the terms and subject to the conditions set forth in the DIP Loan Documents and this Interim Order) is predicated upon (i) the Debtors requesting authority to sell all or substantially of their assets to one or more buyers pursuant to Section 363 of the Bankruptcy Code by filing a motion (the "Sale Motion") in accordance with the Milestones (as defined below) to approve bidding and sale procedures and the sale of the Debtors' assets, (ii) the Debtors seeking to retain Triple P RTS, LLC ("Portage") to advise them in connection with, among other things, the sale of the Debtors' assets, and (iii) the Debtors' agreement to the Milestones (as defined below) as set forth in the DIP Loan Documents. Absent such arrangements, the DIP Lenders and the Prepetition Secured Parties would not have agreed to make the DIP Loans or consent to the use of Cash Collateral as provided in the DIP Loan Documents and this Interim Order.

(vi) Certain Conditions to DIP Facility. The DIP Lenders' willingness to make the DIP Loans is conditioned upon, among other things: (a) the Debtors obtaining Court approval to enter into the DIP Loan Documents and to incur all of the obligations thereunder, and to confer upon the DIP Secured Parties all applicable rights, powers, and remedies thereunder in each case as modified by this Interim Order; (b) the Debtors' obtaining Court approval of and compliance with the "Milestones" set forth on Exhibit D, which are hereby approved in all respects; (c) the provision of adequate protection of the Prepetition Secured Parties' interests in the Prepetition Collateral pursuant to sections 361, 363, and 364 of the Bankruptcy Code; and (d) the DIP Secured Parties being granted, as security for the prompt payment of the DIP Facility and all other

obligations of the Debtors under the DIP Loan Documents, subject to the priorities described in **Exhibit B** annexed hereto, perfected security interests in and liens upon all property and assets of the Debtors, including, but not limited to, a valid and perfected security interest in and lien upon all of the following now existing or hereafter arising or acquired property and assets: (i) all property and assets comprising Prepetition Collateral and (ii) all other property and assets of the Debtors, including any property or assets consisting of “Excluded Property” under any of the Prepetition Term Loan Documents (collectively hereinafter referred to as the “DIP Collateral” which, for avoidance of doubt, shall (subject to the entry of the Final Order) include, the proceeds (the “Avoidance Proceeds”) of any claim or cause of action arising under or pursuant to chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law (including any other avoidance actions under the Bankruptcy Code) (collectively, the “Avoidance Actions”).

(vii) Business Judgment and Good Faith Pursuant to Section 364(e). Any credit extended, loans made, and other financial accommodations extended to the Debtors by the DIP Secured Parties, including, without limitation, pursuant to this Interim Order, have been extended, issued, or made, as the case may be, in “good faith” within the meaning of section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Facility, the DIP Liens, and the DIP Superpriority Claim (as defined below) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code.

(viii) Sections 506(c) and 552(b). The Debtors have agreed as a condition to obtaining financing under the DIP Facility and the use of Cash Collateral as set forth in this Interim Order that as a material inducement to the DIP Secured Parties to agree to provide the DIP Facility and the Prepetition Secured Parties’ consent to the priming by the DIP Facility and to the use of

Cash Collateral as set forth in this Interim Order, and in exchange for (a) the DIP Secured Parties' willingness to provide the DIP Facility to the extent set forth herein, (b) the DIP Secured Parties' and the Prepetition Secured Parties' agreement to subordinate their liens and superpriority claims to the Carve-Out, and (c) the consensual use of Cash Collateral consistent with the Approved Budget, the terms of the DIP Loan Agreement, and the terms of this Interim Order, each of the DIP Secured Parties and the Prepetition Secured Parties are entitled to receive, subject to the entry of the Final Order (1) a waiver of any equities of the case exceptions or claims under section 552(b) of the Bankruptcy Code, and (2) a waiver of the provisions of section 506(c) of the Bankruptcy Code.

(ix) Good Cause. Good cause has been shown for the entry of this Interim Order. The relief requested in the Motion is necessary, essential, and appropriate under the circumstances as its implementation will, among other things, provide the Debtors with the necessary liquidity to (1) minimize disruption to the Debtors' operating business, on-going operations and other applicable activities and efforts, including the pursuit of a Court-approved marketing and sale process, (2) preserve and maximize the value of the Debtors' Estates for the benefit of all the Debtors' creditors, and (3) avoid immediate and irreparable harm to the Debtors, their creditors, their businesses, their employees, and their assets. The terms of the DIP Facility and this Interim Order are fair and reasonable, reflect each Debtor's exercise of its business judgment, and are supported by reasonably equivalent value and fair consideration. The DIP Facility and this Interim Order are the product of reasonable, arm's length, good faith negotiations between the Debtors, the DIP Secured Parties and the Prepetition Secured Parties.

(x) Adequate Protection. The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code, to receive adequate protection against

any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral), as set forth in this Interim Order.

(xi) Immediate Entry. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2). Any objections that were made (to the extent such objections have not been withdrawn, waived, resolved, or settled) are hereby overruled on the merits.

(xii) Interim Hearing. Notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, whether by facsimile, electronic mail, overnight courier or hand delivery, to the Notice Parties.

Based upon the foregoing, and upon the record made before the Court at the Interim Hearing and after due consideration and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Section 1. Authorization and Conditions to Financing and Use of Cash Collateral.

1.1 Motion Granted. The Motion is granted on an interim basis solely to the extent provided in this Interim Order. Any objections to the entry of this Interim Order that have not been withdrawn, waived, resolved, or settled, are hereby denied and overruled on the merits.

1.2 Authorization of DIP Financing and Use of Cash Collateral.

(a) The Debtors are hereby authorized to immediately borrow, incur, and guarantee (as applicable) the DIP Loans, pursuant to the terms and conditions of the DIP Loan Documents, this Interim Order and the Approved Budget, in an aggregate principal amount not to exceed \$7.1 million, with such Interim DIP Loan to be made upon entry of this Interim Order and satisfaction of other conditions set forth in the DIP Loan Documents and in accordance with the Approved Budget.

(b) The Debtors are hereby authorized to (i) borrow under the DIP Facility and use Cash Collateral during the period (the “Interim Financing Period”) commencing on the date of this Interim Order through and including the earlier to occur of (x) the date of entry of the Final Order or (y) the occurrence of a DIP Termination Event (as defined below) solely in accordance with, and for the purposes permitted by, the DIP Loan Documents, this Interim Order and the Approved Budget and (ii) pay all interest, costs, fees, and other amounts and obligations accrued or accruing under the DIP Loan Agreement and other DIP Loan Documents, all pursuant to the terms and conditions of this Interim Order, the Approved Budget, the DIP Loan Agreement, and the other DIP Loan Documents. The Initial Budget is hereby approved in all respects.

1.3 Financing Documents.

(a) Authorization. The Debtors are hereby authorized to enter into, execute, deliver, and perform all obligations under the DIP Loan Documents. No obligation, payment, transfer, or grant of security hereunder or under the DIP Loan Documents shall be stayed, restrained, voidable, avoidable, or recoverable under the Bankruptcy Code or under any applicable state, federal, or foreign law (including, without limitation, under chapter 5 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or foreign law), or be subject to any defense, reduction, setoff, counterclaim, recoupment, offset, recharacterization, subordination (whether equitable, contractual or otherwise), cross-claims, or any other challenge under the Bankruptcy Code or any applicable law, rule, or regulation by any person or entity.

(b) Approval; Evidence of Borrowing Arrangements. The DIP Loan Documents and DIP Obligations shall be valid, binding, and enforceable against the Debtors, their Estates, and any successors thereto, including, without limitation, any trustee appointed in any of

these Chapter 11 Cases or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of these Chapter 11 Cases (collectively, the “Successor Cases”), and their creditors and other parties in interest, in each case, in accordance with the terms of this Interim Order and the DIP Loan Documents.

(c) Payment of DIP Fees and Other Expenses. Any and all fees and expenses payable pursuant to the DIP Loan Documents (collectively, any and all such fees and expenses, the “DIP Fees”) are hereby approved and the Debtors are hereby authorized to pay, in cash and on a current basis, all reasonable and documented out-of-pocket costs, disbursements, and expenses of the DIP Agent and the DIP Lenders incurred at any time, as provided by the DIP Loan Documents and this Interim Order in accordance with Section 5.15 hereof. Except as otherwise provided in this Interim Order, the DIP Fees shall not be subject to any offset, defense, claim, counterclaim, or diminution of any type, kind, or nature whatsoever.

(d) Amendments to DIP Loan Documents. Subject to the terms and conditions of the applicable DIP Loan Documents, the Debtors and the applicable DIP Secured Parties may make amendments, modifications, or supplements to any DIP Loan Document, and the DIP Agent (acting at the direction of the Required Lenders (as defined in the DIP Loan Documents) if so required by the applicable DIP Loan Documents) and the DIP Lenders may waive any provisions in the DIP Loan Documents, without further approval of the Court; provided that any amendments, modifications, or supplements to any DIP Loan Documents that operate to increase the aggregate commitments, the rate of interest payable thereunder, or existing fees, or to add new fees thereunder (excluding, for the avoidance of doubt, any amendment, consent or waiver fee) other than as currently provided in the DIP Loan Documents (collectively, the “Material DIP Amendments”), shall be filed with the Court, and the Debtors shall provide not less than five (5)

Business Days prior written notice of any Material DIP Amendment and the proposed the effective date thereof to (i) counsel to the Committee, or, in the event no such Committee is appointed at the time of such Material DIP Amendment, the Debtors' 30 largest unsecured creditors on a consolidated basis and (ii) the U.S. Trustee; *provided, further*, that the consent of the foregoing parties will not be necessary to effectuate any such amendment, modification or supplement, except that any Material DIP Amendment that is subject to an objection filed within three (3) Business Days following receipt of such Material DIP Amendment must be approved by the Court prior to becoming effective. For the avoidance of doubt, the Debtors must receive written consent as to any Material DIP Amendment prior to filing notice thereof with the Court from the Prepetition Agent for any amendment, modification, supplement, or waiver that materially and adversely affects any rights of any Prepetition Secured Parties hereunder or the treatment of the Prepetition Obligations hereunder.

1.4 DIP Escrow Account. The proceeds of the DIP Loans shall be funded into an escrow account at Key Bank in the name of Alter Domus (US) LLC, as escrow agent (the "Escrow Agent"), with the account number ending in x4675 (the "DIP Escrow Account"), which DIP Escrow Account shall be maintained by the Escrow Agent pursuant to the terms of the Escrow Agreement dated as of May __, 2023 (the "Escrow Agreement") by and among the DIP Agent and the Escrow Agent. The Debtors shall be permitted to make Withdrawals from the DIP Escrow Account upon submission of a Withdrawal Notice to the DIP Agent and the Escrow Agent that provides, among other things, that the amount of the requested Withdrawal complies with the Withdrawal Liquidity Condition.⁶ The DIP Escrow Account (and all amounts from time to time on deposit therein) shall constitute DIP Collateral for all purposes.

⁶ The term "Withdrawal" is defined in the DIP Loan Agreement as "a withdrawal from the Escrow Account made in accordance with Section 2." The term "Withdrawal Liquidity Condition" is defined in the DIP Loan Agreement to

1.5 Indemnification. The Debtors are authorized to indemnify and hold harmless the DIP Agent, each DIP Lender, and, solely in their capacities as such, each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders and employees, past, present and future, and their respective heirs, predecessors, successors and assigns (each, an “Indemnified Party”), in accordance with, and subject to, the DIP Loan Documents.

Section 2. Postpetition Lien; Superpriority Administrative Claim Status.

2.1 Postpetition Lien.

(a) Postpetition DIP Lien Granting. To secure performance and payment when due (whether at the stated maturity, by acceleration or otherwise) of any and all DIP Obligations of the Debtors to the DIP Secured Parties of whatever kind, nature, or description, whether absolute or contingent, now existing or hereafter arising, the DIP Agent, for the benefit of itself and the DIP Lenders, shall have and is hereby granted, effective as of the Petition Date, continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected security interests in and liens (collectively, the “DIP Liens”) in and upon all DIP Collateral, subject and subordinate to the Carve-Out and Permitted Liens and the rankings and priority set forth in Section 2.1(b) below and as set forth on **Exhibit B** hereto.

mean “with respect to any Withdrawal, the amount of the requested withdrawal does not exceed the positive difference of (a) the amount of disbursements reasonably anticipated to be made during the period from such withdrawal date to the last Business Day of the week following such withdrawal date as set forth in the Approved Budget (subject to Permitted Variances), minus (b) the sum (without duplication) of (x) the amount of cash receipts reasonably expected to be received by the Debtors during the period from such withdrawal date to the last Business Day of the week following such withdrawal date as set forth in the Approved Budget (subject to Permitted Variances) and (y) estimated cash in certain designated Debtor bank accounts as of such withdrawal date.”

(b) DIP Lien Priority in DIP Collateral. The DIP Liens on the DIP Collateral securing the DIP Obligations shall be first and senior in priority to all other interests and liens of every kind, nature, and description, whether created consensually, by an order of the Court or otherwise, including, without limitation, liens or security interests granted in favor of third parties in conjunction with sections 363, 364, or any other section of the Bankruptcy Code or other applicable law; *provided, however*, that the DIP Liens on (A) the Prepetition Collateral (whether in existence on the Petition Date or hereafter arising) shall be subject to the Carve-Out and Permitted Liens;⁷ (B) assets of the Debtors (the “Non-Lender Encumbered Assets”) that were subject to validly perfected liens or security interests as of the Petition Date other than the Prepetition Liens (if any, the “Non-Lender Existing Liens”) shall be subject to such Non-Lender Existing Liens and the Carve-Out; and (C) any other assets of the Debtors (“Unencumbered Assets”) that were not subject to any validly perfected liens or security interest as of the Petition Date (including, subject to the entry of a Final Order, Avoidance Proceeds) shall be subject and subordinate to the Carve-Out, in each case as such priorities are set forth in **Exhibit B**.⁸ For the avoidance of doubt, the DIP Liens shall prime and be senior to the Prepetition Liens of the Prepetition Secured Parties on the Prepetition Collateral.

(c) Postpetition Lien Perfection. This Interim Order shall be sufficient and conclusive evidence of the priority, perfection, and validity of the DIP Liens, the Prepetition Secured Parties Adequate Protection Liens, and the other security interests granted herein, effective as of the Petition Date, without any further act and without regard to any other federal,

⁷ For purposes of this Interim Order, “Permitted Liens” shall mean any liens that are senior by operation of law (including any such liens that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code) or that were, as of the Petition Date, valid, properly perfected, non-avoidable and senior in priority to the Prepetition Liens.

⁸ In the event of any conflict or inconsistency between the terms and provisions of this Interim Order and Exhibit B, Exhibit B shall control.

state, or local requirements or law requiring notice, filing, registration, recording, or possession of the DIP Collateral, or other act to validate or perfect such security interest or lien, including, without limitation, control agreements with any financial institution(s) party to a control agreement (including, without limitation, the Control Agreements) or other depository account consisting of DIP Collateral, or requirement to register liens on any certificates of title (a “Perfection Act”). Notwithstanding the foregoing, if the DIP Agent or the Prepetition Agent, as applicable, shall, in its sole discretion, elect for any reason to file, record, or otherwise effectuate any Perfection Act, then the DIP Agent or Prepetition Agent, as applicable, is authorized to perform such act, and the Debtors are authorized and directed to perform such act to the extent necessary or required by the DIP Loan Documents and this Interim Order, which act or acts shall be deemed to have been accomplished as of the date and time of entry of this Interim Order notwithstanding the date and time actually accomplished, and, in such event, the subject filing or recording office is authorized to accept, file, or record any document in regard to such act in accordance with applicable law. The DIP Agent or Prepetition Agent, as applicable, may choose to file, record, or present a certified copy of this Interim Order in the same manner as a Perfection Act, which shall be tantamount to a Perfection Act, and, in such event, the subject filing or recording office is authorized to accept, file, or record such certified copy of this Interim Order in accordance with applicable law. Should the DIP Agent or Prepetition Agent, as applicable, so choose and attempt to file, record, or perform a Perfection Act, no defect or failure in connection with such attempt shall in any way limit, waive, or alter the validity, enforceability, attachment, priority, or perfection of the postpetition liens and security interests granted herein by virtue of the entry of this Interim Order.

(d) To the extent that any applicable non-bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of any liens and security

interests granted and created by this Interim Order (including the DIP Liens and the Prepetition Secured Parties Adequate Protection Liens) or otherwise would impose filing or registration requirements with respect to such liens and security interests, such law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, applicable federal or foreign law, and the judicial power and authority of this Court; *provided, however*, that nothing herein shall excuse the Debtors from payment of any local fees, if any, required in connection with such liens. By virtue of the terms of this Interim Order, to the extent that the DIP Agent or Prepetition Agent, as applicable, has filed Uniform Commercial Code financing statements, mortgages, deeds of trust, or other security or perfection documents under the names of any of the Debtors (including all Guarantors), such filings shall be deemed to properly perfect its liens and security interests granted and confirmed by this Interim Order without further action by the DIP Agent or Prepetition Agent, as applicable.

(e) Except as provided in this Interim Order, the DIP Liens, the DIP Superpriority Claim, the Prepetition Secured Parties Adequate Protection Liens, and the Prepetition Secured Parties Adequate Protection Claims (as defined below) (i) shall not be made subject to or *pari passu* with (A) any lien, security interest, or claim heretofore or hereinafter granted in any of these Chapter 11 Cases or any Successor Cases and shall be valid and enforceable against the Debtors, their Estates, any trustee, or any other estate representative appointed or elected in these Chapter 11 Cases or any Successor Cases and/or upon the dismissal of any of these Chapter 11 Cases or any Successor Cases; (B) any lien that is avoided and preserved for the benefit of the Debtors and their Estates under section 551 of the Bankruptcy Code or otherwise; and (C) any intercompany or affiliate lien or claim; and (ii) shall not be subject to sections 510, 549, 550, or 551 of the Bankruptcy Code.

2.2 Superpriority Administrative Expenses.

(a) DIP Loans. Subject to the priorities set forth on **Exhibit B** and the Carve-Out, on account of all DIP Obligations now existing or hereafter arising pursuant to this Interim Order, the DIP Loan Documents, or otherwise, the DIP Agent, for the benefit of itself and the DIP Lenders, is granted allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code, having priority in right of payment over any and all other obligations, liabilities, and indebtedness of the Debtors, whether now in existence or hereafter incurred by the Debtors, and over any and all administrative expenses or priority claims of the kind specified in, or ordered pursuant to, *inter alia*, sections 105, 326, 328, 330, 331, 364(c)(1), 365, 503(b), 507(a), 507(b), 546(c), 1113, or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment, which allowed superpriority administrative claim shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof (including, subject to entry of the Final Order, proceeds of Avoidance Actions) (such superpriority administrative expense claim, the “DIP Superpriority Claim”).

2.3 Carve-Out Provisions.

(a) Definitions; No Independent Obligation. For purposes of this Interim Order, “Carve-Out” shall mean: (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below) (collectively, the “Statutory Fees”); plus the sum of (ii) all reasonable fees and expenses up to \$25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below) (the “Chapter 7 Trustee Carve-Out”); (iii) to the extent allowed at any time, whether by final order, interim order,

procedural order, or otherwise, subject to the Approved Budget, all unpaid fees (excluding any success or transaction fees) costs, disbursements and expenses (the “Allowed Professional Fees”) incurred or earned by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) or the Committee pursuant to sections 327, 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”) at any time before or on the first business day following delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to, on or after delivery of a Carve-Out Trigger Notice (the “Pre-Trigger Carve-Out Cap”); and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$250,000 (inclusive of any prepetition retainer held by the applicable Professional Person to the extent not previously applied or returned) incurred after the first business day following delivery by the DIP Agent of the Carve-Out Trigger Notice (such date, the “Trigger Date”), to the extent allowed at any time, whether by final order, interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve-Out Trigger Notice Cap” and such amounts set forth in clauses (i) through (iv), the “Carve-Out Cap”); *provided that*, nothing herein shall be construed to impair any party’s ability to object to court approval of the fees, expenses, reimbursement of expenses or compensation of any Professional Person. For purposes of the foregoing, “Carve-Out Trigger Notice” shall mean a written notice delivered by email by the DIP Agent to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee, if any (collectively, the “Carve-Out Trigger Notice Parties”), which notice may be delivered following the occurrence and during the continuation of a DIP Termination Event, and shall describe in reasonable detail such DIP Termination Event that is alleged to have occurred and be continuing and stating that the Post-Carve-Out Trigger Notice Cap

has been invoked. None of the DIP Secured Parties or the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person incurred in connection with the Chapter 11 Cases or any Successor Cases under any chapter of the Bankruptcy Code, other than payment or reimbursement of any fees or disbursements from proceeds of DIP Collateral to the extent of the Carve-Out. Nothing in this Interim Order or otherwise shall be construed to obligate the DIP Secured Parties or the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(b) Carve-Out Reserves. On the last business day of each week, the Debtors shall fund a professional fee reserve (the "Professional Fee Reserve") in an amount equal to the professional fees for Professional Persons as set forth in the Approved Budget for the week then ended. All funds in the Professional Fee Reserve shall be used first to pay the Carve-Out (whether such fees are allowed on an interim or final basis) for Allowed Professional Fees of Professional Persons, and all Professional Persons shall have all professional fees paid from the Professional Fee Reserve prior to seeking payment from any other DIP Collateral. If, after payment in full of the Carve-Out for Allowed Professional Fees of Professional Persons, the Professional Fee Reserve has not been reduced to zero, all remaining funds shall be returned to the DIP Agent on behalf of the DIP Lenders (or, if no DIP Obligations remain outstanding, to the Prepetition Agent for the benefit of the Prepetition Secured Parties).

2.4 Prepetition Secured Parties Adequate Protection.

(a) Adequate Protection Claims and Liens. The Prepetition Secured Parties are entitled, pursuant to sections 361, 363(e), 364(d)(1), 503(b), 507(a), and 507(b) of the Bankruptcy Code and effective as of the Petition Date, to adequate protection of their respective interests in

the Prepetition Collateral, including any Cash Collateral, in an amount equal to the aggregate Diminution in Value of the Prepetition Secured Parties' interests in the Prepetition Collateral from and after the Petition Date. On account of such adequate protection, the Prepetition Secured Parties are hereby granted the following, in each case subject to the priorities set forth on **Exhibit B** and the Carve-Out (collectively, the "Adequate Protection"):

(i) Prepetition Adequate Protection Liens. Subject to Section 4.1, the Prepetition Secured Parties are hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of any Perfection Act) valid and perfected postpetition replacement security interests in and liens upon the DIP Collateral (the "Prepetition Adequate Protection Liens"), which liens shall be, with respect to: (A) the Prepetition Collateral (whether in existence on the Petition Date or hereafter arising), subject and subordinate solely to the Carve-Out, Permitted Liens and the DIP Liens; (B) the Non-Lender Encumbered Assets, subject to the Non-Lender Existing Liens, the Carve-Out and the DIP Liens; and (C) Unencumbered Assets, subject to the Carve-Out and the DIP Liens, in each case as such priorities are set forth in **Exhibit B**.

(ii) Adequate Protection Payments. Subject to the Approved Budget, the Debtors are authorized to pay to the Prepetition Lenders, commencing on the first business day the calendar month following entry of this Interim Order, an amount equal to all accrued and unpaid postpetition interest (at the non-default rate), fees, and costs under and in accordance with the Prepetition Term Loan Documents. For the avoidance of doubt, the payment of interest pursuant to this paragraph shall be without prejudice to the rights of the Prepetition Secured Parties to assert claims for payment of interest at the default rate in accordance with the Prepetition Term Loan Documents.

(iii) Adequate Protection Superpriority Claims. To the extent of any Diminution in Value, the Prepetition Secured Parties are hereby granted allowed superpriority administrative expense claims pursuant to sections 503(b), 507(a), and 507(b) of the Bankruptcy Code (the “Prepetition Secured Parties Adequate Protection Claims”), which shall be allowed claims against each of the Debtors (jointly and severally), with priority (except as otherwise provided herein) over any and all administrative expenses and all other claims against the Debtors now existing or hereafter arising, of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and all other administrative expenses or other claims arising under any other provision of the Bankruptcy Code, including, without limitation, sections 105, 326, 327, 328, 330, 331, 365, 503(b), 507(a), 507(b), or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other nonconsensual lien, levy, or attachment. The Prepetition Secured Parties Adequate Protection Claims shall be payable from and have recourse to all pre- and post-petition property of the Debtors, subject to the Carve-Out, Permitted Liens, the DIP Superpriority Claims and the rankings and priorities set forth in **Exhibit B**.

(b) Reporting. The Debtors shall timely provide the Prepetition Secured Parties with (x) reasonable access to the Debtors’ facilities, management, books, and records required under the Prepetition Term Loan Documents and (y) copies of all financial reporting provided to the DIP Agent and DIP Lenders pursuant to the DIP Loan Documents substantially simultaneously with such delivery to the DIP Lenders.

(c) Fees and Expenses. The Debtors are authorized and directed to pay: (i) on the date of the first advance under the DIP Facility, all reasonable and documented fees and out-of-pocket expenses of the Prepetition Agent and the Prepetition Lenders that are required to be paid by the Debtors under the Prepetition Term Loan Documents, including such fees and expenses

of counsel and financial advisors to such Prepetition Agent and Prepetition Secured Parties; and (ii) on an ongoing basis, from time to time after the Petition Date, and without duplication, all reasonable and documented fees and out-of-pocket expenses incurred by such Prepetition Agent and Prepetition Secured Parties and required to be paid by the Debtors under the Prepetition Term Loan Documents, including the reasonable and documented fees and out-of-pocket expenses of (A) Schulte Roth & Zabel LLP, (B) Landis Rath & Cobb LLP, and (C) Paladin Management Group, LLC (such professionals, the “Adequate Protection Professionals,” and such fees and expenses, collectively, the “Adequate Protection Professional Fees and Expenses”).

(d) Requests for Payment of Fees and Expenses. With respect to Adequate Protection Professional Fees and Expenses incurred postpetition, such Adequate Protection Professionals shall deliver an invoice in summary form (which shall not be required to include time entry detail, but shall include a general, brief description of the nature of the matters for which services were performed, and which may be redacted for privileged or confidential information) to the Debtors, the U.S. Trustee, and any Committee. If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the date that is ten (10) calendar days after delivery of such invoice, the Debtors shall promptly pay such fees and expenses in full. If an objection to an Adequate Protection Professional’s invoice is timely received, the undisputed portion of any such invoice will be deemed allowed, the Debtors shall promptly pay such undisputed amount and the Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding the foregoing, the Debtors are authorized and directed to pay on the Closing Date (as defined in the DIP Loan Agreement) all Adequate Protection Professional Fees and Expenses incurred on or prior to (including prior to the Petition Date) such date without the need for any Adequate Protection Professionals to first deliver

a copy of its invoice as provided for herein. The Adequate Protection Professionals shall not be required to comply with the U.S. Trustee fee guidelines or file applications or motions with, or obtain approval of, the Court for the payment of any of their fees or out-of-pocket expenses (other than with respect to disputed amounts). Subject to Section 4.1 hereof, payments of any amounts set forth in this paragraph are not subject to recharacterization, avoidance, subordination, or disgorgement.

Section 3. DIP Termination Events; Waivers; Rights and Remedies; Relief from Stay.

3.1 DIP Termination Events. Each of the following shall constitute a “DIP Termination Event” unless waived in writing by the DIP Secured Parties and in accordance with the applicable DIP Loan Documents: (i) the occurrence of any “Event of Default” as that term is defined in the DIP Loan Agreement; (ii) any failure to meet or satisfy any Milestone in accordance with the applicable DIP Loan Documents; (iii) the occurrence of the “Maturity Date” as defined in the DIP Loan Agreement; (iv) any material violation, breach, or default by any Debtor with respect to any of its obligations under this Interim Order or the DIP Loan Documents; (v) the termination of the DIP Loan Documents, or the modification of this Interim Order in a manner adverse to any of the DIP Secured Parties or the Prepetition Secured Parties without the prior written consent of such party; (vi) entry of any order authorizing any party in interest to reclaim any of the DIP Collateral, granting any party in interest relief from the automatic stay with respect to the DIP Collateral, or requiring that Debtors turnover any of the DIP Collateral, in each case prior to full, final and indefeasible repayment in full in cash of all DIP Obligations and Prepetition Obligations and with respect to DIP Collateral having value in excess of \$250,000; (vii) conversion of any Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (viii) a trustee is appointed or elected in any Chapter 11 Case, or an examiner with the power to operate the Debtors’ businesses is appointed in any Case; (ix) (A) with respect to the Debtors, commencement of an adversary

proceeding or contested matter objecting to the extent, validity or priority of any Prepetition Obligations and/or the Prepetition Liens and (B) with respect to any party in interest (other than the Debtors), commencement of such proceeding or matter to the extent such proceeding or matter is not overruled by the Court or dismissed within sixty (60) days; (x) the date that is thirty-five (35) calendar days following the entry of this Interim Order if a Final Order is not entered in form and substance acceptable to the DIP Secured Parties and the Prepetition Secured Parties by such date; (xi) the date of the Final Hearing, if this Interim Order is modified at the Final Hearing in a manner unacceptable to the DIP Secured Parties or the Prepetition Secured Parties; (xii) the Debtors shall withdraw the Sale Motion and/or propose an alternative restructuring transaction, chapter 11 plan or course of these Chapter 11 Cases other than a sale of substantially all assets pursuant to the Sale Motion (in any event, the “New Approach”) that, in any case, does not provide for the repayment in full, in cash, of the DIP Obligations substantially contemporaneously with such withdrawal of the Sale Motion or proposal of such New Approach; and (xiii) any modification, amendment, vacatur or stay of this Interim Order in any manner not consented to in writing by the DIP Agent and the Prepetition Agent.

3.2 Additional DIP Termination Events.

(a) Prior to the payment in full of all Prepetition Obligations and all DIP Obligations, any request by the Debtors with respect to the following shall also constitute a DIP Termination Event: (i) to obtain postpetition loans or other financial accommodations pursuant to section 364(c) or 364(d) of the Bankruptcy Code that does not provide for the repayment in full of the DIP Obligations, other than as provided in this Interim Order or as may be otherwise permitted pursuant to the DIP Loan Documents; (ii) to challenge the application of any payments authorized by this Interim Order pursuant to section 506(b) of the Bankruptcy Code; (iii) to propose or support

any challenge pursuant to Section 4.1 of this Interim Order, or any challenge by any party in interest seeking to limit or prevent the DIP Secured Parties or the Prepetition Secured Parties from exercising their credit bid rights in connection with the sale of any assets of the Debtors; *provided*, that the Debtors' response to any information request by a party in interest shall not constitute "support" of a challenge; or (iv) to seek relief under the Bankruptcy Code, including, without limitation, under section 105 of the Bankruptcy Code, to the extent any such relief would interfere with or modify (A) the rights and remedies of any of the DIP Secured Parties or the Prepetition Secured Parties against the Debtors as provided in this Interim Order, any of the DIP Loan Documents or any of the Prepetition Term Loan Documents (B) the exercise of such rights or remedies by any of the DIP Secured Parties or the Prepetition Secured Parties against the Debtors in accordance with the DIP Loan Documents, this Interim Order or the Prepetition Term Loan Documents; *provided, however*, that the DIP Agent and the Prepetition Agent may otherwise consent in writing, but no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Secured Parties and the Prepetition Secured Parties.

(b) It shall also be a DIP Termination Event if the Debtors propose or support any chapter 11 plan or the sale of all or substantially all of the Debtors' assets (other than pursuant to the Sale Procedures Motion and the Sale Motion), or seek entry of an order confirming a chapter 11 plan or approving such non-conforming sale, that is not conditioned upon the payment of the DIP Obligations, in full in cash, within a commercially reasonable period of time, and in any event no later than the effective date of such chapter 11 plan or sale, without the written consent of the DIP Agent and the Prepetition Agent, as applicable.

3.3 Rights and Remedies upon a DIP Termination Event. Upon the expiration of five (5) business days following the delivery of a written notice by the DIP Agent or Prepetition

Agent, as applicable, of the occurrence of and during the continuance of a DIP Termination Event (such five (5) business day period, the “Remedies Notice Period”), (a) the DIP Agent shall be entitled to take any act or exercise any right or remedy as provided in this Interim Order or any DIP Loan Document, as applicable, including, without limitation, (i) declare all DIP Obligations owing under the DIP Loan Documents to be immediately due and payable; (ii) terminate, reduce, or restrict any commitment to extend additional credit to the Debtors to the extent any such commitment remains; (iii) terminate the DIP Facility and any DIP Loan Document as to any future liability or obligation of the DIP Secured Parties, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations; (iv) invoke the right to charge interest at the default rate under the DIP Loan Documents; and/or (v) stop lending; and (b) the Prepetition Agent shall (i) be entitled to terminate and/or revoke the Debtors’ right, if any, under this Interim Order and the other DIP Loan Documents to use any Cash Collateral and all such authority to use Cash Collateral shall cease and (ii) have automatic and immediate relief from the automatic stay with respect to the Prepetition Collateral (without regard to the passage of time provided for in Fed. R. Bankr. P. 4001(a)(3)), and shall be entitled to exercise all rights and remedies available under the Prepetition Term Loan Documents and applicable non-bankruptcy law. For the avoidance of doubt, notwithstanding the foregoing, during the Remedies Notice Period, the Debtors (x) may not make any Withdrawal from the Escrow Account, and (y) may use Cash Collateral to fund the Carve-Out and in amounts necessary to avoid immediate and irreparable harm to the Debtors’ Estates (including funding payroll and paying other administrative expenses) all in accordance with this Interim Order and the Approved Budget, or that have otherwise been approved in advance in writing by the DIP Secured Parties.

3.4 Modification of Automatic Stay. The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified without further notice, application, or order of the Court to the extent necessary to (i) permit the DIP Agent and Prepetition Agent to perform any act authorized or permitted under or by virtue of this Interim Order, the DIP Loan Agreement, or the other DIP Loan Documents, as applicable, including, without limitation, (i) to implement the postpetition financing arrangements authorized by this Interim Order, (ii) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the DIP Collateral, (iii) to assess, charge, collect, advance, deduct and receive payments with respect to the Prepetition Obligations and DIP Obligations (or any portion thereof), including, without limitation, all interests, fees, costs, and expenses permitted under any of the DIP Loan Documents and apply such payments to the Prepetition Obligations, and (iv) subject to the Remedies Notice Period, and provided that the Debtors, the Committee, if any, or the U.S. Trustee or any party in interest with requisite standing has not obtained an order from this Court to the contrary prior to the expiration of the Remedies Notice Period, to take any action and exercise all rights and remedies provided to it by this Interim Order, the DIP Loan Documents, or applicable law.

Section 4. Representations and Covenants.

4.1 Reservation of Third Party Challenge Rights. The stipulations, releases, agreements, and admissions contained in this Interim Order, including, without limitation, paragraph E hereof, and the releases contained in clause (vii) thereof, and paragraph 5.17 hereof (collectively, the “Prepetition Lien and Claim Matters”), shall be binding on the Debtors, any subsequent trustee, responsible person, examiner with expanded powers, any other estate representative and all creditors and parties-in-interest, and all of their successors in interest and assigns, including without limitation the Committee, unless, and solely to the extent that (a) a

party-in-interest has sought standing and requisite authority to commence a Challenge (as defined below) (other than the Debtors, as to which the ability to commence any Challenge is irrevocably waived and relinquished) by timely filing an appropriate pleading (which shall include as an attachment or exhibit any applicable adversary complaint) under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth in this paragraph 4.1) challenging all or any portion of the Prepetition Lien and Claim Matters (each such proceeding or appropriate pleading commencing an adversary proceeding or other contested matter, a “Challenge”) by no later than (i) the date which is 75 calendar days after entry of this Interim Order, (ii) any such later date as has been agreed to, in writing, by the Prepetition Agent (with the consent of the applicable Prepetition Secured Parties) or (iii) such later date as set by an order of the Court for cause shown (such time period established by the foregoing clauses (i) through (iii), the “Challenge Period”); *provided* that a motion to extend the Challenge Period and an accompanying request for an expedited hearing on such motion shall extend the Challenge Period through the date on which the Court resolves such motion to extend the Challenge Period; *provided further*, that if a chapter 11 trustee is appointed or the Cases are converted to cases under chapter 7 prior to the expiration of the Challenge Period, the chapter 11 or chapter 7 trustee, as applicable, shall have until the later of (1) the expiration of the Challenge Period, and (2) the thirtieth (30th) day after the appointment of the chapter 11 trustee or conversion of the Cases to cases under chapter 7, as applicable, to commence a Challenge; *provided further*, if any adversary proceeding or contested matter is timely filed and is pending on the date, if any, on which any of the Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such adversary proceeding or contested matter on behalf of the Debtors’ estates, without any further authorization or order of the Court.

4.2 Binding Effect. To the extent no Challenge is timely commenced by the expiration of the Challenge Period, or to the extent such proceeding does not result in a final non-appealable judgment or order of this Court that is inconsistent with the Prepetition Lien and Claim Matters, then, without further notice, motion or application to, or order of or hearing before this Court, and without the need or requirement to file any proof of claim, the Prepetition Lien and Claim Matters shall become binding, conclusive and final on any person, entity or party-in-interest in the Cases and their successors and assigns, and in any Successor Case for all purposes, and shall not be subject to any challenge or objection by any party-in-interest, including, without limitation, a trustee, responsible individual, examiner with expanded powers or other representative of the Debtors' estates. Notwithstanding the foregoing, if any Challenge Proceeding is timely commenced, Prepetition Lien and Claims Matters shall nonetheless remain binding and preclusive (as provided in this paragraph) on the Debtors, the Committee (if any), and any other person, entity or party-in-interest, except as to any such findings and admissions that were expressly and successfully challenged in such Challenge Proceeding as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee (if any), 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 Term Loan Documents or the Prepetition Liens on the Prepetition Collateral.

Section 5. Other Rights and DIP Obligations.

5.1 No Modification or Stay of this Interim Order. The DIP Agent and the DIP Lenders have acted in good faith in connection with the DIP Facility and with this Interim Order, and their reliance on this Interim Order is in good faith, and the DIP Agent and the DIP Lenders are entitled to the protections of section 364(e) of the Bankruptcy Code.

5.2 Rights of Access and Information. The Debtors shall comply with the rights of access and information afforded to the DIP Secured Parties under the DIP Loan Documents and the Prepetition Secured Parties under the Prepetition Term Loan Documents.

5.3 Power to Waive Rights; Duties to Third Parties.

(a) Subject to the terms of the DIP Loan Documents, the DIP Agent shall have the right (acting at the direction of the Required Lenders (as defined in the DIP Loan Documents) if so required by the DIP Loan Documents) to waive any of the terms, rights, and remedies provided or acknowledged in this Interim Order that are in favor of the DIP Lenders (the “DIP Lender Rights”), and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any DIP Lender Rights; *provided that*, the DIP Agent shall obtain the prior written consent of the Prepetition Agent for any waiver that affects any rights of the Prepetition Secured Parties hereunder or any treatment of the Prepetition Obligations. Any waiver by the DIP Agent of any DIP Lender Rights shall not be nor shall it constitute a continuing waiver unless otherwise expressly provided therein. Any delay in or failure to exercise or enforce any DIP Lender Right shall neither constitute a waiver of such DIP Lender Right, subject the DIP Agent or any DIP Lender to any liability to any other party, nor cause or enable any party other than the Debtors to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtors to the DIP Agent or any DIP Lender.

(b) The Prepetition Agent shall have the right to waive any of the terms, rights, and remedies provided or acknowledged in this Interim Order that are in favor of the Prepetition Lenders (the “Prepetition Lender Rights”), and shall have no obligation or duty to any other party with respect to the exercise or enforcement, or failure to exercise or enforce, any Prepetition Lender Rights; *provided that*, the Prepetition Agent shall obtain the prior written consent of the

DIP Agent for any waiver that affects any rights of the DIP Secured Parties hereunder or any treatment of the DIP Obligations. Any waiver by the Prepetition Agent of any Prepetition Lender Rights shall not be nor shall it constitute a continuing waiver unless otherwise expressly provided therein. Any delay in or failure to exercise or enforce any Prepetition Lender Right shall neither constitute a waiver of such Prepetition Lender Right, subject the Prepetition Agent or any Prepetition Lender to any liability to any other party, nor cause or enable any party other than the Debtors to rely upon or in any way seek to assert as a defense to any obligation owed by the Debtors to the Prepetition Agent or any Prepetition Lender.

5.4 No Unauthorized Disposition of Collateral; Use of Cash Collateral; Investigation Budget.

(a) The Debtors shall not sell, transfer, lease, encumber, use, or otherwise dispose of any portion of the DIP Collateral (including receivables and Cash Collateral), other than pursuant to the terms of this Interim Order or as permitted by the DIP Loan Documents, and the Debtors are authorized to use Cash Collateral solely in a manner consistent with this Interim Order, the Approved Budget and the DIP Loan Documents (including permitted variances and exclusions to the Approved Budget permitted thereunder).

(b) Notwithstanding anything herein to the contrary, no portion of the proceeds of the DIP Facility, the DIP Collateral or the Prepetition Collateral, including Cash Collateral, may be used for the payment of professional fees, disbursements, costs, or expenses incurred by any person in connection with (i) preventing, hindering, impeding, or delaying any of the DIP Secured Parties' or Prepetition Secured Parties' enforcement or realization upon, or exercise of rights in respect of, any of the DIP Collateral or Prepetition Collateral, other than to seek (based on a good faith assertion) a determination that a DIP Termination Event (as defined below) has not occurred

or is not continuing or in connection with a remedies hearing, (ii) seeking to amend or modify any of the rights or interests granted to the DIP Secured Parties or Prepetition Secured Parties under this Interim Order or the DIP Loan Documents, including seeking to use Cash Collateral on a contested basis, (iii) asserting, commencing, or prosecuting any claims or causes of action, including, without limitation, any Challenge or any other actions under chapter 5 of the Bankruptcy Code (or any similar law), against any DIP Secured Party or Prepetition Secured Party, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees, or (iv) asserting, joining, commencing, supporting, investigating, or prosecuting any Challenge, or any other action for any claim, counterclaim, action, cause of action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or adverse to the material interests of any DIP Secured Party or Prepetition Secured Party, arising out of, in connection with, or relating to the DIP Loan Documents or the Prepetition Term Loan Documents, or the transactions contemplated thereunder, including, without limitation, (A) any action arising under the Bankruptcy Code, (B) any so-called “lender liability” claims and causes of action, (C) any action with respect to the validity and extent of the DIP Obligations or the Prepetition Obligations or the validity, extent, perfection and priority of the DIP Liens or the Prepetition Liens, (D) any action seeking to invalidate, set aside, avoid, reduce, set off, offset, re-characterize, subordinate (whether equitable, contractual, or otherwise), recoup against, disallow, impair, raise any defenses, cross-claims, or counterclaims, or raise any other challenges under the Bankruptcy Code or any other applicable domestic or foreign law or regulation against, or with respect to, the DIP Liens or the Prepetition Liens, in whole or in part, or (E) appeal or otherwise challenge this Interim Order or the Final Order. Notwithstanding the foregoing, no more than \$25,000 in the aggregate of the proceeds of the DIP Facility, DIP

Collateral, or Cash Collateral may be used by any Committee in connection with the investigation of, but not litigation of, any potential Challenge.

5.5 No Waiver. The failure of the DIP Lenders or the Prepetition Lenders, as applicable, to seek relief or otherwise exercise their rights and remedies under the DIP Loan Documents, the DIP Facility, the Prepetition Term Loan Documents, or this Interim Order, as applicable, shall not constitute a waiver of any of the DIP Lenders' or Prepetition Lenders' rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair the rights of the DIP Lenders or the Prepetition Lenders under the Bankruptcy Code or under non-bankruptcy law, including, without limitation, the rights of the DIP Lenders and the Prepetition Lenders to: (a) request conversion of the Chapter 11 Cases to cases under chapter 7, dismissal of the Chapter 11 Cases, or the appointment of a trustee in the Chapter 11 Cases; (b) propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan; or (c) exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Lenders or the Prepetition Lenders.

5.6 Maintenance of Collateral. Unless the DIP Agent, acting at the direction of the Required Lenders (as defined in the DIP Loan Documents), otherwise consents in writing, until (i) the payment in full or otherwise acceptable satisfaction of all DIP Obligations and (ii) the termination of the DIP Agent's and the DIP Lenders' obligations to extend credit under the DIP Facilities, the Debtors shall comply with the covenants contained in the DIP Loan Documents regarding the maintenance and insurance of the DIP Collateral. Upon entry of this Interim Order and to the fullest extent provided by applicable law, the DIP Agent (on behalf of the DIP Lenders) shall be, and shall be deemed to be, without any further action or notice, named as an additional

insured and loss payee on each insurance policy maintained by the Debtors that in any way relates to the DIP Collateral.

5.7 Reservation of Rights. The terms, conditions, and provisions of this Interim Order are in addition to and without prejudice to the rights of each DIP Secured Party and Prepetition Secured Party, as applicable, to pursue any and all rights and remedies under the Bankruptcy Code, the DIP Loan Documents, the Prepetition Term Loan Documents, or any other applicable agreement or law, including, without limitation, rights to seek adequate protection and/or additional or different adequate protection, to seek relief from the automatic stay, to seek an injunction, to oppose any request for use of Cash Collateral or granting of any interest in the DIP Collateral or the Prepetition Collateral, as applicable, or priority in favor of any other party, to object to any sale of assets, and to object to applications for allowance and/or payment of compensation of professionals or other parties seeking compensation or reimbursement from the Estates.

5.8 Binding Effect.

(a) All of the provisions of this Interim Order and the DIP Loan Documents, the DIP Obligations, all liens, and claims granted hereunder in favor of each of the DIP Secured Parties and the Prepetition Secured Parties, and any and all rights, remedies, privileges, immunities and benefits in favor of the DIP Agent, each DIP Lender, and each Prepetition Secured Party set forth herein, including, without limitation, the parties' acknowledgements, stipulations, and agreements in Paragraph E of this Interim Order, subject to Section 4.1 hereof (without each of which the DIP Secured Parties would not have entered into or provided funds under the DIP Loan Documents and the Prepetition Secured Parties would not have consented to the priming of the Prepetition Liens as set forth herein and use of Cash Collateral provided for hereunder) provided

or acknowledged in this Interim Order, and any actions taken pursuant thereto, shall be effective and enforceable as of the Petition Date immediately upon entry of this Interim Order and not subject to any stay of execution or effectiveness (all of which are hereby waived), notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, and 9024, or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, shall continue in full force and effect, and shall survive entry of any other order or action, including, without limitation, any order which may be entered confirming any chapter 11 plan providing for the refinancing, repayment, or replacement of the DIP Obligations, converting one or more of the Chapter 11 Cases to any other chapter under the Bankruptcy Code, dismissing one or more of the Chapter 11 Cases, approving any sale of any or all of the DIP Collateral or the Prepetition Collateral, or vacating, terminating, reconsidering, revoking, or otherwise modifying this Interim Order or any provision hereof; *provided that*, in the event a Final Order is entered, the terms and conditions of such Final Order shall control over this Interim Order; provided further that such Final Order must affirm each of the provisions, protections, grants, statements, stipulations, and agreements in this Interim Order in order for such provisions, protections, grants, statements, stipulations, and agreements to remain in effect after entry of the Final Order.

(b) Nothing in these Chapter 11 Cases may impair the DIP Superpriority Claim, the Prepetition Secured Parties Adequate Protection Claims, and the DIP Secured Parties' and the Prepetition Secured Parties' respective liens on and security interests in the DIP Collateral and the Prepetition Collateral, respectively, and all other claims, liens, adequate protections, and other rights granted pursuant to the terms of this Interim Order, which shall continue in full force and effect notwithstanding any dismissal of one or more of the Chapter 11 Cases until the DIP Obligations and Prepetition Obligations are indefeasibly paid and satisfied in full. Notwithstanding

any such dismissal, this Court shall retain jurisdiction for the purposes of enforcing all such claims, liens, protections, and rights referenced in this paragraph and otherwise in this Interim Order.

(c) Except as set forth in this Interim Order, in the event this Court modifies, reverses, vacates, or stays any of the provisions of this Interim Order or any of the DIP Loan Documents, such modifications, reversals, vacatur, or stays shall not affect the (i) validity, priority, or enforceability of any DIP Obligations incurred prior to the actual receipt of written notice by the DIP Agent of the effective date of such modification, reversal, vacatur, or stay, (ii) validity, priority, or enforceability of the DIP Liens, the DIP Superpriority Claim, the Prepetition Secured Parties Adequate Protection Liens and the Prepetition Secured Parties Adequate Protection Claims or (iii) rights or priorities of any DIP Secured Party or Prepetition Secured Party pursuant to this Interim Order with respect to the DIP Collateral or any portion of the DIP Obligations. All such liens, security interests, claims and other benefits shall be governed in all respects by the original provisions of this Interim Order, and the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits arising under sections 364(e) and 363(m) of the Bankruptcy Code.

(d) This Interim Order shall be binding upon the Debtors, all parties in interest in the Chapter 11 Cases, and their respective successors and assigns, including, without limitation, (i) any trustee or other fiduciary appointed in the Chapter 11 Cases or any subsequently converted bankruptcy case(s) of any Debtor and (ii) any liquidator, receiver, administrator, or similar such person or entity appointed in any jurisdiction or under any applicable law. This Interim Order shall also inure to the benefit of the Debtors, DIP Agent, DIP Lenders, Prepetition Secured Parties, and each of their respective successors and assigns.

5.9 No Discharge. The DIP Obligations and the obligations of the Debtors with respect to adequate protection hereunder, including granting the Prepetition Secured Parties Adequate Protection Liens and the Prepetition Secured Parties Adequate Protection Claims, shall not be discharged by the entry of an order confirming any plan of reorganization in any of these Chapter 11 Cases, notwithstanding the provisions of section 1141(d) of the Bankruptcy Code, unless such obligations have been indefeasibly paid in full in cash, on or before the effective date of such confirmed plan of reorganization, or each of the DIP Secured Parties or the Prepetition Secured Parties, as applicable, has otherwise agreed in writing.

5.10 No Priming of Prepetition Obligations. Notwithstanding anything to the contrary herein, from and after the entry of this Interim Order, absent the express written consent of the applicable Prepetition Lenders, no Debtor shall seek authorization from this Court to obtain or incur any indebtedness or enter into an alternative financing facility other than the DIP Facility (a “Competing DIP Facility”) seeking to impose liens on any Prepetition Collateral ranking on a *pari passu* or priming basis with respect to the Prepetition Liens held by the Prepetition Secured Parties; *provided, however*, that nothing herein shall preclude the Debtors from seeking authorization to incur any indebtedness or enter into any Competing DIP Facility that provides for the payment in full of the DIP Obligations and the Prepetition Obligations at the initial closing of such Competing DIP Facility.

5.11 Section 506(c) Waiver. Subject to entry of the Final Order, no costs or expenses of administration which have been or may be incurred in these Chapter 11 Cases at any time (including, without limitation, any costs and expenses incurred in connection with the preservation, protection, or enhancement of value by the DIP Agent or the DIP Lenders upon the DIP Collateral, or by the Prepetition Secured Parties upon the Prepetition Collateral, as applicable) shall be

charged against any of the DIP Agent, DIP Lenders, or (subject to entry of the Final Order) the Prepetition Secured Parties, or any of the DIP Obligations or Prepetition Obligations or the DIP Collateral or the Prepetition Collateral pursuant to sections 105 or 506(c) of the Bankruptcy Code or otherwise without the prior express written consent of the affected DIP Secured Parties and/or affected Prepetition Secured Parties, in their sole discretion, and no such consent shall be implied, directly or indirectly, from any other action, inaction, or acquiescence by any such agents or creditors (including, without limitation, consent to the Carve-Out or the approval of any budget hereunder).

5.12 Section 552(b) Waiver. Subject to entry of the Final Order, the Debtors have agreed as a condition to obtaining financing under the DIP Facility and using Cash Collateral as provided in this Interim Order that the Prepetition Secured Parties are and shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and that the “equities of the case” exception under section 552(b) shall not apply to the DIP Agent, the DIP Lenders, the DIP Obligations, the Prepetition Secured Parties, or the Prepetition Obligations.

5.13 No Marshaling/Application of Proceeds.

(a) Subject to entry of the Final Order, in no event shall the DIP Agent, the DIP Lenders, the Prepetition Secured Parties be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral, as applicable, and all proceeds shall be received and applied in accordance with the DIP Loan Documents and the Prepetition Term Loan Documents, as applicable.

(b) Notwithstanding anything to the contrary in this Interim Order, but subject in all respects to the priorities set forth on Exhibit B hereto, the respective DIP Obligations shall be satisfied from the proceeds of DIP Collateral.

5.14 Right to Credit Bid. The Debtors acknowledge and agree that, pursuant to Section 363(k) of the Bankruptcy Code, each of the DIP Secured Parties and Prepetition Secured Parties shall have the right to credit bid the full amount of the DIP Obligations and the Prepetition Obligations, respectively, in connection with any sale of the Debtors' assets pursuant to the Sale Motion or otherwise.

5.15 Payment of DIP Lender Fees and Expenses. The Debtors shall pay (i) the reasonable and documented fees and expenses reimbursable under the DIP Facility, the DIP Loan Agreement, or the other DIP Loan Documents, as applicable, whether incurred before or after the Petition Date and (ii) all reasonable and documented out-of-pocket costs and expenses of the DIP Agent and the DIP Lenders including, without limitation, reasonable and documented fees and disbursements of counsel in connection with the enforcement or preservation of any rights under the DIP Facility, the DIP Loan Agreement, or the other DIP Loan Documents. With respect to payment of fees and expenses incurred from and after the Petition Date, the DIP Agent and the DIP Lenders shall comply with the procedures set forth in Section 2.4(d) hereof.

5.16 Limits on Lender Liability.

(a) Solely as a result of making any loan under the DIP Loan Agreements, authorizing the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Loan Documents, the DIP Agent, the DIP Lenders, and, subject to entry of the Final Order, the Prepetition Secured Parties, shall not be deemed to (i) be in control of the operations of the Debtors or to be acting as a "controlling person," "responsible person," or "owner or operator" with respect to the operation or management of the Debtors, so long as the such party's actions do not constitute, within the meaning of 42 U.S.C. § 9601(20)(F), actual participation in the management or operational affairs of a facility owned or

operated by a Debtor, or otherwise cause liability to arise to the federal or state government or the status of responsible person or managing agent to exist under applicable law (as such terms, or any similar terms, are used in the Internal Revenue Code, WARN Act, the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., as amended, or any similar federal or state statute) or (ii) owe any fiduciary duty to any of the Debtors. Furthermore, nothing in this Interim Order shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Secured Parties or the Prepetition Secured Parties, of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

(b) Subject to entry of the Final Order, as to the United States, its agencies, departments, or agents, nothing in this Interim Order or the DIP Loan Documents shall discharge, release or otherwise preclude any valid right of setoff or recoupment that any such entity may have.

5.17 Release. Subject to Section 4.1 of this Interim Order, each of the Debtors, their Estates and the Prepetition Obligor, on their own behalf and on behalf of each of their past, present and future predecessors, successors, heirs, subsidiaries, and assigns, hereby forever, unconditionally, permanently, and irrevocably release, discharge, and acquit each of the DIP Secured Parties and the Prepetition Secured Parties, and (in such capacity) each of their respective successors, assigns, affiliates, parents, subsidiaries, partners, controlling persons, representatives, agents, attorneys, advisors, financial advisors, consultants, professionals, officers, directors, members, managers, shareholders, and employees, past, present and future, and their respective heirs, predecessors, successors and assigns (collectively, the “Released Parties”) of and from any

and all claims, controversies, disputes, liabilities, obligations, demands, damages, expenses (including, without limitation, attorneys' fees), debts, liens, actions, and causes of action of any and every nature whatsoever, whether arising in law or otherwise, and whether known or unknown, matured or contingent, arising under, in connection with, or relating to (i) the Prepetition Obligations and the DIP Facility or (ii) the DIP Loan Documents and the Prepetition Term Loan Documents, as applicable, including, without limitation, (a) any so-called "lender liability" or equitable subordination claims or defenses, (b) any and all "claims" (as defined in the Bankruptcy Code) and causes of action arising under the Bankruptcy Code, and (c) any and all offsets, defenses, claims, counterclaims, set off rights, objections, challenges, causes of action, and/or choses in action of any kind or nature whatsoever, whether arising at law or in equity, including any recharacterization, recoupment, subordination, avoidance, or other claim or cause of action arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state, federal, or foreign law, including, without limitation, any right to assert any disgorgement or recovery, in each case, with respect to the extent, amount, validity, enforceability, priority, security, and perfection of any of the Prepetition Obligations and the DIP Obligations, the Prepetition Term Loan Documents and the DIP Loan Documents, or the Prepetition Liens and the DIP Liens, and further waive and release any defense, right of counterclaim, right of setoff, or deduction to the payment of the Prepetition Obligations and the DIP Obligations that the Debtors now have or may claim to have against the Released Parties, arising under, in connection with, based upon, or related to any and all acts, omissions, conduct undertaken, or events occurring prior to entry of this Interim Order. The Debtors are authorized in any payoff letter or similar agreement into which they enter upon payment in full of any DIP

Obligations to provide a waiver and release substantially similar to the waiver and release set forth in this Section 5.17 of the DIP Agent and the DIP Lenders and their related parties.

5.18 Survival. The provisions of this Interim Order, the validity, priority, and enforceability of the DIP Liens, the DIP Superpriority Claim, the Prepetition Secured Parties Adequate Protection Liens, the Prepetition Secured Parties Adequate Protection Claims, and any actions taken pursuant hereto shall survive, and shall not be modified, impaired or discharged by, entry of any order that may be entered (a) confirming any plan of reorganization in any of these Chapter 11 Cases, (b) converting any or all of these Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (c) dismissing any or all of these Chapter 11 Cases, (d) terminating the joint administration of these Chapter 11 Cases or any other act or omission, (e) approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Loan Documents), or (f) pursuant to which the Court abstains from hearing any of these Chapter 11 Cases. The terms and provisions of this Interim Order, including the claims, liens, security interests, and other protections (as applicable) granted to the DIP Agent, the DIP Lenders, and the Prepetition Secured Parties pursuant to this Interim Order, notwithstanding the entry of any such order, shall continue in any of these Chapter 11 Cases, following dismissal of any of these Chapter 11 Cases or any Successor Cases, and shall maintain their priority as provided by this Interim Order until (i) in respect of the DIP Facility, all of the DIP Obligations, pursuant to the DIP Loan Documents and this Interim Order, have been indefeasibly paid in full in cash (such payment being without prejudice to any terms or provisions contained in the DIP Facility which survive such discharge by their terms) and all commitments to extend credit under the DIP Facility are terminated, and (ii) in respect of the Prepetition Obligations, all of the adequate

protection obligations owed to the Prepetition Secured Parties provided for in this Interim Order and under the Prepetition Term Loan Documents have been indefeasibly paid in full in cash.

5.19 Proofs of Claim. None of the Prepetition Secured Parties shall be required to file proofs of claim in any of these Chapter 11 Cases or subsequent cases of any of the Debtors under any chapter of the Bankruptcy Code, and the Debtors' Stipulations in this Interim Order shall be deemed to constitute a timely filed proof of claim against the applicable Debtor(s). Notwithstanding the foregoing, the Prepetition Agent (on behalf of itself and the Prepetition Lenders) is hereby authorized and entitled, in its discretion, but not required, to file (and amend and/or supplement, as applicable) a master proof of claim in the Debtors' lead Case (and such master proof of claim shall be also deemed filed in each of the Debtors' individual Cases) for any claims of the applicable Prepetition Secured Parties arising from the Prepetition Term Loan Documents or in respect of the Prepetition Obligations; provided, however, that nothing in this Interim Order shall waive the right of any Prepetition Lender to file its own proof of claim against any of the Debtors.

5.20 No Third Party Rights. Except as specifically provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holders, or any direct, indirect, or incidental beneficiary.

5.21 No Avoidance. No obligations incurred or payments or other transfers made by or on behalf of the Debtors on account of the DIP Facility shall be avoidable or recoverable from the DIP Agent or the DIP Lenders under any section of the Bankruptcy Code, or any other federal, state, or other applicable law, *provided that*, nothing within this paragraph is intended to limit or curtail the provisions of Section 4.1 hereof, with respect to the Prepetition Obligations.

5.22 Reliance on Order. All postpetition advances under the DIP Loan Documents are made in reliance on this Interim Order.

5.23 Payments Free and Clear. Subject to Section 4.1, any and all payments or proceeds remitted to the DIP Agent on behalf of the DIP Secured Parties or the Prepetition Agent on behalf of the Prepetition Secured Parties, pursuant to the provisions of this Interim Order, any subsequent order of this Court or the DIP Loan Documents, shall, subject to the terms of this Section 5.23, be irrevocable, received free and clear of any claims, charge, assessment, or other liability, including, without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code or section 552(b) of the Bankruptcy Code, whether asserted or assessed by, through or on behalf of the Debtors, and in the case of payments made or proceeds remitted after the delivery of a Trigger Notice, subject to the Carve-Out in all respects.

5.24 Limited Effect. In the event of a conflict between the terms and provisions of any of the DIP Loan Documents and this Interim Order, the terms and provisions of this Interim Order shall govern.

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

5.26 Bankruptcy Rules. The requirements of Bankruptcy Rules 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

5.27 General Authorization. The Debtors, the DIP Secured Parties, and the Prepetition Secured Parties are authorized to take any and all actions necessary to effectuate the relief granted in this Interim Order.

5.28 Retention of Exclusive Jurisdiction. This Court shall retain exclusive jurisdiction and power with respect to all matters arising from or related to the implementation or interpretation of this Interim Order, the DIP Loan Agreement, and the other DIP Loan Documents.

5.29 Final Hearing and Response Dates. The Final Hearing on the Motion pursuant to Bankruptcy Rule 4001(c)(2) will be held on June [___], 2023, at __:___ .m., prevailing Eastern Time. The Debtors shall promptly mail copies of this Interim Order to the Notice Parties, and to any other party that has filed a request for notices with this Court and to any Committee after same has been appointed, or the Committee's counsel if same shall have filed a request for notice. The Debtors may serve the Motion and this Interim Order without the exhibits attached thereto as such exhibits are voluminous and available, free of charge, at the Debtors' claims and noting agent's website: http://www._____, and such notice is deemed good and sufficient and no further notice need be given. Any party in interest objecting to the relief sought at the Final Hearing shall serve and file written objections, which objections shall be served upon the Notice Parties and shall be filed with the Clerk of the Court, in each case, to allow actual receipt of the foregoing no later than 4:00 p.m. (prevailing Eastern Time), on June __, 2023.

EXHIBIT A

(DIP Loan Agreement)

**DEBTOR IN POSSESSION SECURED
TERM PROMISSORY NOTE**

\$7,100,000.00

New York, New York
May 23, 2023

On May 23, 2023 (the “Petition Date”), PLASTIQ INC., a Delaware corporation (the “Borrower”), and certain of its direct and indirect subsidiaries¹ commenced Chapter 11 cases, which cases are being jointly administered under Chapter 11 Case No. _____ (each a “Chapter 11 Case” and collectively, the “Chapter 11 Cases”), by filing separate voluntary petitions for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Loan Parties (as defined herein) continue to operate their respective businesses and manage their respective properties as debtors and debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. The Borrower has requested that the lenders (the “DIP Lenders”) from time to time party to this Debtor in Possession Secured Term Promissory Note (as amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, this “Note”), make term loans (the “Term Loans”) from time to time evidenced by this Note. Certain subsidiaries of the Borrower who comprise the other debtors in the Chapter 11 Cases wish to guaranty the Borrower’s Obligations under this Note (collectively, the “Guarantors”), and are simultaneously executing Guarantees in favor of Blue Torch Finance, LLC, as agent for the DIP Lenders (in such capacity, the “Agent”). The Borrower intends to utilize such Term Loans, subject to the Financing Orders, to (i) fund general corporate needs, including without limitation working capital and other needs, and (ii) pay costs, premiums, fees, and expenses incurred to administer or related to the Chapter 11 Cases, including fees and expenses of professionals (including funding of the Carve-Out in accordance with the Financing Orders), in each case in accordance with the Approved Budget, subject to any Permitted Variances, or as otherwise provided by the Financing Orders. Capitalized terms used herein and not otherwise defined herein shall have the meanings provided in Section 18 of this Note.

1. Term Loans.

(a) Subject to the terms and conditions hereof including the Agent’s receipt of a Borrowing Request (as defined below), the DIP Lenders agree to provide the Borrower with Term Loans in the aggregate principal amount of up to \$7,100,000.00 (the “Term Loans”). Subject to the terms and conditions hereof, to the extent the Interim Order does not permit the full amount of the Term Loans to be incurred by the Borrower on the Closing Date, (i) the full amount so authorized shall be drawn by the Borrower in a single draw on the Closing Date (the “Interim Order Term Loans”), and (ii) the DIP Lenders shall advance any remaining amount of the Term Loans that are authorized in the Final Order in one draw on the date or during the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PlastiQ Inc. (6125), PLV Inc. d/b/a/ PLV TX Branch Inc. (5084), and Nearside Business Corp. (N/A). The corporate headquarters and the mailing address for the Debtors is 1475 Folsom Street, Suite 400, San Francisco, California 94103.

period permitted by the Final Order (any such Term Loans, the “Final Order Term Loans”). The Final Order Term Loans shall be Term Loans for all purposes of this Note. The Borrower may request the Term Loans pursuant to written notice (which may be by email) (a “Borrowing Request”) delivered to the Agent by a Responsible Officer no later than 12:00 p.m. New York City time on the proposed borrowing date of the Term Loans (or such shorter period as the Agent may agree) or, with respect to any Final Order Term Loans, one (1) Business Day prior to the proposed borrowing day of the Final Order Term Loans (or such shorter period as the Agent may agree). The Borrowing Request shall be in a form reasonably satisfactory to the Agent and shall specify (i) the principal amount of the proposed Term Loan, (ii) the initial Interest Period with respect thereto, and (iii) the proposed borrowing date, which must be a Business Day. Each DIP Lender shall provide each Term Loan in an aggregate amount not to exceed its Commitment with respect to such Term Loan and the obligation of each DIP Lender to make the Term Loans under this Note shall be several and not joint and several. Upon receipt of a Borrowing Request with respect to any Term Loan, subject to the satisfaction (or waiver) of the conditions set forth in Section 2(a) hereof, each DIP Lender shall simultaneously and proportionately to its Pro Rata Share of its Commitment with respect to such Term Loan, make the proceeds of such Term Loan available to the Borrower on the applicable date of funding of the Term Loan by transferring immediately available funds equal to such proceeds to the Escrow Account (or to the Agent, which will then transfer such proceeds to the Escrow Account). The relevant Commitment of each DIP Lender shall be permanently reduced upon the making of the relevant Term Loan in an amount equal to such Term Loan advanced by such DIP Lender. The Borrower may request Withdrawals from the Escrow Account in accordance with Section 2(b) of this Note. Any principal amount of the Term Loan which is repaid or prepaid may not be reborrowed (other than pursuant to Section 7(a)(iv)).

(b) The aggregate principal amount of Terms Loans outstanding shall not exceed \$7,100,000.00, subject to any limitation of credit extensions under this Note and the Financing Orders (the “Maximum Amount”).

(c) The Agent shall be entitled to rely upon, and shall be fully protected in relying upon, any Borrowing Request or similar notice believed by the Agent to be genuine. The Agent may assume that each Person executing and/or delivering any such notice was duly authorized, unless the responsible individual acting thereon for the Agent has actual knowledge to the contrary.

(d) The Borrower shall utilize the proceeds of Term Loans, subject to the Financing Orders, to (i) fund general corporate needs, including without limitation working capital and other needs and (ii) pay costs, premiums, fees, and expenses incurred to administer or related to the Chapter 11 Cases, including fees and expenses of professionals (including funding of the Carve-Out in accordance with the Financing Orders), in each case in accordance with the Approved Budget, subject to any Permitted Variances, this Note, the Bankruptcy Code, and the Financing Orders; provided, that, unless otherwise provided in the Approved Budget, subject to any Permitted Variance, or approved by the Agent, no portion of any Term Loan shall be used, directly or indirectly: (A) to make any payment in respect of, or repurchase, redeem, retire or defease any, prepetition Indebtedness or to finance or make any Restricted Payment, except pursuant to the terms of the Financing Orders (*provided*, that, nothing in this subsection (A) shall prohibit the Borrower from utilizing the proceeds of Term Loans to pay prepetition ordinary

course obligations that are approved by the Bankruptcy Court in accordance with the Approved Budget), (B) to pay any fees or similar amounts payable to any Person who has proposed or may propose to purchase interests in any of the Borrower or any of its respective Subsidiaries or affiliates or who otherwise has proposed or may propose to invest in the Borrower or any of its respective Subsidiaries or affiliates (including so-called “topping fees,” “exit fees,” and similar amounts), or (C) to make any distribution under a plan of reorganization in the Chapter 11 Cases or any similar proceeding of any of the Subsidiaries or affiliates of any of the Borrower.

2. Certain Conditions to Making Term Loans and Withdrawals from the Escrow Account.

(a) The effectiveness of this Note and the obligation of each DIP Lender to fund the Term Loans requested to be made by it shall be subject to the prior or concurrent satisfaction (or waiver by the Agent) of each of the conditions precedent set forth in this clause (a):

(1) the Borrower shall have paid any payment obligations based on delivered invoices then payable hereunder (including the reasonable and documented out-of-pocket fees and expenses of the Agent, including, without limitation, those of counsel for the Agent) or under any other DIP Document;

(2) the Loan Parties shall have delivered corporate resolutions, incumbency certificates and similar documents, in form and substance reasonably satisfactory to Agent with respect to this Note and the other DIP Documents and the transactions contemplated hereby and thereby;

(3) the Escrow Agreement shall be in full force and effect and the Escrow Account shall not be subject to any Liens or claims, except for Liens granted in favor of the Agent;

(4) the Loan Parties shall have delivered guarantees of each of the Guarantors, each in form and substance reasonably satisfactory to Agent with respect to this Note and the other DIP Documents and the transactions contemplated hereby and thereby;

(5) the Loan Parties shall have delivered fully executed copies of all other DIP Documents, each in form and substance reasonably satisfactory to Agent;

(6) any representation or warranty by any Loan Party contained herein or in any other DIP Document shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date;

(7) (i) with respect to the Interim Order Term Loans, (A) the Bankruptcy Court shall have entered the Interim Order and (B) the Interim Order shall not have been stayed, vacated, reversed, modified or amended without Agent’s consent, or (ii) with respect to the Final Order Term Loan, (A) the Bankruptcy Court shall have entered

the Final Order and (B) the Final Order shall have not been stayed, vacated, reversed, modified or amended without Agent's consent;

(8) no Default or Event of Default shall have occurred and be continuing or would result after giving effect to the Term Loans and the transactions contemplated herein;

(9) after giving effect to the making of the Term Loans, the outstanding principal amount of all Term Loans would not exceed the Maximum Amount;

(10) the Agent shall have received and approved the Approved Budget in accordance with this Note and the Financing Orders; and

(11) the Bankruptcy Court shall have entered an order, in form and substance reasonably acceptable to the Agent, authorizing the Loan Parties to use Cash Collateral in a manner consistent with the Approved Budget.

(b) The Borrower may request, and the Escrow Agent shall effectuate upon receipt of such request, a Withdrawal from the Escrow Account, subject to the prior or concurrent satisfaction (or waiver by the Agent) of each of the conditions set forth in this clause (b):

(1) the representations and warranties by the Loan Parties contained herein or in any other DIP Document are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date;

(2) after entry of the Interim Order, the Interim Order shall not have been stayed, vacated, reversed, modified or amended without Agent's consent;

(3) after the entry of the Final Order, the Final Order shall not have been stayed, vacated, reversed, modified or amended without Agent's consent;

(4) the Withdrawal Liquidity Condition shall have been satisfied;

(5) no Default or Event of Default has occurred and is continuing or would result after giving effect to the advance of the Final Order Term Loans or any release of proceeds of the Term Loans from the Escrow Account; and

(6) the Agent shall have received from the Borrower at least two (2) Business Days (or such shorter period as the Agent may agree) prior to the date of such Withdrawal, a Withdrawal Notice and a calculation evidencing satisfaction of the Withdrawal Liquidity Condition, which calculation shall be in form and substance satisfactory to the Agent in the form of Exhibit B.

Upon receipt of the Withdrawal Notice and satisfaction of the conditions set forth

in Section 2(b), the Agent shall promptly direct the Escrow Agent to disburse funds to the Borrower on the funding date set forth in the applicable Withdrawal Notice. Notwithstanding the foregoing, if the Agent determines in its sole discretion that one or more of the conditions set forth in Section 2(b) has not been satisfied as of any requested Withdrawal Date, then the Agent may decline to direct the Escrow Agent to fund such Withdrawal and shall communicate the same to the Escrow Agent and the Borrower.

The request and acceptance in the Escrow Account by the Borrower of the proceeds of the Term Loans and the request of a Withdrawal shall, in each case, be deemed to constitute, as of the date of such request, acceptance or incurrence, a representation and warranty by the Borrower that (A) with respect to the request and acceptance in the Escrow Account by the Borrower of the proceeds of the Term Loans, the conditions in Section 2(a) have been satisfied (or waived) and (B) with respect to the request of a Withdrawal, the conditions in Section 2(b) have been satisfied (or waived) as of the proposed Withdrawal Date.

3. Payment of Principal. FOR VALUE RECEIVED, the Borrower promises to pay to the Agent, for the benefit of the DIP Lenders, the lesser of (x) \$7,100,000.00 and (y) the unpaid principal amount of all Term Loans, on the Maturity Date, together with all accrued and unpaid interest, fees and expenses to the extent required by this Note.

4. Payment of Interest.

(a) Subject to the terms of this Note, the Term Loans or any portion thereof shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loan until repaid, at a rate per annum equal to the Adjusted Term SOFR plus 12.0%.

(b) Interest on the Term Loans shall be payable monthly, in arrears, on the last Business Day of each month, commencing on the last Business Day of the month in which the applicable Term Loan is made. If any payment of any of the Obligations becomes due and payable on a day other than a Business Day, the maturity thereof will be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

(c) All computations of fees and interest shall be made by the Agent on the basis of a 360-day year, in each case for the actual number of days occurring in the period for which such fees or interest are payable (including the first day and the last day). Each determination by the Agent of an interest rate hereunder shall be final, binding and conclusive on the Borrower (absent manifest error).

(d) So long as an Event of Default shall have occurred and be continuing, and at the election of the Agent, the interest rate applicable to the Obligations shall be increased by two percentage points (2.00%) per annum above the rate of interest otherwise applicable hereunder (the "Default Rate"), and all outstanding Obligations shall bear interest at the Default Rate applicable to such Obligations. Interest at the Default Rate shall accrue from the date of such Event of Default until such Event of Default is cured or waived (notwithstanding when the election by the Agent was made) and shall be payable upon demand.

(e) It is the intention of the parties hereto that the Agent and each DIP Lender shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other DIP Document would be usurious as to the Agent or any DIP Lender under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to the Agent or such DIP Lender notwithstanding the other provisions of this Note), then, in that event, notwithstanding anything to the contrary in this Note or any other DIP Document or any agreement entered into in connection with or as security for the Obligations, it is agreed that the aggregate of all consideration which constitutes interest under law applicable to the Agent or any DIP Lender that is contracted for, taken, reserved, charged or received by the Agent or such DIP Lender under this Note or any other DIP Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by the Agent or such DIP Lender on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by the Agent or such DIP Lender, as applicable, to the Borrower). If at any time and from time to time (i) the amount of interest payable to the Agent or any DIP Lender on any date shall be computed at the highest lawful rate applicable to the Agent or such DIP Lender pursuant to this Section 4(e) and (ii) in respect of any subsequent interest computation period the amount of interest otherwise payable to the Agent or such DIP Lender would be less than the amount of interest payable to the Agent or such DIP Lender computed at the highest lawful rate applicable to the Agent or such DIP Lender, then the amount of interest payable to the Agent or such DIP Lender in respect of such subsequent interest computation period shall continue to be computed at the highest lawful rate applicable to the Agent or such DIP Lender until the total amount of interest payable to the Agent or such DIP Lender shall equal the total amount of interest which would have been payable to the Agent or such DIP Lender if the total amount of interest had been computed without giving effect to this Section 4(e).

(f) If, after the date hereof, the DIP Lenders reasonably determine that any Change In Law has the effect of reducing the return on the DIP Lender's or such holding company's capital as a consequence of the DIP Lender's Term Loans hereunder to a level below that which the DIP Lender or such holding company could have achieved but for such Change in Law (taking into consideration the DIP Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount reasonably deemed by the DIP Lender to be material, then the DIP Lender may notify the Borrower thereof. Following receipt of such notice, the Borrower agrees to pay the DIP Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable promptly (but in no event later than fifteen (15) days) after presentation by the DIP Lender to the Borrower of a statement in the amount and setting forth in reasonable detail the DIP Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, the DIP Lender may use any reasonable averaging and attribution methods.

5. Payments. All cash payments of principal, interest and all other Obligations in respect of this Note shall be made in lawful money of the United States of America in same day funds to the Agent at the account as shall be designated in a written notice delivered by the

Agent to the Borrower. Each payment made hereunder shall be credited first to fees and expenses then due and payable, second to interest then due and payable and the remainder of such payment shall be credited to principal, and interest shall thereupon cease to accrue upon the principal so repaid. The Borrower shall make each payment required under this Note prior to 4:00 p.m. New York City time on the date when due, in immediately available funds. Any amounts received after such time on any date may, in the sole discretion of the Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon.

6. Optional Prepayments. Subject to the terms and conditions of the Financing Orders, the Borrower shall have the right at any time and from time to time to prepay any Term Loans under this Note in whole or in part (without premium or penalty) upon two (2) Business Days' written notice to the Agent by 1:00 p.m. New York City time (or such shorter time as the Agent may agree); provided that each such prepayment shall be in a minimum amount of \$100,000. Notice of prepayment having been given as aforesaid, the principal amount specified in such notice shall become due and payable on the prepayment date specified therein in the aggregate principal amount specified therein unless such repayment is conditioned on the receipt of any third party funds or the consummation of certain transactions that are not received or consummated. Any prepayment or repayment hereunder shall be accompanied by interest on the principal amount of the Note being prepaid or repaid to the date of prepayment or repayment.

7. Mandatory Prepayments.

(a) In each case, subject to the terms and conditions of the Financing Orders and the Approved Budget:

i. No later than one (1) Business Day following receipt by any Loan Party of cash proceeds of any asset Disposition (other than Dispositions permitted by Section 15(f)(i)), unless the Agent agrees otherwise, the Borrower shall prepay the Term Loans in an amount equal to all such proceeds, net of (x) commissions and other reasonable and customary transaction costs, fees and expenses properly attributable to such transaction and payable by the Borrower or any Loan Party in connection therewith (in each case, paid to non-affiliates), and (y) with respect to proceeds from the Disposition of assets securing obligations owed to a third party, which Lien is senior to the Liens securing the Obligations under this Note, the amount of such proceeds required by an order of the Bankruptcy Court to repay such third party obligations.

ii. No later than one (1) Business Day following receipt by any Loan Party of cash proceeds of any debt securities or other indebtedness not permitted under this Note, the Borrower shall prepay the Term Loans in an amount equal to all such proceeds, net of underwriting discounts and commissions and other reasonable costs or fees paid to non-affiliates in connection therewith.

iii. No later than one (1) Business Day following receipt by any Loan Party of any Extraordinary Receipts, the Borrower shall prepay the outstanding principal of the Term Loans in an amount equal to all such Extraordinary Receipts, net of (x) any expenses (including reasonable broker's fees or commissions and legal fees) incurred in connection with such Extraordinary Receipts, and (y) with respect to Extraordinary Receipts from assets securing

obligations owed to a third party, which Lien is senior to the Liens securing the Obligations under this Note, the amount of such Extraordinary Receipts required by an order of the Bankruptcy Court to repay such third party obligations.

iv. [reserved]

v. On the last Business Day of each week, the Borrower shall remit to the Escrow Account an amount equal to the positive difference of (a) cash in Debtor bank accounts (other than the Professional Fee Account) minus (b) the sum (without duplication) of (x) the amount of disbursements reasonably anticipated to be made during the period from (but not including) such date to the last Business Day of the week following such date as set forth in the Approved Budget (subject to Permitted Variances) and (y) \$1,500,000, provided that in no event shall the Borrower be required to remit to the Escrow Account an amount in excess of the net aggregate amount of Loan proceeds withdrawn from the Escrow Account. Any amounts remitted by the Borrower to the Escrow Account pursuant to this clause iv. shall be available for subsequent withdrawal subject to compliance with the conditions to withdrawal set forth in Section 2.

(b) Nothing in this Section 7 shall be construed to constitute the Agent's or any DIP Lender's consent to any transaction that is not permitted by other provisions of the Financing Orders, this Note or the other DIP Documents.

8. Fees. Borrower shall pay to the Agent the following fees:

(a) Facility Fee. The Borrower shall pay to the Agent, for the account of the DIP Lenders, an upfront fee in an aggregate amount equal to 5.0% of the aggregate principal amount of the Commitments, which fee shall be fully earned upon the entry of the Interim Order and non-refundable when paid. The upfront fee will be netted against the initial Borrowing Request.

(b) Agent Fee. On the Closing Date, the Borrower shall pay to the Agent an annual agent administration fee equal to \$100,000 per annum. The first annual agent administration fee will be fully earned upon the entry of the Interim Order and non-refundable when paid. Thereafter, the annual agent administration fee shall be due on the anniversary of the Closing Date to the extent that the Obligations have not been repaid in full prior to such date.

(c) Exit Fee. On the earlier of (i) the date that all of the Obligations under this Note are paid in full and (ii) the Maturity Date, the Borrower shall pay to the Agent, for the account of the DIP Lenders, an exit fee equal to 4.0% of the aggregate principal amount of the Commitments, which shall be earned upon the entry of the Interim Order and non-refundable when paid.

9. Indemnity. The Borrower shall indemnify and hold harmless the Agent and each DIP Lender and each of their respective affiliates, and each such Person's respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person"), from and against any and all suits, actions, proceedings, claims, damages, losses, liabilities and reasonable and documented out-of-pocket expenses (including reasonable and documented out-of-pocket attorneys' fees and expenses limited (except in the case conflicts exist between and

among Indemnified Persons) to one primary outside counsel to the Indemnified Persons taken as a whole (and, if necessary, one local counsel in each relevant jurisdiction)) that may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended, suspended or terminated under this Note and the other DIP Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder and any actions or failures to act in connection therewith, and legal costs and expenses arising out of or incurred in connection with disputes between the Agent and the DIP Lenders on the one hand and the Loan Parties on the other hand; provided, that (i) the Borrower shall not be liable for any indemnification to an Indemnified Person (a) to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results solely from that Indemnified Person's gross negligence or willful misconduct as determined in a final nonappealable judgment by a court of competent jurisdiction or (b) any dispute that is among Indemnified Persons that a court of competent jurisdiction has determined in a final non-appealable judgment did not involve actions or omissions of any Loan Party or any of their respective Affiliates and (ii) this Section 9 shall not apply with respect to taxes other than any taxes that represent losses, claims, damages, etc. arising from any non-tax claim. **NO INDEMNIFIED PERSON SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO ANY DIP DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OF SUCH PERSON OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES THAT MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER ANY DIP DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.**

10. Adjustments for Withholding, Capital Adequacy Etc.

(a) All payments to the Agent by the Borrower under this Note shall be made free and clear of and without deduction or withholding for any and all taxes, duties, levies, imposts, deductions, charges or withholdings and all related liabilities (all such taxes, duties, levies, imposts, deductions, charges, withholdings and liabilities being referred to as "Taxes") imposed by the United States of America or any other nation or jurisdiction (or any political subdivision or taxing authority of either thereof), unless such Taxes are required by applicable law to be deducted or withheld. If the Borrower shall be required by applicable law to deduct or withhold any such Taxes from or in respect of any amount payable under this Note other than taxes imposed on the Agent or any DIP Lender's overall net income, then (A) if such Tax is an Indemnified Tax, the amount payable shall be increased as may be necessary so that after making all required deductions or withholdings, (including deductions or withholdings applicable to any additional amounts paid under this Note) the Agent receives an amount equal to the amount it would have received if no such deduction or withholding had been made, (B) the Borrower shall make such deductions or withholdings, and (C) the Borrower shall timely pay the full amount deducted or withheld to the relevant governmental entity in accordance with applicable law.

(b) If the effect of the adoption, effectiveness, phase-in or applicability after the date hereof of any law, rule or regulation (including without limitation any tax, duty, charge or withholding on or from payments due from the Borrower (but excluding Indemnified Taxes, Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and Connection

Income Taxes)), or any change therein or in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, is to reduce the rate of return on the capital of the Agent with respect to this Note or to increase the cost to the Agent of making or maintaining amounts available under this Note, the Borrower agrees to pay to the Agent such additional amount or amounts as will compensate the Agent on an after-tax basis for such reduction or increase.

(c) The Borrower agrees to timely pay any present or future stamp, court or documentary, intangible, recording, filing or similar Taxes (all such Taxes being referred to as “Other Taxes”) which arise from any payment made by the Borrower under this Note or from the execution, delivery or registration of, or otherwise with respect to, this Note.

(d) The Borrower shall indemnify the Agent and each of the DIP Lenders for the full amount of Indemnified Taxes (including, without limitation, any Indemnified Taxes imposed by any jurisdiction on amounts payable by the Borrower hereunder) paid by the Agent or any DIP Lender and any liability (including penalties, interest and expenses) arising from or with respect to such Indemnified Taxes, whether or not they were correctly or legally asserted, excluding taxes imposed on the Agent or any DIP Lender’s overall net income. Payment under this indemnification shall be made within 10 days from receipt of written demand. A certificate as to the amount of such Indemnified Taxes submitted to the Borrower by the Agent shall be conclusive evidence, absent manifest error, of the amount due from the Borrower to the DIP Lenders.

(e) The Borrower shall furnish to the DIP Lenders the original or a certified copy of a receipt evidencing any payment of Taxes made by the Borrower pursuant to this Section 10 within thirty (30) days after the date of any such payment. If any Recipient becomes aware that it has received a refund of any Taxes with respect to which the Borrower has paid any amount pursuant to this Section 10, such Recipient shall pay the amount of such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such Recipient and without interest (other than any interest received from the relevant governmental authority with respect thereto), to the Borrower promptly after receipt thereof.

(f) (A) any DIP Lender that is a U.S. Person shall deliver to the Borrower and the Agent on or prior to the date on which such DIP Lender becomes a DIP Lender under this Note (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed copies of IRS Form W-9 certifying that such DIP Lender is exempt from U.S. federal backup withholding tax;

(B) any DIP Lender that is not a U.S. Person (a “Foreign Lender”) shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a DIP Lender under this Note (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any DIP Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any DIP Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Internal Revenue Code, (x) a certificate substantially in the form of Exhibit [B]-1 hereto to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Internal Revenue Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Internal Revenue Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit [B]-2 or Exhibit [B]-3, IRS Form W-9, or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit [B]-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Foreign Lender becomes a DIP Lender under this Note (and from time to time thereafter upon the reasonable request of the Borrower or the Agent), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a DIP Lender under any DIP Document would be subject to U.S. federal withholding Tax imposed by FATCA if such DIP Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such DIP Lender shall deliver to the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably

requested by the Borrower or the Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such DIP Lender has complied with such DIP Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Note.

Each DIP Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Agent in writing of its legal inability to do so.

11. Priority of Obligations and DIP Lenders' Liens.

(a) To secure all of the Borrower's Obligations now existing or hereafter arising, the Agent is granted, for the benefit of itself and the DIP Lenders (i) a super-priority administrative claim against each of the Borrower and Guarantors pursuant to Section 364(c)(1) of the Bankruptcy Code, and except as set forth in the Financing Orders (including with respect to the Carve-Out), having a priority over all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 363, 364, 503, 506, 507, 546, 726, 1113 or 1114 or any other provision of the Bankruptcy Code or otherwise (whether incurred in these Chapter 11 Cases and any Successor Case), and, except as set forth in the Financing Orders (including with respect to the Carve-Out), shall at all times be senior to the rights of the Borrower or any domestic or foreign Subsidiary of the Borrower, any successor trustee or estate representative, or any other creditor or party in interest in the Chapter 11 Cases or any Successor Case, and (ii) pursuant to Sections 364(c)(2), 364(c)(3) and 364(d) of the Bankruptcy Code and subject to clause (b) below, Liens on, and security interests in, the Collateral,; provided that no Liens shall be permitted on either the Escrow Agreement or the Escrow Account, or amounts held therein or proceeds thereof other than the lien of the Agent (and, to the extent constituting a Lien, the Carve-Out). The security interests and Liens granted to the Agent hereunder pursuant to Sections 364(c) shall not be (i) subject to any Lien or security interest that is avoided and preserved for the benefit of the Loan Parties' estate under Section 551 of the Bankruptcy Code, or (ii) except as set forth in the Financing Orders (including with respect to the Carve-Out), subordinated to or made pari passu with any other Lien or security interest under Section 364(d) of the Bankruptcy Code or otherwise.

(b) The priority of the Agent's Liens on the Collateral shall be as set forth in the Financing Orders.

(c) Notwithstanding anything herein to the contrary (i) all proceeds received by the Agent and the DIP Lenders from the Collateral subject to the Liens granted in this Section 11 and in each other DIP Document and by the Financing Orders shall be subject to the priorities set forth in the Financing Orders, the Carve-Out and Permitted Prior Liens (provided that neither the Escrow Agreement, nor the Escrow Account nor amounts held therein or proceeds thereof

shall be subject to Permitted Prior Liens) and (ii) no Person entitled to the Carve-Out shall be entitled to sell, or otherwise Dispose, or seek or object to the sale or other Disposition of, such Collateral, subject to any such Person's fiduciary obligations.

(d) Each of the Loan Parties agrees for itself that the Obligations of such Person shall constitute allowed administrative expenses in the Chapter 11 Cases, having priority over all administrative expenses of and unsecured claims against such Person now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 327, 328, 330, 331, 361, 362, 363, 364, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113 and 1114 of the Bankruptcy Code, except as set forth in the Financing Orders (including with respect to the Carve-Out).

12. Further Assurances. The Borrower agrees that it shall, at the Borrower's expense and upon the reasonable request of the Agent, duly execute and deliver or cause to be duly executed and delivered, to the Agent or such DIP Lender, as the Agent shall direct such Borrower such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the Agent to carry out more effectively the provisions and purposes of this Note or any other DIP Document, including, upon the written request of the Agent and in form and substance reasonably satisfactory to the Agent, security agreements, UCC-1 financing statements and other Collateral Documents confirming and perfecting the granting to the Agent, on behalf of the DIP Lenders, of the Liens (subject to the Financing Orders) in the Collateral to secure the Obligations.

13. [Reserved.]

14. Affirmative Covenants. The Borrower agrees that until the Commitments shall have expired or been terminated and the Obligations payable under the DIP Documents shall have been paid in full in cash:

(a) Upon reasonable request of the Agent, the Loan Parties will permit any officer, employee, attorney or accountant or agent of the Agent to audit, review, make extracts from or copy, at the Borrower's expense, any and all corporate and financial and other books and records of the Loan Parties at all times during ordinary business hours and, in the absence of an Event of Default, upon reasonable advance notice, to discuss the Loan Parties' affairs with any of their directors, officers, employees or accountants, so long as a Responsible Officer of a Loan Party is invited to attend such discussions. The Borrower will permit the Agent, or any of its officers, employees, accountants, attorneys or agent, to examine and inspect any Collateral or any other property of the Loan Parties at any time during ordinary business hours and, in the absence of an Event of Default, upon reasonable prior notice. Notwithstanding the foregoing, none of the Loan Parties will be required to disclose information to the Agent (or any agent or representative thereof) that is prohibited by applicable law or is subject to attorney-client or similar privilege or constitutes attorney work product.

(b) (i) The Borrower and its Subsidiaries will comply with all requirements of applicable law, the non-compliance with which could reasonably be expected to have a Material Adverse Effect and (ii) the Borrower and its Subsidiaries will obtain, maintain in effect and

comply with all permits, licenses and similar approvals necessary for the operation of its business as now or hereafter conducted other than to the extent contemplated by the Approved Budget or the Financing Orders.

(c) The Borrower and its Subsidiaries will pay or discharge, when due, (i) all material taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties of the Borrower and its Subsidiaries (including, without limitation, the Collateral) or upon or against the creation, perfection or continuance of the security interest, prior to the date on which penalties attach thereto, except in each case (1) where the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the Borrower or such Subsidiary or (2) taxes the nonpayment of which is permitted or required by the Bankruptcy Code or this Note, (ii) all federal, state and local taxes required to be withheld by it, and (iii) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a lien or charge upon any properties of Borrower and its Subsidiaries.

(d) (i) The Borrower and each of its Subsidiaries will keep and maintain the Collateral and all of its other properties necessary or useful in its business in good condition, repair and working order (normal wear and tear excepted) other than to the extent contemplated by the Approved Budget or the Financing Orders, (ii) the Borrower and each of its Subsidiaries will defend the Collateral against all claims or demands of all Persons (other than Permitted Encumbrances) claiming the Collateral or any interest therein, and (iii) the Borrower and each of its Subsidiaries will keep all Collateral free and clear of all security interests, liens and encumbrances, except Permitted Encumbrances and liens otherwise permitted by the Financing Orders.

(e) The Borrower and its Subsidiaries will maintain insurance with responsible and reputable insurance companies or associations (including, without limitation, commercial general liability, worker's compensation and business interruption insurance) with respect to the Collateral and its other properties (including all real property leased or owned by it) and business, in such amounts and covering such risks as is (i) carried generally in accordance with sound business practice by companies in similar businesses similarly situated, (ii) required by any law or regulation, and (iii) required by any material contract. All property and commercial general liability/hazard policies covering the Collateral are to be made payable to the Agent (for the benefit of the Agent and DIP Lenders) as a lender loss payee/mortgagee, other than proceeds required by an order of the Bankruptcy Court to be applied to the repayment of debt secured by a Lien on the related assets that is senior to the Liens securing the Obligations under this Note, and are to contain such other provisions as the Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of insurance are to be delivered to the Agent and the policies are to be premium prepaid with the lenders' loss payee and additional insured endorsement in favor of the Agent (for the benefit of the Agent and DIP Lenders), and shall provide for not less than 30 days' (10 days' in the case of non-payment) prior written notice to the Agent of the exercise of any right of cancellation. If any Loan Party or any of its Subsidiaries fails to maintain such insurance, the Agent may arrange for such insurance, but at the Borrowers' expense and without any responsibility on the Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence and during the continuance of an Event of Default, the Agent shall

have the sole right, in the name of the Agent (on behalf of the Agent and DIP Lenders), any Loan Party and its Subsidiaries, to file claims under any insurance policies, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies. The Loan Parties may settle, adjust or compromise any insurance claim on terms reasonably acceptable to the Agent, as long as the proceeds are delivered to the Agent pursuant to this Note and the Financing Orders.

(f) The Borrower and its Subsidiaries will preserve and maintain their existence and all of their rights, privileges and franchises necessary or desirable in the normal conduct of its business, except to the extent contemplated by the Approved Budget or the Financing Orders or as permitted hereunder.

(g) The Borrower and its Subsidiaries shall at all times provide reasonable access for, and reasonable cooperation with, any financial advisors or other professionals to the Agent.

(h) The Borrower and its Subsidiaries each agree that they shall take all actions necessary to cause each of the following to occur:

(1) no later than 3 Business Days after the Petition Date, the Interim Order approving the Note shall be entered by the Bankruptcy Court;

(2) no later than 3 Business Days after the Petition Date, the Loan Parties shall file one or more motions seeking entry of orders authorizing and approving bid and sale procedures for all or substantially all of the Loan Parties' assets (the "Sale Motion"), in form and substance acceptable to the Agent;

(3) no later than 35 days after the Petition Date, the Final Order approving this Note shall be entered by the Bankruptcy Court;

(4) no later than 35 days after the Petition Date the Bankruptcy Court shall have entered one or more orders, in form and substance reasonably acceptable to the Agent, approving the bid and sale procedures requested in the Sale Motion (including, if appropriate, approval of stalking horse and related protections), which procedures shall establish a bid deadline of not later than 60 days following the Petition Date;

(5) no later than 70 days after the Petition Date the Bankruptcy Court shall have entered one or more orders authorizing and approving the sale of all or substantially all of the Loan Parties' assets pursuant to one or a series of related or unrelated sale transactions; and

(6) no later than 75 days after the Petition Date the sale(s) of all or substantially all of the Debtors' assets approved by the Bankruptcy Court shall have been consummated.

(i) The Borrower will deliver (which delivery may be made by electronic communication (including email)) to the Agent each of the reports and other items set forth on Schedule I attached hereto no later than the times specified therein (or such later time as the Agent may agree). No less than once per week, the Borrower shall make its senior management and its advisors available at reasonable times and upon reasonable notice to the Agent and DIP Lenders to discuss the financial position, cash flows, variances, operations, sale process and general case status of the Loan Parties.

(j) The Borrower will fund from proceeds of the Term Loans or cash on hand into a segregated account held by Young Conaway Stargatt & Taylor, LLP, in its capacity as counsel to the Borrower (the "Professional Fee Account") for the benefit of professionals, on a weekly basis, an amount equal to the amount of "Professional Fees for the Debtors and the Committee", if any, provided for in the Approved Budget for the preceding week.

15. Negative Covenants. So long as any DIP Lender shall have any Commitment hereunder, or any Term Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Borrower shall not, nor shall it permit any Subsidiary to, without the prior written consent of the Agent:

(a) Neither the Borrower nor any of its Subsidiaries shall directly or indirectly, by operation of law or otherwise, (i) form or acquire any Subsidiary, or (ii) merge with, consolidate with, acquire all or substantially all of the assets or Equity Interests of, or otherwise combine with or acquire, any Person, except in the case of this clause (ii), with respect to existing Subsidiaries to the extent consented to by the Agent (which consent shall not be unreasonably withheld), other than, in each case, any such action approved by an order of the Bankruptcy Court; *provided*, that, any wholly-owned Subsidiary of the Borrower may (A) be merged with or into another wholly-owned Subsidiary of the Borrower or into the Borrower, or may consolidate or amalgamate with a Loan Party or another wholly-owned Subsidiary of the Borrower, so long as (1) no other provision of this Note would be violated thereby, (2) no Event of Default shall have occurred or be continuing either before or after giving effect to such transaction, (3) the DIP Lenders' rights in any material Collateral are not adversely affected in any material respect by such merger, consolidation or amalgamation, (4) if such merger, consolidation or amalgamation involves the Borrower, the Borrower shall be the surviving or continuing Person and (5) if such merger, consolidation or amalgamation involves any Loan Party, a Loan Party shall be the surviving or continuing Person and (B) wind-up, liquidate, or dissolve, so long as the assets of such Person are transferred to (1) if such Person is a Loan Party, another Loan Party and (2) if such Person is not a Loan Party, the Borrower or another wholly-owned Subsidiary of the Borrower.

(b) Neither the Borrower nor any of its Subsidiaries shall create, incur, assume or permit to exist any Indebtedness, except (without duplication), to the extent not prohibited by the Financing Orders, Permitted Indebtedness.

(c) Neither the Borrower nor any of its Subsidiaries shall create, incur, assume or permit to exist any Lien on or with respect to any of its properties or assets (whether now owned or hereafter acquired) except for Permitted Encumbrances.

(d) Neither the Borrower nor any of its Subsidiaries shall make any Restricted Payment, except dividends and distributions by Subsidiaries of the Borrower paid to the Borrower or other wholly-owned Subsidiaries of the Borrower. Except for (i) claims of employees for unpaid wages, bonuses, accrued vacation and sick leave time, business expenses and contributions to employee benefit plans for the period immediately preceding the Petition Date and prepetition severance obligations, in each case to the extent permitted to be paid by order of the Bankruptcy Court, and (ii) payments permitted by the Financing Orders and the Approved Budget, subject to Permitted Variance, neither the Borrower nor any of its Subsidiaries shall make any payment in respect of, or repurchase, redeem, retire or defease any, prepetition Indebtedness, except for other payments consented to by the Agent in writing; *provided*, that, nothing in this subsection (d) shall prohibit the Borrower from paying prepetition ordinary course obligations that are the subject of typical first day relief or otherwise approved by the Bankruptcy Court, in each case in accordance with the Approved Budget.

(e) Neither the Borrower nor any of its Subsidiaries will assume, guarantee, endorse or otherwise become directly or contingently liable in connection with any obligations of any other Person (other than the Borrower or any of its Subsidiaries), except (i) the endorsement of negotiable instruments by Borrower and its Subsidiaries for the deposit or collection or similar transactions in the ordinary course of business and (ii) to the extent such obligations constitute Permitted Indebtedness.

(f) Neither the Borrower nor any of its Subsidiaries will Dispose of any of its property, business or assets, whether now owned or hereinafter acquired other than (i) the sale of Inventory and other assets held for sale in the ordinary course of business, (ii) the Disposition of obsolete, damaged, unusable, immaterial, uneconomical, surplus or worn out property or equipment, (iii) the sale of other property on terms acceptable to the Agent, (iv) the Disposition of assets approved by an order of the Bankruptcy Court, (v) [reserved], (vi) leasing or subleasing assets in the ordinary course of business and the termination or cancellation of any lease or sublease in the ordinary course of business, (vii) the (A) lapse of Intellectual Property of the Loan Parties to the extent no longer used in or material to the conduct of their business, so long as such lapse is not materially adverse to the interests of the DIP Lenders or (B) abandonment of any Intellectual Property or rights thereto in the ordinary course of business, (viii) any involuntary loss, damage or destruction of property or involuntary condemnation, seizure by taking, exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property, (ix) so long as such Disposition would not be otherwise prohibited hereunder, the transfer of assets from any Loan Party to another Loan Party, (x) dispositions of property subject to casualty events, (xi) termination of leases, subleases, licenses, sublicenses or similar use and occupancy agreements by the applicable Loan Party that do not interfere in any material respect with the business of such Loan Party and (xii) the granting of Liens that are Permitted Liens.

(g) Neither the Borrower nor any of its Subsidiaries shall consent to any amendment, supplement or other modification of any of the terms or provisions contained in, or applicable to, (i) the Financing Orders or (ii) the Prepetition Obligations.

(h) Neither the Borrower nor any of its Subsidiaries shall make any investment in, or make loans or advances of money to, any Person (other than another Loan

Party), through the direct or indirect lending of money, holding of securities or otherwise.

(i) Neither the Borrower nor any of its Subsidiaries shall change its fiscal year.

(j) For each most recently ended Variance Testing Period, the Borrower shall not permit: (x) the Actual Cash Receipts to be less than Budgeted Cash Receipts (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than the Permitted Variance for such Variance Testing Period, and (y) the aggregate amount of Actual Operating Disbursement Amounts to exceed the aggregate amount of Budgeted Operating Disbursement Amounts (each calculated on a cumulative basis as opposed to on a line by line basis), in each case, for such Variance Testing Period, by more than the Permitted Variance.

(k) Neither the Borrower nor any of its Subsidiaries shall, directly or indirectly, use the Term Loans or the proceeds of the Term Loans, or lend, contribute or otherwise make available the Term Loans or the proceeds of the Term Loans to any Person, to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as DIP Lender, Agent or otherwise) of Sanctions.

16. Events of Default; Rights and Remedies. Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to the Bankruptcy Court, the occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an “Event of Default” hereunder:

(a) The Borrower (i) shall fail to make any payment of principal of, or interest on, or fees owing in respect of, the Term Loans or any of the other Obligations when due and payable, or (ii) shall fail to pay or reimburse the Agent on behalf of the DIP Lenders for any expense reimbursable hereunder or under any other DIP Document within three (3) Business Days following the Agent’s written demands for such reimbursement or payment and the passage of any notice period required in the Financing Orders.

(b) Any Loan Party shall fail to comply with any of the provisions of Sections 1(d), 14(f), 14(g), 14(h), 14(i), 14(j) and 15 of this Note.

(c) Any Loan Party shall fail to comply with any other provision of this Note or any of the other DIP Documents (other than any provision embodied in or covered by any other clause of this Section 16) and the same, if capable of being remedied, shall remain unremedied for ten (10) Business Days after the earlier of the date (i) a senior officer of any Loan Party becomes aware of such failure and (ii) the date written notice of such default shall have been given by the Agent to such Loan Party.

(d) Except for defaults occasioned by the filing of the Chapter 11 Cases and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits any Loan Party from complying or permits any Loan Party not to comply, a default or breach shall occur under any agreement, document or instrument to which any Loan Party is a party (other

than agreements, documents and instruments evidencing Prepetition Obligations) that is not cured within any applicable grace period therefor, and such default or breach (i) involves the failure to make any payment when due in respect of any Indebtedness (other than the Obligations) of any Loan Party in excess of \$50,000 in the aggregate, or (ii) causes, or permits any holder of such Indebtedness or a trustee to cause, Indebtedness or a portion thereof in excess of \$50,000 in the aggregate to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, regardless of whether such default is waived, or such right is exercised, by such holder or trustee.

(e) Any representation or warranty herein or in any other DIP Document or in any written statement, report, financial statement or certificate made or delivered to DIP Lenders by any Loan Party is untrue or incorrect in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date when made or deemed made.

(f) Any Loan Party shall bring a motion in any Chapter 11 Case: (i) to obtain financing from any Person other than DIP Lenders under Section 364(c) or 364(d) of the Bankruptcy Code, except to the extent the proceeds of such financing would be used to repay in full all of the Obligations under this Note; (ii) to grant any Lien other than Permitted Encumbrances upon or affecting any Collateral, except to the extent the proceeds of any such financing secured by such Lien would be used to repay in full all of the Obligations under this Note; or (iii) to authorize any other action or actions adverse to the Agent or the DIP Lenders, or the Agent's rights and remedies hereunder or their interests in the Collateral.

(g) The entry of an order in any of the Chapter 11 Cases confirming a plan or plans of reorganization that does not contain a provision for the termination of the DIP Lenders' commitment to make Term Loans and the repayment in full in cash of all the Obligations under this Note on or before the effective date of such plan or plans.

(h) The filing of any motion by the Borrower or any Loan Party against the DIP Lenders seeking, or the entry of any order in the Chapter 11 Cases in respect of, any claim or claims under Section 506(c) of the Bankruptcy Code against or with respect to any Collateral.

(i) The sale, without the Agent's consent, of all or substantially all of the Loan Parties' assets either through a sale under Section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases, or otherwise, that does not provide for payment in full in cash of the Obligations and termination of the DIP Lenders' commitment to make Term Loans.

(j) The entry by the Bankruptcy Court of an order authorizing the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, business, or reorganization of any Loan Party.

(k) The Chapter 11 Cases, or any of them, shall be dismissed or converted from cases under Chapter 11 to cases under Chapter 7 of the Bankruptcy Code.

(l) The entry of an order in any Chapter 11 Case avoiding or requiring

repayment of any portion of the payments made on account of the Obligations owing under this Note or the other DIP Documents.

(m) The entry of an order in any Chapter 11 Case granting any other super-priority administrative claim or Lien equal to or superior to that granted to the Agent (other than any such claim or Lien permitted by the Financing Orders), unless (i) consented to by the Agent or (ii) the Obligations are paid in full in cash and the DIP Lenders' commitment to make Term Loans is terminated.

(n) The entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any creditor (other than the Agent) to execute upon or enforce a Lien on any Collateral except with respect to Permitted Encumbrances arising prior to the Petition Date in an aggregate amount not to exceed \$50,000.

(o) The Financing Orders (or either of them) shall be stayed, amended, modified, reversed or revoked in any respect without the Agent's prior written consent.

(p) There shall commence any suit or action against the Agent or any DIP Lender by or on behalf of (i) any Loan Party or (ii) any official committee in the Chapter 11 Cases (other than a motion for standing to commence a suit or action), in each case, that asserts a claim or seeks a legal or equitable remedy that would have the effect of subordinating the claim or Lien of the Agent or the DIP Lenders and, if such suit or action is commenced by any Person other than Borrower or any Subsidiary, officer, or employee of Borrower, such suit or action shall not have been dismissed or stayed within 60 days after service thereof on the Agent or any DIP Lender, as applicable, and, if stayed, such stay shall have been lifted.

(q) Any provision of any DIP Document shall for any reason cease to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any DIP Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any DIP Document has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms), or any Lien created under any DIP Document shall cease to be a valid and perfected first priority Lien (except as otherwise permitted herein or in the Financing Orders) in any of the Collateral purported to be covered thereby.

(r) The occurrence of a DIP Termination Event (as defined in the Financing Orders).

(s) Assets of any Loan Party with a fair market value of \$50,000 or more are attached, seized, levied upon or subjected to a writ or distress warrant, or come within the possession of any receiver, trustee, custodian or assignee for the benefit of creditors of any Loan Party and such condition continues for ten (10) days or more.

(t) A breach by any Loan Party of the terms of the Financing Orders.

(u) Any agreement for the sale of the Loan Parties' assets entered into pursuant to the Sale Motion and approved by the Bankruptcy Court, or any provision thereof, (i)

shall fail to be in full force and effect or binding upon and enforceable against any Loan Party or any other party thereto in accordance with its terms, (ii) has been amended or modified without the consent of the Agent, or (iii) has been breached due to the action or inaction of any Loan Party or any other party thereto. Any party to a sale agreement shall have notified any other party to such agreement of its intent to terminate such agreement or any other event shall occur, or shall fail to occur, which, subject to a notice requirement or passage of time, would result in the termination of any such agreement.

(v) Entry of an order authorizing and/or directing the reclamation of goods pursuant to section 546(c) of the Bankruptcy Code in excess of \$50,000.

If any Event of Default shall have occurred and be continuing, then the Agent may, upon five (5) Business Days' written notice to the Borrower and subject to the terms of the Financing Orders (the "Remedies Notice Period"): (i) terminate the Commitment of each DIP Lender with respect to further Term Loans; (ii) declare all or any portion of the Obligations, including all or any portion of any Term Loan, to be forthwith due and payable; (iii) revoke the Borrower's rights to use Cash Collateral in which the Agent and the DIP Lenders have an interest; and (iv) exercise any rights and remedies under the DIP Documents (including, without limitation, termination of the Escrow Account) or at law or in equity, all in accordance with the Financing Orders. Upon the occurrence of an Event of Default and the exercise by the Agent or the DIP Lenders of their rights and remedies under this Note and the other DIP Documents pursuant to clause (iv) above and subject to the Financing Orders, each Loan Party shall assist the Agent in effecting a Disposition of the Collateral upon such terms as are designed to maximize the proceeds obtainable from such Disposition. On any date on which the Term Loans shall have been accelerated, subject to the Financing Orders, any amounts remaining in the Escrow Account (other than with respect to amounts necessary to fund the Carve-Out) may be applied by the Agent to reduce the Term Loans and other Obligations then outstanding. None of the Loan Parties shall have (and each Loan Party hereby affirmatively waives) any right to withdraw, claim or assert any property interest in any funds on deposit in the Escrow Account upon the occurrence and continuance of any Default or Event of Default. For the avoidance of doubt, notwithstanding the foregoing, during the Remedies Notice Period, unless otherwise provided herein, the Debtors (x) may not make any Withdrawal from the Escrow Account, and (y) may use Cash Collateral solely in amounts necessary to avoid immediate and irreparable harm to the Debtors' Estates (including funding payroll and paying other administrative expenses) all in accordance with the Financing Orders and the Approved Budget, or that have otherwise been approved in advance in writing by the Agent.

Except as otherwise provided for in this Note, the Financing Orders or by applicable law, the Borrower waives: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by the Agent on which the Borrower may in any way be liable, and hereby ratifies and confirms whatever the Agent may do in this regard; (b) all rights to notice and a hearing prior to the Agent taking possession or control of, or Agent's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing Agent to exercise any of its remedies; and (c) the benefit of all valuation, appraisal,

marshaling and exemption laws.

To the extent permitted by law and subject in all respects to the terms of the Financing Orders, the Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as Agent deals with similar securities and property for its own account, the Agent's duty of care with respect to Collateral in the custody or possession of a bailee or other third person shall be deemed fulfilled if the Agent exercises reasonable care in the selection of the bailee or other third person, and the Agent need not otherwise preserve, protect, insure or care for any Collateral, and the Agent shall not be obligated to preserve any rights any Loan Party may have against prior parties.

Any amount or payment received by the Agent or any DIP Lender from any Loan Party or from the proceeds of Collateral (subject to the terms of the Financing Orders) following (i) any acceleration of the Obligations under this Note or (ii) at the direction of the Agent or the Required Lenders after any Event of Default, shall be applied to the Obligations as determined by the Agent in its sole discretion and once paid in full, any excess shall be paid to the Borrower or as otherwise required by applicable law.

17. Reference Agreements. This Note evidences the Term Loans that may be made to Borrower from time to time in the aggregate principal amount outstanding of up to \$7,100,000.00 and is issued pursuant to and entitled to the benefits of the Financing Orders, to which reference is hereby made for a more complete statement of the terms and conditions under which the Term Loans evidenced by this Note are made and are to be repaid.

18. Definitions; Certain Terms.

(a) Definitions. The following terms used in this Note shall have the following meanings (and any of such terms may, unless the context otherwise requires, be used in the singular or the plural depending on the reference):

"Actual Cash Receipts" shall mean with respect to any period, the actual amount that corresponds to the line item "Total Operating Receipts" as determined by reference to the Approved Budget as then in effect.

"Actual Net Operating Cash Flow" shall mean with respect to any period, the actual amount that corresponds to the line item "Net Cash Flow" in the Approved Budget as then in effect.

"Actual Operating Disbursement Amounts" shall mean with respect to any period, the actual amount that corresponds to the line item "Total Operating Disbursements" in the Approved Budget as then in effect.

"Adjusted Term SOFR" means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment.

"Approved Budget" shall mean a rolling thirteen (13) week forecast of projected receipts, disbursements, net cash flow, liquidity and loans for the immediately following

consecutive thirteen (13) weeks after the date of delivery, which shall be in substantially the form of the Initial Approved Budget or otherwise in form and substance acceptable to the Agent and shall be approved by the Agent, in the Agent's sole discretion. The initial Approved Budget (the "Initial Approved Budget") is attached hereto as Exhibit A.

"Approved Budget Variance Report" shall mean a report provided by the Borrower to the Agent and the DIP Lenders (a) showing, in each case, on a line item by line item and a cumulative basis, the Actual Cash Receipts, the Actual Operating Disbursement Amounts and the Actual Net Operating Cash Flow, in each case as of the last day of the Variance Testing Period then most recently ended, noting therein (i) all variances, on a cumulative basis, from the Budgeted Cash Receipts, the Budgeted Operating Disbursement Amounts and the Budgeted Net Operating Cash Flow for such period as set forth in the Approved Budget as in effect for such period and (ii) containing an indication as to whether each variance is temporary or permanent and analysis and explanations for all material variances, (iii) certifying compliance or non-compliance in such Variance Testing Period with the Permitted Variances and (iv) including explanations for all material variances and violations, if any, of such covenant and if any such violation exists, setting forth the actions which the Borrower has taken or intend to take with respect thereto and (b) which such reports shall contain supporting information, satisfactory to the Agent in its sole discretion.

"Bankruptcy Code" shall have the meaning given such term in the recital to this Note.

"Bankruptcy Court" shall have the meaning given such term in the recital to this Note.

"Borrower" shall have the meaning given such term in the recital to this Note.

"Budgeted Cash Receipts" shall mean with respect to any period, the amount that corresponds to the line item "Total Cash Receipts" in the Approved Budget, as then in effect.

"Budgeted Net Operating Cash Flow" shall mean with respect to any period, the actual amount that corresponds to the line item "Net Cash Flow" in the Approved Budget as then in effect.

"Budgeted Operating Disbursement Amounts" shall mean with respect to any period, the amount that corresponds to the line item "Total Operating Disbursements" in the Approved Budget as then in effect.

"Business Day" shall mean (a) for all purposes other than as described in clause (b) below, any day other than a Saturday, Sunday or legal holiday under the laws of the State of New York or any other day on which banking institutions located in the State of New York are authorized or required by law or other governmental action to close, and (b) with respect to the borrowing, payment or continuation of, or determination of interest rate on the Term Loans, any U.S. Government Securities Business Day.

"Carve-Out" shall have the meaning given such term in the Financing Orders and shall include, for the avoidance of doubt, the Professional Fee Account.

“Cash Collateral” shall have the meaning given to such term in the Financing Orders.

“Change In Law” means the occurrence, after the date of this Note, of any of the following:

- (a) the adoption or taking effect of any law, rule, regulation or treaty (excluding the taking effect after the date of this Note of a law, rule, regulation or treaty adopted prior to the date of this Note);
- (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or
- (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

It is understood and agreed that (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, H.R. 4173), all Laws relating thereto, all interpretations and applications thereof and any compliance by a DIP Lender with any and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof or relating thereto and (ii) all requests, rules, guidelines, requirements or directives issued by any United States or foreign regulatory authority in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority) in each case pursuant to Basel III, shall, for the purposes of this Agreement, be deemed to be adopted subsequent to the date hereof and a Change in Law regardless of the date enacted, adopted, issued, promulgated or implemented.

“Chapter 11 Case” and “Chapter 11 Cases” shall have the respective meanings given such terms in the recital to this Note.

“Closing Date” shall mean the Business Day when each of the conditions applicable to the funding of the Term Loans (other than any Final Order Term Loans) and listed in Section 2(a) of this Note shall have been satisfied or waived in a manner satisfactory to the Agent.

“Collateral” shall mean the assets and property covered by the Financing Orders and the other Collateral Documents and any other assets and property, real or personal, tangible or intangible, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the Agent on behalf of the DIP Lenders, to secure the Obligations and the Guaranteed Obligations. Without limiting the foregoing, the Collateral shall include all present and future property of each Loan Party under Section 541(a) of the Bankruptcy Code (including, without limitation, the proceeds of avoidance actions upon entry of the Final Order) and all proceeds thereof.

“Collateral Documents” shall mean each agreement entered into pursuant to Section 12 hereof and all similar agreements entered into guaranteeing payment of, or granting a Lien upon property as security for payment of, the Obligations and the Guaranteed Obligations, including the Financing Orders and the Guaranty.

“Commitment” shall mean, with respect to each DIP Lender, the commitment of such DIP Lender to make its portion of the Term Loans to the Borrower in the principal amount set forth on Schedule II hereto, as the same may be terminated or reduced from time to time in accordance with the terms of this Note.

“Conforming Changes” means, with respect to the use or administration of Term SOFR, any technical, administrative or operational changes (including changes to the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, and other technical, administrative or operational matters) that the Agent decides may be necessary or appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Agent decides is reasonably necessary or appropriate in connection with the administration of this Agreement and the other DIP Documents).

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“Debtors” shall have the meaning given to such term in the Financing Orders.

“Default” shall mean an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Default Rate” shall have the meaning given such term in Section 4(d) of this Note.

“Designated Jurisdiction” shall mean any country or territory that is the target of a Sanction (as of the date of this Agreement, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People’s Republic, and the so-called Luhansk People’s Republic).

“DIP Documents” shall mean the Note, the Collateral Documents, the Guaranty, the Escrow Agreement, the Financing Orders and all other agreements, instruments, documents and certificates executed and delivered to, or in favor of the Agent in connection with this Note. Any reference in this Note or any other DIP Document to a DIP Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, amendments and restatements supplements or other modifications thereto, and shall refer to such DIP Document as the same may be in effect at any and all times such reference becomes operative.

“DIP Lenders” shall have the meaning given such term in the recital to this Note.

“Dispose” or “Disposition” means any transaction, or series of related transactions, pursuant to which any Person or any of its Subsidiaries sells, assigns, transfers, leases, licenses (as licensor) or otherwise disposes of any property or assets (whether now owned or hereafter

acquired) to any other Person, in each case, whether or not the consideration therefor consists of cash, securities or other assets owned by the acquiring Person. For purposes of clarification, “Disposition” shall include (a) the sale or other disposition for value of any contracts, (b) any disposition of property through a “plan of division” under the Delaware Limited Liability Company Act or any comparable transaction under any similar law, and (c) the early termination or modification of any contract resulting in the receipt by any Loan Party of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification).

“Dollars” or “\$” shall mean lawful currency of the United States of America.

“Equity Interests” shall have the meaning given such term in the Prepetition Term Loan Credit Agreement whether or not such agreement remains in effect.

“Escrow Account” shall mean an escrow account with the Escrow Agent into which the proceeds of the Term Loans (and amounts described in Section 1(f)) shall be deposited and retained subject to withdrawal thereof by the Borrower pursuant to the terms hereof for use in accordance with the terms hereof and of the Approved Budget (subject to any Permitted Variance) or return thereof to the DIP Lenders upon the occurrence of the Maturity Date.

“Escrow Agent” shall mean Alter Domus.

“Escrow Agreement” shall mean an Escrow Agreement, dated as of the Closing Date, among the Borrower, the Escrow Agent and the Agent (for and on behalf of the DIP Lenders) relating to the Escrow Account in form and substance reasonably satisfactory to the DIP Agent and the Borrower (as amended, restated, amended and restated, supplemented or otherwise modified from time to time).

“Event of Default” shall have the meaning given such term in Section 16 of this Note.

“Excluded Taxes” shall mean any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any DIP Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a DIP Lender, federal withholding Taxes imposed on amounts payable to or for the account of such DIP Lender with respect to an applicable interest in Term Loans or Commitment pursuant to a law in effect on the date on which (i) such DIP Lender acquires such interest in the Term Loans or Commitment or (ii) such DIP Lender changes its lending office, except in each case to the extent that, pursuant to Section 10, amounts with respect to such Taxes were payable either to such DIP Lender’s assignor immediately before such DIP Lender became a party hereto or to such DIP Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to provide the Borrower with the tax documentation described in Section 10 hereof and (d) any withholding Taxes imposed under FATCA.

“Extraordinary Receipts” shall mean any cash received by Borrower or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Sections 7(a)(i) and 7(a)(ii) hereof) from (i) foreign, United States, state or local tax refunds, (ii) pension plan reversions, (iii) proceeds of insurance (other than to the extent such insurance proceeds are immediately payable to a Person that is not the Borrower or any of its Subsidiaries) and including, for the avoidance of doubt, any director and officer insurance policies, (iv) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (v) condemnation awards (and payments in lieu thereof), (vi) indemnity payments (other than to the extent such payments described in the foregoing clauses (iv) and (v) are immediately payable to a Person that is not an affiliate of the Borrower or any of its Subsidiaries) and (vii) any purchase price adjustment received in connection with any purchase agreement.

“FATCA” shall mean Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Note (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among governmental authorities and implementing such Sections of the Internal Revenue Code.

“Final Order” shall mean the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing pursuant to Sections 105, 326, 363, 364, 503 and 507 of the Bankruptcy Code and Bankruptcy Rule 4001, in form and substance satisfactory to the Agent, together with all extensions, modifications and amendments thereto, authorizing Borrower to obtain credit, incur Indebtedness, and grant Liens under this Note and/or certain financing documentation, all as set forth in such order.

“Final Order Term Loan” shall have the meaning given such term in Section 1(a).

“Financing Orders” shall mean, collectively, the Interim Order and the Final Order, as applicable.

“Floor” shall mean a rate of interest equal to [1.5%].

“GAAP” shall mean generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guaranteed Obligations” shall mean the obligations to be guaranteed by each Guarantor pursuant to the terms of the Guaranty.

“Guarantor” shall have the meaning given such term in the recital to this Note.

“Guaranty” shall mean the Guaranty, dated as of the date hereof, made by the Guarantors in favor of the Agent.

“Indebtedness” shall have the meaning given such term in the Prepetition Term Loan Credit Agreement (and the defined terms used in such definition and defined in the Prepetition Term Loan Credit Agreement shall have the meanings given such terms therein, unless any such term is also defined herein, in which case each such defined term used in such definition shall have the meaning provided herein) whether or not such agreement remains in effect and without giving effect to any amendments or other modifications thereto made after the Closing Date.

“Indemnified Person” shall have the meaning given such term in Section 9 of this Note.

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

“Interest Period” means, with respect to each Term Loan, a period commencing on the date of the making of such Term Loan (or the continuation of a Term Loan) and ending three (3) months thereafter; provided, however, that (a) if any Interest Period would end on a day that is not a Business Day, such Interest Period shall be extended (subject to clauses (c)-(e) below) to the next succeeding Business Day, (b) interest shall accrue at the applicable rate based upon Adjusted Term SOFR from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (c) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (d) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is three (3) months after the date on which the Interest Period began, as applicable, and (e) the Borrowers may not elect an Interest Period which will end after the Maturity Date.

“Interim Order” shall mean the interim order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing (assuming satisfaction of the standards prescribed in Sections 105, 326, 363, 364, 503 and 507 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), together with all extensions, modifications and amendments thereto, satisfactory in form and substance to the Agent, authorizing, on an interim basis, Borrower to execute and perform under the terms of this Note and the other DIP Documents.

“Inventory” shall have the meaning given such term in the Prepetition Term Loan Agreement whether or not such agreement remains in effect.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities and executive orders, including the binding interpretation or

administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority.

“Lien” shall mean any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the Uniform Commercial Code or comparable law of any jurisdiction).

“Loan Party” shall mean the Borrower and any Guarantor.

“Material Adverse Effect” shall mean a material adverse effect on (i) the operations, business, assets, properties or financial condition of the Loan Parties taken as a whole, (ii) the ability of the Loan Parties to perform payment or other material obligations under any DIP Document, (iii) the legality, validity or enforceability of this Note or any other DIP Document, (iv) the rights and remedies of the Agent and the DIP Lenders under any DIP Document, or (v) the validity, perfection or priority of a Lien in favor of DIP Lenders on any of the Collateral; provided, however that “Material Adverse Effect” shall expressly exclude any change, event or occurrence, arising individually or in the aggregate, from events that could reasonably be expected to result from the filing or commencement of the Chapter 11 Cases or the announcement of the filing or commencement of the Chapter 11 Cases.

“Maturity Date” shall mean the earliest to occur of (i) August __, 2023², or if such date is not a Business Day the immediately following Business Day, (ii) May __, 2023³, if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, or if such date is not a Business Day the immediately following Business Day, (iii) the consummation of a sale of all or substantially of the Debtors’ assets pursuant to the Sale Motion or otherwise; (iv) the substantial consummation of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order of the Bankruptcy Court, or (v) the date on which the Term Loans are accelerated pursuant to Section 16.

“Maximum Amount” shall have the meaning given such term in Section 1 of this Note.

“Note” shall have the meaning given such term in the recital to this Note.

“Obligations” shall mean all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable)

² NTD: Such date to be 120 days following the Petition Date.

³ NTD: Such date to be 35 days following the date of entry of the Interim Order.

owing by Borrower to Agent and DIP Lenders arising under the Note or any of the other DIP Documents, and all covenants and duties regarding such amounts, of any kind or nature, present or future, arising under the Note or any of the other DIP Documents. This term includes all principal, interest, fees, charges, expenses, reasonable and documented attorneys' fees and any other sum chargeable to Borrower under the Note or any of the other DIP Documents.

“OFAC” shall mean the Office of Foreign Assets Control of the United States Department of the Treasury.

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

“Other Taxes” shall have the meaning given such term in Section 10 of this Note.

“Participant Register” shall have the meaning given such term in Section 21 of this Note.

“Payment Office” shall mean such account, office or offices of the Agent as may be designated in writing from time to time by the Agent to Borrower.

“Periodic Term SOFR Determination Day” has the meaning specified therefor in the definition of “Term SOFR”.

“Permitted Encumbrances” shall mean the following encumbrances: (a) Liens for taxes or assessments or other governmental charges (i) not yet due and payable, (ii) that are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, or (iii) the nonpayment of which is permitted or required by the Bankruptcy Code; (b) pledges or deposits of money securing statutory obligations under workmen's compensation, unemployment insurance, social security or public liability laws or similar legislation (excluding Liens under Title IV of the Employee Retirement Income Security Act of 1974); (c) pledges or deposits of money securing bids, tenders, contracts (other than contracts for the payment of money) or leases to which any Loan Party is a party as lessee made in the ordinary course of business; (d) carriers', warehousemen's, suppliers' or other similar possessory liens arising in the ordinary course of business; (e) zoning restrictions, easements, rights of way, encroachments, covenants, conditions, reservations, licenses, or other restrictions on the use of any real estate or other minor irregularities in title (including leasehold title) thereto so long as the same do not materially impair the use or value of such real estate; (f) the Agent's and DIP Lenders' Liens; (g) Liens existing on the Petition Date (to the extent valid, enforceable, perfected and not subject to avoidance as of the Petition Date or perfected after the Petition Date pursuant to section 546(b) of the Bankruptcy Code); (h) Liens granted pursuant to the Financing Orders (including, to the extent constituting a Lien, the Carve-Out); (i) to the extent constituting Liens, Liens on goods delivered to any Loan Party after the Petition Date under any consignment or similar title retention agreements, (j) non-

exclusive licenses of intellectual property rights in the ordinary course of business, and (k) any interest or title of a lessor under any operating lease or operating sublease entered into by the Borrower or any Guarantor in the ordinary course of its business and other statutory and common law landlords' liens under such leases and subleases.

“Permitted Indebtedness” shall mean: (a) current Indebtedness incurred in the ordinary course of business for inventory, supplies, equipment, services, taxes or labor; (b) Indebtedness arising under this Note and the other DIP Documents; (c) Prepetition Obligations; (d) deferred taxes and all other expenses incurred in the ordinary course of business; (e) any Indebtedness existing on the Petition Date; (f) administrative expenses of Borrower for which the Bankruptcy Court has not directed payment; and (g) Indebtedness owed to any Person providing worker's compensation, health, disability or other employee benefits or property, casualty or liability insurance to the Borrower and its Subsidiaries incurred in connection with such Person providing such benefits or insurance pursuant to customary reimbursement or indemnification obligations to such Person.

“Permitted Prior Liens” shall mean certain permitted senior liens as expressly set forth in the Financing Orders.

“Permitted Variances” shall mean, with respect to any Variance Testing Period, (a) in respect of the aggregate amount of Actual Operating Disbursement Amounts, (x) 20% for the Initial Two Week Disbursements Period, (y) 20% for the Initial Three Week Disbursements Period, and (z) 15% for the Initial Four Week Disbursements Period and each Four Week Disbursements Period thereafter and (b) in respect of Actual Cash Receipts (x) 15% for the Initial Two Week Receipts Period, (y) 15% for the Initial Three Week Receipts Period, and (z) 15% for the Initial Four Week Receipts Period and each Four Week Receipts Period thereafter.

“Person” shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

“Petition Date” shall have the meaning given such term in the recital to this Note.

“Prepetition Obligations” shall have the meaning given such term in the Financing Orders.

“Prepetition Term Loan Agreement” shall have the meaning given to such term in the Financing Orders.

“Pro Rata Share” shall mean with respect to a DIP Lender's obligation to make Term Loans and receive payments of interest, fees and principal with respect thereto, the percentage obtained by dividing (i) such DIP Lender's Commitment by (ii) the Maximum Amount.

“Recipient” shall mean the Agent or any DIP Lender, as applicable.

“Register” shall have the meaning given such term in Section 21 of this Note.

“Registered Loan” shall have the meaning given such term in Section 21 of this Note.

“Related Fund” shall mean, with respect to any Person, an affiliate of such Person, or a fund or account managed by such Person or an affiliate of such Person.

“Related Parties” shall mean, with respect to any specified Person, such Person’s affiliates and the respective managers, administrators, trustees, partners, investors, directors, officers, employees, agents, advisors, sub-advisors or other representatives of such Person and such Person’s affiliates.

“Relevant Governmental Body” shall mean the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“Required Lenders” shall mean, at any time, DIP Lenders whose aggregate Pro Rata Shares exceed 50%.

“Resignation Effective Date” shall have the meaning given such term in Section 20(g)(1).

“Restricted Payment” shall mean any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person or any of its Subsidiaries, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person’s stockholders, partners or members (or the equivalent of any thereof), or any option, warrant or other right to acquire any such dividend or other distribution or payment.

“Responsible Officer” means the chief executive officer, chief financial officer, chief operating officer, general counsel or chief restructuring officer of the Borrower.

“Sale Motion” shall have the meaning given such term in Section 14 of this Note.

“Sale Order” shall mean an order of the Bankruptcy Court approving the Sale Motion in form and substance acceptable to the DIP Agent.

“Sanction” shall mean any sanction administered or enforced by the United States Government (including OFAC and the U.S. State Department), the United Nations Security Council, the European Union, or His Majesty’s Treasury.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“SOFR Administrator” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“Subsidiary” of a Person shall mean a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Borrower.

“Successor Case” shall have the meaning given such term in the Financing Orders.

“Taxes” shall have the meaning given such term in Section 10 of this Note.

“Term Loans” shall have the meaning given such term in Section 1 of this Note.

“Term SOFR” shall mean the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; *provided, however*, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; *provided, further*, that if Term SOFR determined as provided above (including as determined in the first proviso) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“Term SOFR Adjustment” means, for any calculation with respect to a Term Loan, a percentage per annum equal to 0.26161%.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“U.S. Government Securities Business Day” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income department of its members be closed for the entire day for purposes of trading in United States government securities.

“U.S. Person” means any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Internal Revenue Code.

“Variance Testing Period” shall mean each of (a) in respect of Actual Operating Disbursement Amounts, (w) the two week period ending on May __, 2023 (“Initial Two Week Disbursements Period”), (x) the three week period ending on May __, 2023 (“Initial Three Week Disbursements Period”), (y) the four week period ending on June __, 2023 (“Initial Four Week Disbursements Period”), and (z) thereafter the rolling four week period ending on each Friday (each a, “Four Week Disbursements Period”) and (b) in respect of Actual Cash Receipts (w) the two week period ending on May __, 2023 (“Initial Two Week Receipts Period”), (x) the three week period ending on May __, 2023 (“Initial Three Week Receipts Period”), (y) the four week period ending on June __, 2023 (“Initial Four Week Receipts Period”), and (z) thereafter the rolling four week period ending on each Friday (each a “Four Week Receipts Period”).

“Withdrawal” means a withdrawal from the Escrow Account made in accordance with Section 2.

“Withdrawal Date” means the date of the making of any Withdrawal.

“Withdrawal Liquidity Condition” shall mean, with respect to any Withdrawal, the amount of the requested withdrawal does not exceed the positive difference of (a) the amount of disbursements reasonably anticipated to be made during the period from such withdrawal date to the last Business Day of the week following such withdrawal date as set forth in the Approved Budget (subject to Permitted Variances), minus (b) the sum (without duplication) of (x) the amount of cash receipts reasonably expected to be received by the Debtors during the period from such withdrawal date to the last Business Day of the week following such withdrawal date as set forth in the Approved Budget (subject to Permitted Variances), and (y) estimated cash in certain Debtor bank accounts as of such withdrawal date.

“Withdrawal Notice” means a request to make a Withdrawal, which shall include the Withdrawal Date and a certification by a Responsible Officer of the satisfaction of the Withdrawal Liquidity Condition for such Withdrawal.

(b) Rates. The Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or (b) the effect, implementation or composition of any Conforming Changes. The Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, or any relevant adjustments thereto, in each case, in a manner adverse to the Borrowers. The Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, in each case pursuant to the terms of this Note, and shall have no liability to the Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

19. Representations and Warranties. The Borrower and each of the other Loan Parties represents as follows:

(a) the Borrower and each of the Loan Parties are duly formed and/or organized and validly existing under the laws of their jurisdictions of incorporation or formation;

(b) upon entry of the Financing Orders, the execution and delivery of this Note and the other DIP Documents and the performance by the Borrower of the Borrower's obligations hereunder and under the other DIP Documents (i) are within its corporate powers, (ii) have been duly authorized by all necessary corporate action of the Borrower, (iii) have received all necessary bankruptcy, insolvency or governmental approvals, and (iv) do not contravene or conflict with any provisions of (A) applicable material law, (B) the Borrower's corporate charter or by-laws or (C) of any agreements binding upon or applicable to the Borrower or any of its Subsidiaries or any of their properties, except, in the case of clauses (iv)(A) and (iv)(C), to the extent such contravention or non-compliance could not reasonably be expected to have a Material Adverse Effect;

(c) the Chapter 11 Cases have been duly authorized by all necessary legal and corporate action by or on behalf of each Loan Party and have been duly and properly commenced;

(d) upon entry of the Financing Orders, this Note and each other DIP Document is a legal, valid and binding obligation, enforceable against the Borrower in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally, including the entry of the Financing Orders and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law;

(e) other than as a result of the Chapter 11 Cases or this Note and subject to any necessary orders or authorization of the Bankruptcy Court, the Borrower and the Loan Parties have good and marketable title to, or valid leasehold interests in, all of its material property and assets; none of the properties and assets of the Borrower and its Subsidiaries are subject to any Liens other than Permitted Encumbrances;

(f) no written statement furnished by or on behalf of the Borrower and its Subsidiaries to the DIP Lenders pursuant to the terms of this Note (other than any projections, the Approved Budget, estimates and information of a general economic nature or general industry nature), when taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not materially misleading in light of all of the circumstances under which they were made;

(g) upon entry of the Financing Orders, the Liens granted to the Agent, for the benefit of the DIP Lenders, pursuant to the Collateral Documents and the Financing Orders will at all times be fully perfected Liens in and to the Collateral described therein, subject, as to priority only to Permitted Prior Liens or other Liens permitted to have such priority under the Financing Orders (including, to the extent constituting a Lien, the Carve-Out);

(h) except for proceedings in or related to the Chapter 11 Cases, no action, claim, lawsuit, demand, investigation or proceeding is now pending or, to the knowledge of the Borrower, threatened in writing against the Borrower or its Subsidiaries before any governmental authority or before any arbitrator or panel of arbitrators that challenges the rights or powers of the Borrower or its Subsidiaries to enter into or perform any of its obligations under the DIP Documents to which it is a party, or the validity or enforceability of any DIP Document or any

action taken thereunder;

(i) each Loan Party is in compliance in all material respects with the requirements of all laws and regulations and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of law or regulation or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect;

(j) none of the Loan Parties is an “investment company”, “affiliated person”, “promoter” of, or “principal underwriter” of or for, an “investment company”, as such terms are defined in the Investment Company Act of 1940, as amended;

(k) no Loan Party, nor, to the knowledge of the Loan Parties, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is, (i) currently the subject or target of any Sanctions or (ii) located, organized or resident in a Designated Jurisdiction;

(l) since the Petition Date, there has been no event or circumstance that has had or would reasonably be expected to have a Material Adverse Effect; and

(m) the Borrower and its Subsidiaries have filed all material federal, state and other tax returns and reports required to be filed, and have paid all material federal, state and other taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, that are being contested in good faith by appropriate proceedings.

20. Agent.

(a) Appointment. Each DIP Lender hereby irrevocably appoints and authorizes the Agent to perform the duties of the Agent as set forth in this Note including: (i) to receive on behalf of each DIP Lender any payment of principal of or interest on the Term Loans outstanding hereunder and all other amounts accrued hereunder for the account of the DIP Lenders and paid to the Agent, and to distribute promptly to each DIP Lender its Pro Rata Share of all payments so received; (ii) to distribute to each DIP Lender copies of all material notices and agreements received by the Agent; (iii) to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Term Loans, and related matters and to maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Collateral and related matters; (iv) to execute or file any and all notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to this Note or any other DIP Document; (v) to perform, exercise, and enforce any and all other rights and remedies of the DIP Lenders with respect to the Borrower, the Obligations, or otherwise related to any of same to the extent reasonably incidental to the exercise by the Agent of the rights and remedies specifically authorized to be exercised by the Agent by the terms of this Note or any other DIP Document; (vi) to incur and pay such fees necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to this Note or any other DIP Document; and (vii) to take such action as the Agent deems

appropriate on its behalf to administer the Term Loans and the DIP Documents and to exercise such other powers delegated to the Agent by the terms hereof or the other DIP Documents together with such powers as are reasonably incidental thereto to carry out the purposes hereof and thereof. The Agent may perform any of its duties hereunder or under the other DIP Documents by or through any one or more sub-agents or attorneys-in-fact appointed by the Agent. The Agent and any such sub-agent or attorney-in-fact may perform any and all of its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions set forth in this Section 20 shall apply to any such sub-agent or attorney-in-fact and the Related Parties of the Agent, any such sub-agent and any such attorney-in-fact and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Agent.

(b) Nature of Duties. The Agent shall have no duties or responsibilities except those expressly set forth in this Note or in the other DIP Documents.

(c) Rights, Exculpation, Etc. The Agent and its directors, officers, agents or employees shall not be liable for any action taken or omitted to be taken by them under or in connection with this Note or the other DIP Documents, except for their own gross negligence or willful misconduct as determined by a final nonappealable judgment of a court of competent jurisdiction.

(d) Reliance. The Agent shall be entitled to rely upon any written notices, statements, certificates, orders or other documents or any telephone message believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person, and with respect to all matters pertaining to this Note or any of the other DIP Documents and its duties hereunder or thereunder, upon advice of counsel selected by it.

(e) Indemnification. To the extent that the Agent is not reimbursed and indemnified by the Borrower, the DIP Lenders will reimburse and indemnify the Agent from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, advances or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of this Note or any of the other DIP Documents or any action taken or omitted by the Agent under this Note or any of the other DIP Documents, in proportion to each DIP Lender's Pro Rata Share.

(f) Collateral Matters.

(1) The DIP Lenders hereby irrevocably authorize the Agent, to release any Lien granted to or held by the Agent upon any Collateral upon cancellation of the Note and payment and satisfaction of the Term Loans and all other Obligations which have matured and which the Agent has been notified in writing are then due and payable; or constituting property Disposed of in the ordinary course of the Borrower's business or otherwise in compliance with or as permitted by the terms of this Note and the other DIP Documents; or if approved, authorized or ratified in writing by the DIP Lenders.

(2) Without in any manner limiting the Agent's authority to act without any specific or further authorization or consent by the DIP Lenders, each DIP

Lender agrees to confirm in writing, upon request by the Agent, the authority to release Collateral conferred upon the Agent under paragraph (f)(1) above.

The Agent shall have no obligation whatsoever to any DIP Lender to assure that the Collateral exists or is owned by the Loan Parties, or is cared for, protected or insured or has been encumbered or that the Lien granted to the Agent pursuant to this Note or any other DIP Document has been properly or sufficiently or lawfully created, perfected, protected or enforced or is entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Agent in this section or in any other DIP Document, it being understood and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Agent may act in any manner it may deem appropriate, in its sole discretion, given the Agent's own interest in the Collateral as one of the DIP Lenders and that the Agent shall have no duty or liability whatsoever to any other DIP Lender, except as otherwise provided herein.

(g) Successor Agent.

(1) The Agent may at any time give at least 30 days prior written notice of its resignation to the DIP Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right to appoint a successor Agent which is reasonably acceptable to the Borrower. If no such successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Agent may (but shall not be obligated to), on behalf of the DIP Lenders, appoint a successor Agent. Whether or not a successor Agent has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(2) With effect from the Resignation Effective Date, (i) the retiring Agent shall be discharged from its duties and obligations hereunder and under the other DIP Documents (except that in the case of any Collateral held by such Agent on behalf of the DIP Lenders under any of the DIP Documents, the retiring Agent shall continue to hold such collateral security until such time as a successor Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through such retiring Agent shall instead be made by or to each DIP Lender directly, until such time, if any, as a successor Agent shall have been appointed as provided for above. Upon the acceptance of a successor's Agent's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other DIP Documents. After the retiring Agent's resignation hereunder and under the other DIP Documents, the provisions of this Article, Section 9 and Section 21(b) shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by it while the retiring Agent was acting as Agent.

21. Miscellaneous.

(a) All notices and other communications provided for hereunder shall be in writing (including facsimile communication) and mailed, emailed or delivered as follows:

If to Borrower: Plastiq Inc.
595 Market Street
San Francisco, CA 94105
Attn: Vladimir Kasparov, Chief Restructuring Officer
Email: vkasparov@pppllc.com

with copies to
(which shall not
constitute notice): Young Conaway Stargatt & Taylor, LLP
1000 North King Street
Wilmington, Delaware 19801
Attn: Matthew B. Lunn
Email: mlunn@ycst.com

If to Agent or any
DIP Lender: Blue Torch Finance, LLC
c/o Blue Torch Capital LP
150 East 58th Street, 18th Floor
New York, New York 10155
Email: BlueTorchAgency@alterdomus.com

with copies to: SEI- Blue Torch Capital Loan Ops
1 Freedom Valley Drive
Oaks, Pennsylvania 19456
Email: bluetorch.loanops@seic.com

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022
Attn: Adam Harris
Email: adam.harris@srz.com

All such notices and communications shall, when mailed or sent by overnight courier, be effective when deposited in the mails or delivered to the overnight courier, as the case may be, or when sent by email be effective when confirmation is received.

(b) The Borrower shall reimburse the Agent for all reasonable and documented out-of-pocket expenses incurred in connection with the negotiation and preparation of the DIP Documents and the obtaining of approval of the DIP Documents by the Bankruptcy Court, including fees, costs and expenses of financial and other advisors (provided, that, with respect to legal fees and expenses, limited to the reasonable and documented out-of-pocket legal fees, costs and expenses of one legal counsel (and one local counsel in each relevant jurisdiction)). Subject to the foregoing, the Borrower shall reimburse the Agent for all reasonable and documented out-of-pocket fees, costs and expenses (provided, that, with respect to legal fees and expenses, limited to the and reasonable and documented legal fees, out-of-pocket costs and expenses of one legal counsel (and one local counsel in each relevant

jurisdiction)), including fees, costs and expenses of financial and other advisors, in connection with:

- (1) any amendment, modification or waiver of, consent with respect to, or termination or enforcement of, any of the DIP Documents or advice in connection with the administration of the Term Loans made pursuant hereto or its rights hereunder or thereunder;
- (2) the review of pleadings and documents related to the Chapter 11 Cases and any subsequent Chapter 7 case, attendance at meetings related to the Chapter 11 Cases and any subsequent Chapter 7 case, and general monitoring of the Chapter 11 Cases and any subsequent Chapter 7 case;
- (3) any litigation, contest, dispute, suit, proceeding or action (whether instituted by the Agent, the Borrower or any other Person, and whether as a party, witness or otherwise) in any way relating to the Collateral, any of the DIP Documents or any other agreement to be executed or delivered in connection herewith or therewith, including any litigation, contest, dispute, suit, case, proceeding or action, and any appeal or review thereof, in connection with a case commenced by or against Borrower or any other Person that may be obligated to the Agent by virtue of the DIP Documents, including any such litigation, contest, dispute, suit, proceeding or action arising in connection with any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default;
- (4) any attempt to enforce any remedies of the Agent against any or all of the Borrower or any other Person that may be obligated to the Agent by virtue of any of the DIP Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default;
- (5) any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default; and
- (6) any efforts to (A) monitor the Term Loans or any of the other Obligations, (B) evaluate, observe or assess any of the Borrower or their respective affairs, (C) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise Dispose of any of the Collateral and (D) monitor any sales;

all of which shall, subject to the Financing Orders, be payable within 10 Business Days of the Borrower's receipt of an invoice. Without limiting the generality of the foregoing, such expenses, costs, charges and fees may include: fees, costs and expenses of accountants, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal or other advisory services. All expenses incurred by the Agent shall receive super-priority administrative expense status per Section 364 of the Bankruptcy Code (subject to the Financing Orders).

(c) No failure or delay on the part of the Agent or any other holder of this Note to exercise any right, power or privilege under this Note and no course of dealing between Borrower and the Agent shall impair such right, power or privilege or operate as a waiver of any default or an acquiescence therein, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies expressly provided in this Note are cumulative to, and not exclusive of, any rights or remedies that the Agent would otherwise have. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the right of the Agent to any other or further action in any circumstances without notice or demand.

(d) Borrower and any endorser of this Note hereby consent to renewals and extensions of time at or after the maturity hereof without notice, and hereby waive diligence, presentment, protest, demand and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

(e) If any provision in or obligation under this Note shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

(f) THIS NOTE AND THE RIGHTS AND OBLIGATIONS OF THE BORROWER AND THE AGENT HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK (INCLUDING WITHOUT LIMITATION SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

(g) Each party hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Note or any DIP Document, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by law, in such Federal court.

(h) THE BORROWER AND, BY THEIR ACCEPTANCE OF THIS NOTE, THE AGENT, ANY DIP LENDER AND ANY SUBSEQUENT HOLDER OF THIS NOTE, HEREBY IRREVOCABLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS NOTE AND THE AGENT'S/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including without limitation contract claims, tort claims, breach

of duty claims and all other common law and statutory claims. The Borrower and, by their acceptance of this Note, the Agent, any DIP Lender and any subsequent holder of this Note, each (i) acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this relationship, and that each will continue to rely on this waiver in their related future dealings and (ii) further warrants and represents that each has reviewed this waiver with its legal counsel and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING) THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS OF THIS NOTE.** In the event of litigation, this provision may be filed as a written consent a trial by the court.

(i) The Borrower shall not have the right to assign their obligations or liabilities under this Note without the prior written consent of the Agent. The DIP Lenders may, with the prior written consent of the Agent and to the extent no Event of Default then exists the Borrower (which consent of the Borrower shall not be required for any assignment to the Agent, a DIP Lender, a Related Fund or an affiliate of the Agent or a DIP Lender or which consent shall not be unreasonably conditioned, withheld or delayed), assign to one or more entities all or any part of, or may grant participation's to one or more entities in or to all or any part of, the amounts outstanding hereunder, and to the extent of any such assignment or participation (unless otherwise stated therein) the assignee or participant shall have the same rights and benefits hereunder as it would have if it were a DIP Lender hereunder. An assigning DIP Lender shall deliver to the Agent (and notify the Borrower thereof) an assignment agreement in a form approved by the Agent, which shall include a description of the assignment and include customary instructions from the DIP Lender and such assignee with respect to the making of payments and other communications with the DIP Lender and such assignee, together with a processing and recordation fee of \$3,500 and all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations.

(j) The Agent shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain, or cause to be maintained at one of its offices, a copy of each assignment notice delivered to and accepted by it and a register (the "Register") for the recordation of the names and addresses of the Persons, if any, that take an assignment from it and the principal amount of the Term Loans and stated interest thereon (the "Registered Loans") owing to each DIP Lender from time to time. The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower and the Agent may treat each Person whose name is recorded in the Register as a DIP Lender hereunder for all purposes of this Note. The Register shall be available for inspection by Borrower and the DIP Lenders at any reasonable time and from time to time upon reasonable prior written notice.

(k) Upon receipt by the Agent of an assignment notice, subject to the consent rights in clause (i) above, the Agent shall accept such assignment and record the information contained therein in the Register.

(l) A Registered Loan may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register. Any assignment or sale of all or part of

such Registered Loan may be effected only by registration of such assignment or sale on the Register. Prior to the registration of assignment or sale of any Registered Loan, the Agent shall treat the Person in whose name such Registered Loan is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary.

(m) In the event that a DIP Lender sells participations in a Registered Loan, such DIP Lender shall maintain a register for this purpose as a non-fiduciary agent of Borrower on which it enters the name of all participants in the Registered Loans held by it and the principal amount (and stated interest thereon) of the portion of the Registered Loan that is the subject of the participation (the "Participant Register"). A Registered Loan may be participated in whole or in part only by registration of such participation on the Participant Register. Any participation of such Registered Loan may be effected only by the registration of such participation on the Participant Register. The Participant Register shall be available for inspection by the Borrower and the DIP Lenders at any reasonable time and from time to time upon reasonable prior notice.

(n) No provision of this Note may be amended or waived unless such amendment or waiver is in writing and is signed by the Borrower, the Agent and the Required Lenders.

(o) This Note may be executed and delivered in any number of counterparts, and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute one and the same instrument. Execution of this Note via facsimile or electronic mail shall be effective, and signatures received via facsimile or electronic mail shall be binding upon the parties hereto and shall be effective as originals. The parties hereto irrevocably and unreservedly agree that this Note may be executed by way of electronic signatures and the parties agree that neither this Note, nor any part hereof, shall be challenged or denied any legal effect, validity and/or enforceability solely on the ground that it is in the form of an electronic record.

(p) This Note, the other DIP Documents, and all Liens created hereby or pursuant to the Collateral Documents or any other DIP Document shall be binding upon the Borrower and each other Loan Party, the estates of the Borrower, and any trustee or successor in interest of the Borrower and each other Loan Party in the Chapter 11 Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code, and shall not be subject to Section 365 of the Bankruptcy Code. This Note and the other DIP Documents and the Financing Orders shall be binding upon, and inure to the benefit of, the successors of the Agent and the DIP Lenders and each of their respective permitted assigns, transferees and endorsees. The Liens created by this Note, and the other DIP Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Case or any other bankruptcy case of any Loan Party to a case under chapter 7 of the Bankruptcy Code or in the event of dismissal of the Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Agent file financing statements or otherwise perfect its security interests or Liens under applicable law.

(q) In the event of any inconsistency between the terms and conditions of this Note and the Financing Orders, the provisions of the Financing Orders shall govern and control.

(r) THIS WRITTEN PROMISSORY NOTE REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES, AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

* * * * *

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed and delivered by its duly authorized officer as of the day and year and at the place first above written.

PLASTIQ INC., as Debtor and Debtor in Possession

By: _____
Name:
Title

Acknowledged and Agreed

BLUE TORCH FINANCE, LLC, as Agent

By: _____

Name: Kevin Genda

Title: Authorized Signer

LENDERS:

**BLUE TORCH CREDIT OPPORTUNITIES
FUND II LP**

By: Blue Torch Credit Opportunities GP II LLC, its
general partner

By: KPG BTC Management LLC, its sole member

By: _____

Name: Kevin Genda

Title: Authorized Signer

**BLUE TORCH CREDIT OPPORTUNITIES
FUND III LP**

By: Blue Torch Credit Opportunities GP III LLC, its
general partner

By: KPG BTC Management LLC, its sole member

By: _____

Name: Kevin Genda

Title: Authorized Signer

BTC HOLDINGS FUND II LLC

By: Blue Torch Credit Opportunities Fund II LP, its
sole member

By: Blue Torch Credit Opportunities GP II LLC, its
general partner

By: KPG BTC Management LLC, its sole member

By: _____

Name: Kevin Genda

Title: Authorized Signer

BTC HOLDINGS SBAF FUND LLC

By: Blue Torch Credit Opportunities SBAF Fund LP, its sole member

By: Blue Torch Credit Opportunities SBAF GP LLC, its general partner

By: KPG BTC Management LLC, its sole member

By: _____

Name: Kevin Genda

Title: Authorized Signer

BTC HOLDINGS KRS FUND LLC

By: Blue Torch Credit Opportunities KRS Fund LP, its sole member

By: Blue Torch Credit Opportunities KRS GP LLC, its general partner

By: KPG BTC Management LLC, its sole member

By: _____

Name: Kevin Genda

Title: Authorized Signer

Schedule I

Deliver (which delivery may be made by electronic communication (including email)) to the Agent, the monthly reports and quarterly reports and other information required by Section 7.01(a) (commencing with the fiscal quarter ending March 31, 2023) of the Prepetition Term Loan Agreement (and the defined terms used in such sections and defined in the Prepetition Term Loan Agreement shall have the meanings given such terms therein, unless any such term is also defined herein, in which case each such defined term used in such definition shall have the meaning provided herein) (whether or not such agreement remains in effect and without giving effect to any amendments or other modifications thereto made after the Closing Date unless the Agent shall otherwise agree) and each of the financial statements, reports, or other items set forth below at the following times in form reasonably satisfactory to the Agent:

on May , 2023 and every Thursday of each week ending thereafter	(a) a certificate which shall include such detail as is reasonably satisfactory to the Agent (i) certifying that the Loan Parties are in compliance with the covenants contained in <u>Section 15(j)</u> and (ii) certifying that no Default or Event of Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and attaching thereto the Approved Budget Variance Report which shall be prepared by the Borrower as of the last day of the most recently ended Variance Testing Period,
on May , 2023 and every Thursday of each week ending thereafter	(b) a revised proposed budget (it being understood that upon written approval of such proposed budget by the Agent (and not before such written approval), in its sole discretion, such proposed budget shall become the “ <u>Approved Budget</u> ” and provided that until such time as such proposed budget becomes the Approved Budget, the prior Approved Budget shall continue to be the Approved Budget) and timing changes with respect to any periods that were included in a previously delivered report and which shall be in form and substance acceptable to the Agent and DIP Lenders,
promptly, to the extent reasonably feasible,	(c) copies of all material pleadings, motions, applications or financial information filed by any Loan Party with the Bankruptcy Court; <u>provided</u> that any such documents that are publicly available shall be deemed to have been delivered,
promptly, but in any event within five (5) Business Days after Borrower has knowledge of any event or condition that constitutes a Default,	(d) notice of such event or condition and a statement of the curative action that Borrower proposes to take with respect thereto, and

upon the reasonable request of the Agent,	(e) any other information relating to the business, financial, legal or corporate affairs of the Borrower or its Subsidiaries.
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Schedule II

Commitments

Term Loan Principal Amounts

Fund	Allocation %	Allocation Amount
Blue Torch Credit Opportunities Fund II LP	____%	\$ ____
Blue Torch Credit Opportunities Fund III LP	____%	\$ ____
BTC Holdings Fund II LLC	____%	\$ ____
BTC Holdings SBAF Fund LLC	____%	\$ ____
BTC Holdings KRS Fund LLC	____%	\$ ____
Total		<hr style="border-top: 1px solid black;"/> \$ ____

EXHIBIT A

(Approved Budget)

EXHIBIT B

(Withdrawal Notice)

EXHIBIT B**Lien and Superpriority Claim Priority**

Order of Priority	Prepetition Collateral (whether in existence on the Petition Date or thereafter arising)	Non-Lender Encumbered Assets	Unencumbered Assets	Superpriority Claims
1st	Carve-Out and Permitted Liens	Non-Lender Existing Liens	Carve-Out	Carve-Out
2nd	DIP Liens	Carve-Out	DIP Liens	DIP Superpriority Claim
3rd	Prepetition Liens	DIP Liens	Prepetition Adequate Protection Liens	Prepetition Adequate Protection Claims
4th	Prepetition Adequate Protection Liens	Prepetition Adequate Protection Liens		

EXHIBIT C

(Approved Budget)

Plastiq – DIP Budget – 5/23/23

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Post-Petition 11-Week Total
(\$000's)	Petition Date (5/23)							Bid Dead-Line (7/14)	Auction (7/18)	Sale Hearing (7/24)	Sale Closing (7/31)	
Week Ending	5/28	6/4	6/11	6/18	6/25	7/2	7/9	7/16	7/23	7/30	8/6	
Cash Receipts												
Transaction Profit	\$ 285.0	\$ -	\$ 285.0	\$ -	\$ 285.0	\$ -	\$ -	\$ 285.0	\$ -	\$ -	\$ 285.0	\$ 1,425.0
AR Receipts	-	0.6	63.8	16.4	39.2	-	-	-	58.4	-	-	178.5
Net Cash Receipts	\$ 285.0	\$ 0.6	\$ 348.8	\$ 16.4	\$ 324.2	\$ -	\$ -	\$ 285.0	\$ 58.4	\$ -	\$ 285.0	\$ 1,603.5
Operating Disbursements												
Payroll & Related Items	\$ 350.4	\$ 138.7	\$ -	\$ 382.2	\$ -	\$ 489.1	\$ -	\$ 382.2	\$ -	\$ 489.1	\$ -	\$ 2,231.8
Rent & Facilities	-	-	15.8	-	-	-	15.8	-	-	-	-	31.6
Insurance	-	20.0	-	-	11.0	-	-	156.0	-	-	-	187.0
Ordinary Course Professionals	-	67.1	29.1	71.5	39.0	26.5	22.0	26.5	19.0	26.5	19.0	346.6
Software & Subscriptions	-	88.3	134.9	30.3	108.0	115.9	24.7	15.0	113.3	35.0	189.3	854.7
Marketing	-	17.2	-	-	-	17.2	-	-	-	17.2	17.2	68.8
General & Administrative	-	10.0	5.0	15.0	15.0	15.0	15.0	15.0	15.0	15.0	10.0	130.0
Taxes	-	10.0	-	6.0	-	20.0	-	-	-	-	-	36.0
Rebates	-	40.0	25.0	33.0	-	70.0	120.0	28.0	-	115.0	65.0	496.0
Total Operating Disbursements	\$ 350.4	\$ 391.4	\$ 209.9	\$ 538.0	\$ 173.1	\$ 753.8	\$ 197.5	\$ 622.7	\$ 147.3	\$ 697.9	\$ 300.6	\$ 4,382.5
Operating Cash Flow	\$ (65.4)	\$ (390.7)	\$ 138.9	\$ (521.6)	\$ 151.1	\$ (753.8)	\$ (197.5)	\$ (337.7)	\$ (89.0)	\$ (697.9)	\$ (15.6)	\$ (2,779.0)
Cumulative Op. Cash Flow	(65.4)	(456.1)	(317.2)	(838.7)	(687.6)	(1,441.4)	(1,638.9)	(1,976.6)	(2,065.6)	(2,763.5)	(2,779.0)	(2,779.0)
Professional Fees												
Debtor Advisors	\$ 363.1	\$ 363.1	\$ 301.5	\$ 222.2	\$ 207.2	\$ 280.7	\$ 337.8	\$ 333.7	\$ 332.1	\$ 407.1	\$ 1,728.8	\$ 4,877.2
Lender Advisors	-	-	135.0	-	-	-	140.0	-	-	-	175.0	450.0
UCC Advisors	-	-	110.0	50.0	50.0	50.0	50.0	50.0	50.0	50.0	40.0	500.0
Total Professional Fees	\$ 363.1	\$ 363.1	\$ 546.5	\$ 272.2	\$ 257.2	\$ 330.7	\$ 527.8	\$ 383.7	\$ 382.1	\$ 457.1	\$ 1,943.8	\$ 5,827.2
Other Non-Op. Disbursements												
DIP Interest & Fees	\$ -	\$ 37.0	\$ -	\$ -	\$ -	\$ 94.3	\$ -	\$ -	\$ -	\$ -	\$ 117.8	\$ 249.1
KERP	-	-	-	-	-	-	-	-	-	-	500.0	500.0
Trustee Fees	-	-	-	-	-	54.7	-	-	-	-	250.0	304.7
Total Non-Op. Disbursements	\$ -	\$ 37.0	\$ -	\$ -	\$ -	\$ 148.9	\$ -	\$ -	\$ -	\$ -	\$ 867.8	\$ 1,053.8
Total Cash Disbursements	\$ 713.5	\$ 791.5	\$ 756.4	\$ 810.2	\$ 430.3	\$ 1,233.4	\$ 725.3	\$ 1,006.4	\$ 529.4	\$ 1,155.0	\$ 3,112.2	\$ 11,263.5
Beginning Cash	\$ 3,030.2	\$ 2,601.7	\$ 1,810.8	\$ 1,403.3	\$ 750.0	\$ 750.0	\$ 750.0	\$ 750.0	\$ 750.0	\$ 750.0	\$ 750.0	\$ 3,030.2
(+/-) Net Cash Flow	(428.5)	(790.9)	(407.5)	(793.8)	(106.1)	(1,233.4)	(725.3)	(721.4)	(471.0)	(1,155.0)	(2,827.2)	(9,660.1)
(+) DIP Draw / (Repayment)	-	-	-	140.5	106.1	1,233.4	725.3	721.4	471.0	1,155.0	2,077.2	6,629.9
Ending Cash	\$ 2,601.7	\$ 1,810.8	\$ 1,403.3	\$ 750.0	\$ 750.0	\$ 750.0	\$ 750.0	\$ 750.0	\$ 750.0	\$ 750.0	\$ -	\$ -
DIP Facility Rollforward												
Beg. Balance (Funded)	\$ -	\$ -	\$ -	\$ -	\$ 140.5	\$ 246.6	\$ 1,480.0	\$ 2,205.3	\$ 2,926.7	\$ 3,397.7	\$ 4,552.7	\$ -
(+) Draw / (Repayment)	-	-	-	140.5	106.1	1,233.4	725.3	721.4	471.0	1,155.0	2,077.2	6,629.9
Ending Balance (Funded)	\$ -	\$ -	\$ -	\$ 140.5	\$ 246.6	\$ 1,480.0	\$ 2,205.3	\$ 2,926.7	\$ 3,397.7	\$ 4,552.7	\$ 6,629.9	\$ 6,629.9
(+) Facility & Agent Fee (Unfunded)	455.0	455.0	455.0	455.0	455.0	455.0	455.0	455.0	455.0	455.0	455.0	455.0
Ending Balance (incl. Upfront Fees)	\$ 455.0	\$ 455.0	\$ 455.0	\$ 595.5	\$ 701.6	\$ 1,935.0	\$ 2,660.3	\$ 3,381.7	\$ 3,852.7	\$ 5,007.7	\$ 7,084.9	\$ 7,084.9
(+) Exit Fee	-	-	-	-	-	-	-	-	-	-	284.0	284.0
Ending Balance (Total)	\$ 455.0	\$ 455.0	\$ 455.0	\$ 595.5	\$ 701.6	\$ 1,935.0	\$ 2,660.3	\$ 3,381.7	\$ 3,852.7	\$ 5,007.7	\$ 7,368.9	\$ 7,368.9
DIP Facility Availability	\$ 6,645.0	\$ 6,645.0	\$ 6,645.0	\$ 6,504.5	\$ 6,398.4	\$ 5,165.0	\$ 4,439.7	\$ 3,718.3	\$ 3,247.3	\$ 2,092.3	\$ 15.1	\$ 15.1

EXHIBIT D

(Milestones)

- (i) No later than 3 Business Days after the Petition Date, the Interim Order approving the DIP Facility and the adequate protection of the Prepetition Liens shall be entered by the Bankruptcy Court;
- (ii) No later than 3 Business Days following the Petition Date, the Debtors shall file the Sale Motion, which motion shall be in form and substance acceptable to the DIP Agent;
- (iii) No later than 35 days after the Petition Date, the Final Order approving the DIP Facility and the adequate protection of the Prepetition Liens shall be entered by the Bankruptcy Court;
- (iv) No later than 35 days after the Petition Date the Bankruptcy Court shall have entered an order approving bid and auction procedures, in form and substance reasonably acceptable to the DIP Secured Parties, which procedures shall establish a bid deadline of not later than 60 days following the Petition Date;
- (v) No later than 70 days after the Petition Date the Bankruptcy Court shall have entered one or more orders authorizing and approving the sale of all or substantially all of the Debtors' assets pursuant to one or a series of related or unrelated transactions; and
- (vi) No later than 75 days after the Petition Date the approved sale(s) of all or substantially all of the Debtors' assets shall have been consummated.

EXHIBIT B

Bremer Declaration

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	
)	Chapter 11
PLASTIQ INC., <i>et al.</i> , ¹)	
)	Case No. 23-10671 (___)
Debtors.)	
)	(Joint Administration Requested)
)	

**DECLARATION OF STEVEN W. BREMER IN SUPPORT
OF DEBTORS’ MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING,
(II) AUTHORIZING DEBTORS TO USE CASH COLLATERAL, (III) GRANTING
LIENS AND PROVIDING SUPERPRIORITY ADMINISTRATIVE EXPENSE CLAIMS,
(IV) GRANTING ADEQUATE PROTECTION, (V) MODIFYING AUTOMATIC STAY,
(VI) SCHEDULING A FINAL HEARING, AND (VII) GRANTING RELATED RELIEF**

I, Steven W. Bremer, hereby declare as follows under penalty of perjury:

1. I am a Managing Director of Portage Point Partners, LLC (“**Portage Point**”) with principal offices located at 300 North LaSalle, Suite 1420, Chicago, Illinois 60654. Triple P RTS, LLC is wholly owned by Portage Point, and is the proposed provider of a chief restructuring officer and other associated personnel to the debtors and debtors-in-possession (each, a “**Debtor**” and collectively, the “**Debtors**”) in the above-captioned chapter 11 cases.

2. I submit this declaration (“**Declaration**”) on behalf of the Debtors in support of the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, (III) Granting Liens And Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection,*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: PlastiQ Inc. (6125), PLV Inc. d/b/a/ PLV TX Branch Inc. (5084), and Nearside Business Corp. (N/A). The corporate headquarters and the mailing address for the Debtors is 1475 Folsom Street, Suite 400, San Francisco, California 94103.

(V) *Modifying Automatic Stay*, (VI) *Scheduling A Final Hearing*, And (VII) *Granting Related Relief* (the “**DIP Motion**”).²

3. In particular, I submit this Declaration in support of my belief that (a) the Debtors are currently unable to borrow funds on an unsecured or junior basis, or solely secured by the Debtors’ unencumbered assets, if any, in amounts sufficient to fund these chapter 11 cases, (b) the DIP Facility (i) is the product of an arm’s-length, good faith negotiation process, and (ii) is the best currently available postpetition financing option for the Debtors under the circumstances, and (c) the terms of the DIP Facility, taken as a whole, are reasonable under the circumstances.

4. The DIP Motion seeks, among other items, authorization for the Debtors to enter into the proposed DIP Facility, which consists of a senior secured, superpriority term loan (the “**DIP Loans**”) in an aggregate principal amount of \$7.1 million, plus capitalized fees and accrued interest thereon, with \$1 million available upon entry of an Interim Order, and the balance available upon entry of the Final Order (the “**DIP Facility**”). In addition, the DIP Motion seeks authorization to use the Cash Collateral of the Prepetition Lenders and to provide adequate protection for the Prepetition Lenders to the extent of any diminution in value of the Prepetition Collateral. As demonstrated by the Approved Budget, the Debtors believe that the DIP Facility and use of Cash Collateral are anticipated to provide the Debtors with sufficient working capital and liquidity to operate their business during these chapter 11 cases.

5. Except as otherwise indicated, all statements set forth in this Declaration are based upon (a) my personal knowledge of the Debtors’ current operations and financial performance;

² Capitalized terms used but not otherwise defined in this Declaration shall have the meanings used in the DIP Motion and the *Declaration of Vladimir Kasparov in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”), which was filed contemporaneously herewith and is incorporated herein by reference.

(b) information learned from my review of relevant documents; (c) information I have received from members of the Debtors' management and advisors, including members of Portage Point working directly with me and under my supervision, direction or control; and/or (d) my opinions based upon my experience and knowledge.

6. I am over the age of 18 and authorized to submit this Declaration on behalf of the Debtors. I am not being specifically compensated for this testimony other than through payments received by Portage Point, as a proposed professional to be retained by the Debtors. If called upon to testify, I could and would testify as to the facts set forth herein.

QUALIFICATIONS

7. Portage Point is a business advisory, interim management, investment banking, and financial services firm whose professionals have a wealth of experience in providing financial advisory, restructuring advisory, and turnaround management services and enjoys an excellent reputation for services it has rendered on behalf of debtors and creditors throughout the United States, both in chapter 11 proceedings and in out of court restructurings. The Portage Point team is comprised of operators and advisors with proven skills necessary to identify, preserve, and create value in the most challenging and complex situations. Portage Point's professionals have extensive experience across a wide range of industries.

8. I received both a Bachelor of Science degree and a Master of Science degree in Systems Engineering from the University of Virginia and an MBA from the Wharton School at the University of Pennsylvania. I have over fifteen (15) years of experience advising and executing on financing and restructuring transactions, as well as mergers and acquisitions. My experience includes representing companies, boards, creditors, and other stakeholders in a variety of situations. Prior to joining Portage Point, I was a partner in the restructuring and debt advisory

group of Centerview Partners, a director at Millstein & Co., and a vice president at Miller Buckfire & Co.

9. In addition to acting as an advisor to the Debtors in these Chapter 11 Cases, I have provided advisory services in connection with the in-court restructuring of numerous companies, including In re Patriot Coal Corp., Case No. 15-32450 (KLP) (Bankr. E.D.V.A.); In re Peabody Energy Corp., Case No. 16-42529 (BSS) (Bankr. E.D. Mo.); In re Dendreon Corp., et al., Case No. 14-12515 (LSS) (Bankr. D. Del.); In re Energy Future Holdings Corp., Case No. 14-10979 (CSS) (Bankr. D. Del.); In re Lenox Grp., Inc., Case No. 08-14680-ALG (Bankr. S.D.N.Y.); In re Glob. Brokerage Inc., Case No. 17-13532 (MEW) (Bankr. S.D.N.Y.); In re Aspect Software, Inc., Case No. 16-10597 (MFW) (Bankr. D. Del.); In re Seventy Seven Energy Inc., Case No. 16-11410 (LSS) (Bankr. D. Del.); In re SunEdison, Inc., Case No. 16-10992 (SMB) (Bankr. S.D.N.Y.); In re Blackhawk Mining LLC, et al., Case No. 19-11595 (LSS) (Bankr. D. Del.); Westmoreland Coal Company, et al., Case No. 18-35672 (DRJ) (Bankr. S.D. Texas); In re Synergy Pharmaceuticals Inc., et al., Case No. 18-14010 (LGB) (Bankr. S.D.N.Y.); In re Westinghouse Electric Company LLC, et al., Case No. 17-10751 (MEW) (Bankr. S.D.N.Y.); and In re Performance Powersports Group Investor, LLC, Case No. 23-10047 (LSS) (Bankr. D. Del.).

PORTAGE POINT'S ENGAGEMENT

10. On January 13, 2023, the Debtors retained Portage Point to provide a chief restructuring officer and associated personnel. In this role, Portage Point has, among other things, (a) analyzed and discussed potential strategic alternatives with the Debtors' management and board of directors; (b) negotiated and evaluated potential transactions with the Prepetition Secured Parties, (c) assisted the Debtors in developing and refining their business plan, (c) developed and discussed potential restructuring solutions (including numerous interactions with the Prepetition Secured Parties and their advisors), (d) solicited third-party interest in a purchase of the Debtors,

(e) assisted the Debtors with negotiating and documenting the DIP Facility, including assisting management in developing the Approved Budget, (f) assisted the Debtors in developing the Bidding Procedures for their postpetition marketing process, and (g) assisted the Debtors and their counsel in the preparation for the commencement of these chapter 11 cases. Throughout its engagement, Portage Point has worked closely with the Debtors' management and other restructuring professionals and has become well acquainted with the Debtors' capital structure, liquidity needs, and business operations.

BACKGROUND TO THE PROPOSED DIP FINANCING

11. The Debtors' imminent need for additional liquidity drove negotiations related to and the eventual terms of the proposed DIP Facility. As further described in the DIP Motion and the First Day Declaration, the Debtors are parties to the Prepetition Term Loan Agreement with the Prepetition Secured Parties, with an outstanding balance of approximately \$43,334,584.39 as of the Petition Date.

12. As further described in the DIP Motion and the First Day Declaration, I understand that the Debtors have an immediate need for access to the DIP Facility and the use of Cash Collateral to continue to operate their business and administer their estates on a postpetition basis.

13. Pursuant to the DIP Motion, the Debtors seek authority to obtain postpetition financing in the form of the DIP Facility consisting of an aggregate principal amount of up to \$7.1 million of DIP Loans, of which \$1 million is proposed to be available immediately upon entry of the Interim Order and (ii) an additional \$6.1 million is proposed to be available upon entry of the Final Order. The DIP Facility is memorialized in that certain *Debtors in Possession Secured Term Promissory Note* (the "**DIP Loan Agreement**") attached as Exhibit A to the Interim DIP Order. The Debtors also seek authority to use the Cash Collateral of the Prepetition Secured Parties as provided in the proposed DIP Orders and the DIP Loan Agreement.

**THE PROPOSED DIP FACILITY REPRESENTS THE BEST
POSTPETITION FINANCING OPTION CURRENTLY
AVAILABLE TO THE DEBTORS UNDER THE CIRCUMSTANCES**

14. As further explained below, based on the Debtors' and their advisors' efforts to secure postpetition financing, my experience in raising DIP financing, the Debtors' current circumstances, and the negotiations around the proposed DIP Facility, I believe that there are no viable alternative sources of financing currently available to the Debtors on both better and more executable terms, taken as a whole, than the DIP Facility. I therefore believe that the DIP Facility represents the best option currently available to address the Debtors' liquidity needs and create a pathway to exit from chapter 11.

15. Beginning in February of 2023 and continuing into March, Portage Point engaged with the Prepetition Secured Parties regarding their interest in providing debtor in possession financing. In addition, Portage Point reached out to seven (7) third-party institutions that routinely provide debtor-in-possession financing. Portage Point inquired as to whether any of these third parties would be willing to extend financing to the Debtors on an unsecured, junior priority, or even priming basis. Each of these parties confirmed that, in light of the facts and circumstances, they had no interest in extending financing to the Debtors on an unsecured, junior priority, or priming basis. The Debtors and the Prepetition Secured Parties subsequently engaged in arm's-length and good faith negotiations over the terms of the proposed DIP Facility. During discussions with advisors to the Prepetition Secured Parties regarding the Debtors' needs for additional financing prior to the Petition Date, it was clear that the Prepetition Secured Parties would not consent to a third-party priming or *pari passu* financing facility with respect to the collateral securing the obligations to the Prepetition Secured Parties.

16. Subsequent to Portage Point's conversations with potential financing parties, on March 9, 2023, the Debtors received a non-binding letter of intent (the "LOI") from a third-party

purchaser to pursue a potential out-of-court merger transaction. Over the following two weeks, the Debtors and the third party negotiated the terms and conditions of the LOI. On March 28, 2023, the LOI was executed by the necessary parties. The LOI contained certain customary provisions for a merger transaction, including an exclusivity provision for the duration of the diligence period. On April 22, 2023, the Debtors terminated the LOI as the third party had not completed its due diligence.

17. Given the short time period between the February/March financing process—where no party expressed interest in providing financing on terms that would be acceptable to the Debtors—and considering that the facts and circumstances surrounding the Debtors’ financial and operational needs remained largely unchanged, the Debtors determined that a further financing marketing process after the termination of the LOI was unlikely to yield any results. Accordingly, the Debtors immediately reengaged with the Prepetition Secured Parties to finalize the terms of the DIP Facility. Based on my experience, I believe that the Debtors are currently unable to secure third-party financing on an unsecured, junior, or even priming basis on better and more executable terms, taken as a whole, than the DIP Facility.

18. In summary, I believe that the DIP Facility represents the best possible postpetition financing option currently available to the Debtors under the circumstances.

**THE ECONOMIC TERMS OF THE DIP FACILITY, TAKEN AS A WHOLE,
ARE REASONABLE UNDER THE CIRCUMSTANCES**

19. Based on my experience in representing debtors and creditors in chapter 11 cases and distressed financial transactions, I believe that the economic terms of the proposed DIP Facility are reasonable for debtor-in-possession financings under the current circumstances. The terms of the DIP Facility were thoroughly negotiated in good faith and at arm’s-length with all parties represented by experienced counsel. The Debtors and DIP Lenders focused on the DIP size

necessary to fund these chapter 11 cases, as well as costs that may be necessary to consummate a potential sale of some, all, or substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code. The DIP Lenders ultimately agreed to provide the DIP Loans, in accordance with the terms and conditions set forth in the DIP Credit Agreement.

20. Importantly, the DIP Facility and access to Cash Collateral will provide the Debtors with immediate access to liquidity that the Debtors believe will allow them to pursue a public bidding process and potential sale of their assets under section 363 of the Bankruptcy Code while maintaining sufficient liquidity. This marketing process redounds to the benefit of all of the Debtors' stakeholders.

ACCESS TO CASH COLLATERAL IS CRITICAL

21. Based on my discussions with the Debtors and their advisors, I understand that the Debtors have an urgent need for use of the Cash Collateral to, among other things, pay operating expenses, including employees and essential vendors. Absent such relief, and without access to the liquidity provided by the DIP Facility, it is my understanding that the Debtors will not have sufficient liquidity and their business may be brought to an immediate halt, with damaging consequences for all stakeholders.

22. In addition, and in connection with the consensual use of Cash Collateral, the Debtors and the DIP Lenders engaged in exhaustive, arm's-length negotiations that culminated in the agreed upon terms of the proposed adequate protection package in the DIP Facility as reflected in the Interim Order. I believe that the terms of the proposed adequate protection package and concessions made therein, taken as a whole, are reasonable under the circumstances, particularly in light of my view that there is not a better alternative financing currently available.

CONCLUSION

23. As described herein, it is my belief that the proposed DIP Facility represents the best new money financing available to the Debtors because it is actionable, was negotiated at arm's-length, and provides new money on reasonable terms under the circumstances of these chapter 11 cases. Accordingly, I respectfully submit that the Court should approve the DIP Facility.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: May 24, 2023

/s/ Steven W. Bremer
Steven W. Bremer