

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)	
In re:	)	Chapter 11
	)	
PROTERRA INC, <i>et al.</i> , <sup>1</sup>	)	Case No. 23-11120 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
	)	<b>Ref. Docket Nos. 44, 72, &amp; 118</b>
	)	

**CERTIFICATION OF COUNSEL REGARDING  
SECOND INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO USE CASH  
COLLATERAL, (II) GRANTING ADEQUATE PROTECTION, (III) MODIFYING THE  
AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF**

On August 9, 2023, the above-captioned debtors and debtors in possession (together, the “Debtors”) filed the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [D.I. 44] (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

On August 10, 2023, the Court entered the *Interim Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* [D.I. 72] (the “First Interim Order”). Pursuant to the First Interim Order, the Debtors were authorized to use cash collateral during the interim period through and including August 24, 2023 (the “Termination Date”). On August 23, 2023, the Debtors filed the *Notice of Extension of Debtors’ Authority to Use Cash Collateral* [D.I. 118], extending the Termination Date to August 25, 2023.

As memorialized in the *Stipulation and Agreement Between the Debtors and the*

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Protterra Inc (1379); and Protterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.



*Prepetition Secured Parties* (the “Stipulation”) attached hereto as **Exhibit A**, after negotiations with the first and second lien agents (the “Agents”), the Debtors hereby submit as **Exhibit B** a proposed form of second interim cash collateral order (the “Proposed Second Interim Order”) having the consent of the Agents. The Debtors have shared the Proposed Second Interim Order with the United States Trustee, who does not object to the entry of the Proposed Second Interim Order. For the convenience of the Court and parties in interest, a blackline of the Proposed Second Interim Order marked against the First Interim Order is attached hereto as **Exhibit C**.

The Debtors submit that the Proposed Second Interim Order is appropriate and consistent with the relief requested in the Motion and discussions with and agreement of the Agents. Accordingly, the Debtors respectfully request that the Court enter the Proposed Second Interim Order at its earliest convenience without further notice or hearing.

As set forth in the Stipulation, the Termination Date is extended until entry of the Proposed Second Interim Order. Upon the Court’s entry of the Proposed Second Interim Order, or entry of such other form of proposed second interim cash collateral order, with the consent of the Agents and the Debtors, such order will govern the Termination Date.

Dated: August 25, 2023  
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &  
TAYLOR, LLP**

/s/ Shella Borovinskaya

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*Proposed Counsel to the Debtors and  
Debtors in Possession*

**Exhibit A**

**Stipulation**

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

	)	Chapter 11
In re:	)	
	)	Case No. 23-11120 (BLS)
PROTERRA INC, <i>et al.</i> , <sup>1</sup>	)	
	)	(Jointly Administered)
	)	
Debtors.	)	
	)	

**STIPULATION AND AGREEMENT BETWEEN  
THE DEBTORS AND THE PREPETITION SECURED PARTIES**

This stipulation and agreement (the “Stipulation”) is entered into by and between the above-captioned debtors and debtors in possession (the “Debtors”) and the Agents, through their respective undersigned counsel.<sup>2</sup> The Debtors and the Agents are collectively referred to in this Stipulation as the “Parties” and each as a “Party.” The Parties hereby stipulate as follows:

**RECITALS**

A. On August 7, 2023 (the “Petition Date”), the Debtors commenced with this Court the above-captioned cases under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Debtors continue to operate and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. On August 10, 2023, the Bankruptcy Court entered the Interim Cash Collateral Order, which provided for, *inter alia*,

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Proterra Inc (9565); and Proterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Interim Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* (the “Interim Cash Collateral Order”) [Docket No. 72].

authorization for the Debtors to use Cash Collateral pursuant to the terms thereof until 5:00 p.m. on August 24, 2023 (the “Interim Period”).

B. On August 23, 2023, the Debtors filed the *Notice of Extension of Debtors’ Authority to Use Cash Collateral* [Docket No. 118] which provided notice of the extension of the Interim Period until 11:59 p.m. on August 25, 2023 with the consent of the Secured Parties.

C. Concurrently herewith, the Debtors are filing the *Certification of Counsel Regarding Second Interim Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief*, to which the *Second Interim Order (I) Authorizing the Debtors to Use Cash Collateral (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, and (IV) Granting Related Relief* (the “Proposed Second Interim Cash Collateral Order”) is attached as Exhibit B thereto.

D. The Proposed Second Interim Cash Collateral Order has been shared with the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) and reflects the U.S. Trustee’s comments.

**NOW, THEREFORE, UPON THE FOREGOING RECITALS, WHICH ARE INCORPORATED AS THOUGH FULLY SET FORTH HEREIN, IT IS HEREBY STIPULATED AND AGREED, BY AND AMONG THE PARTIES, THROUGH THEIR RESPECTIVE UNDERSIGNED COUNSEL, THAT:**

1. The First Lien Agent and the Second Lien Agent consent to the Debtors’ continued use of Cash Collateral on the terms set forth in the Proposed Second Interim Cash Collateral Order.

2. The Debtors and the Agents, through their respective undersigned counsel, hereby agree to a further extension of the Interim Period until such time as the Proposed Second

Interim Cash Collateral Order is entered, and the Interim Period is thus extended until such time.

3. Each person who executes this Stipulation on behalf of a Party hereto represents that he or she is duly authorized to execute this Stipulation on behalf of such Party and that each such Party has full knowledge of, and has consented to, this Stipulation.

4. This Stipulation may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

5. This Stipulation shall be effective as of the date it is executed by the Parties.

6. This Stipulation may not be amended or modified without the written consent of the Parties.

7. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation.

*[Signature Page Follows]*

Dated: August 25, 2023


**PROTERRA INC  
PROTERRA OPERATING COMPANY, INC.**

By: Paul, Weiss, Rifkind, Wharton & Garrison LLP, proposed counsel to the Debtors

By: /s/ Robert A. Britton  
Name: Robert A. Britton  
Title: Partner

**BANK OF AMERICA, N.A., in its capacity as First Lien Agent**

By: Holland & Knight LLP, counsel to the First Lien Agent

By:   
Name: Robert W. Jones  
Title: Partner

**CSI GP I LLC, in its capacity as Second Lien Agent**

By: Sidley Austin LLP, counsel to the Second Lien Agent

By: /s/ Thomas R. Califano  
Name: Thomas R. Califano  
Title: Partner



**Exhibit B**

**Proposed Second Interim Order**

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

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In re:	)	
	)	Chapter 11
	)	
PROTERRA INC, <i>et al.</i> , <sup>1</sup>	)	Case No. 23-11120 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	
		<b>Ref. Docket Nos. 44, 72</b>

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**SECOND INTERIM ORDER (I) AUTHORIZING  
THE DEBTORS TO USE CASH COLLATERAL,  
(II) GRANTING ADEQUATE PROTECTION, (III) MODIFYING  
THE AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”) of the above-captioned debtors and debtors-in-possession (together, the “Debtors”)<sup>2</sup> seeking entry of an interim order(s) and a final order (collectively, the “Cash Collateral Orders”), pursuant to sections 105, 361, 362, 363 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “Bankruptcy Code”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) providing for:

(a) authorization for the Debtors to (1) use “cash collateral” (as such term is defined in section 363(a) of the Bankruptcy Code) pursuant to section 363 of the Bankruptcy Code (the “Cash Collateral”) and (2) provide adequate protection to the Prepetition Secured Parties (as defined below) with respect to the diminution in value, if any, of the interest of the First Lien

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Protterra Inc (1379); and Protterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

<sup>2</sup> Capitalized terms used but not otherwise herein defined shall have the respective meanings ascribed to such terms in the Motion and the First Interim Order (as defined below), as applicable.

Agent and Second Lien Agent (as defined below) in the Prepetition Collateral (as defined below), including Cash Collateral, on the terms described herein;

(b) scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the “Final Hearing”) for this Court to consider the relief requested in the Motion on a final basis;

(c) modifying the automatic stay arising under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the Cash Collateral Orders; and

(d) granting related relief.

An interim hearing on the Motion having been held by this Court on August 10, 2023 (the “First Interim Hearing”), after which the Court considered the Motion, and the evidence submitted at the First Interim Hearing, to consider entry of the *Interim Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection, (III), Modifying the Automatic Stay, and (IV) Granting Related Relief* [ECF No. 72] (the “First Interim Order”); and this Court having entered the First Interim Order which provides that if a second interim hearing is not necessary, the Court may enter another interim order approving the relief requested in the Motion on an interim basis without further hearing; and a stipulation having been filed contemporaneously herewith by the Debtors and the Prepetition Secured Parties regarding such parties’ agreement relating to use of Cash Collateral for a further interim period on the terms set forth herein (the “CC Stipulation”); and this Court having determined that the relief requested in the CC Stipulation and entry of this second interim order granting the Motion on an interim basis (this “Second Interim Order”) is proper; and

**BASED UPON THE RECORD ESTABLISHED AT THE FIRST INTERIM HEARING AND THE CC STIPULATION, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. Jurisdiction and Venue. This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby 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 (the “Amended Standing Order”). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

B. Petition Date. On August 7, 2023, each of the Debtors filed a voluntary petition with this Court commencing cases under chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these Chapter 11 Cases.

C. Notice. Notice of the Motion and the Interim Hearing was provided to: (a) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”); (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the United States Attorney’s Office for the District of Delaware; (d) the Internal Revenue Service; (e) the state attorneys general for states in which the Debtors conduct business; (f) the Securities and Exchange Commission; (g) counsel to the Second Lien Agent; (h) counsel to First Lien Agent; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. Under the circumstances, notice of the Motion, as it relates to this Second Interim Order, complies with the Bankruptcy Code and the Bankruptcy Rules, including, without limitation, sections 102(1) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014.

D. Cash Collateral. The Debtors require the use of Cash Collateral to operate their business and pay certain obligations.

E. Committee Formation. On August 24, 2023, the U.S. Trustee appointed an official committee of unsecured creditors (the “Creditors’ Committee”) in these Chapter 11 Cases [Docket No. 126].

F. Debtors’ Stipulations. In requesting use of their Prepetition Collateral, including Cash Collateral, and in exchange for and as a material inducement to the Prepetition Secured Parties’ agreement to permit consensual use of their Prepetition Collateral, including Cash Collateral, the Debtors acknowledge, represent, stipulate, and agree, subject to the challenge rights set forth in Paragraph 7 below (but subject to the limitations thereon contained therein), as follows (collectively, the “Debtors’ Stipulations” or “Stipulations”):

(a) First Lien Credit Facility. As more fully described in the First Day Declaration and the Motion, on May 8, 2019, Debtor Proterra Operating Company, Inc. (f/k/a Proterra Inc) (“OpCo”) entered into that certain Loan, Guaranty and Security Agreement (as amended, amended and restated, supplemented or otherwise modified, the “Senior Credit Agreement”), by and among OpCo, the lenders from time to time thereto (collectively, the “Prepetition First Lien Lenders”), the issuing bank(s) party thereto (the “Issuing Bank”), and Bank of America, N.A. (“Bank of America”), as administrative agent (the “First Lien Agent” and, together with the Prepetition First Lien Lenders and the Issuing Bank, the “Prepetition First Lien Secured Parties”), which provides for a revolving credit facility in the maximum principal amount of \$75.0 million, including a \$25.0 million letter of credit (the “First Lien Credit Facility”). As of the Petition Date, no amounts were outstanding under the First Lien Credit Facility, other than approximately \$21.9 million in face amount of issued and outstanding letters of credit (collectively, the “Prepetition Letters of Credit” and, together with the Senior Credit Agreement, the “Prepetition First Lien Loan Documents”). As security for OpCo’s obligations under, and

pursuant to the terms of, the Senior Credit Agreement (the “Prepetition First Lien Obligations”), OpCo granted to the First Lien Agent for the benefit of the Prepetition First Lien Secured Parties valid and perfected first priority liens and security interests (the “Prepetition First Liens”) on substantially all of OpCo’s assets (collectively, the “Prepetition Collateral”), including OpCo’s cash, accounts receivable, and inventory, but excluding certain assets expressly excluded from “Collateral” under the terms of the Senior Credit Agreement, including fee-owned real property, any leasehold interests in real property and certain related assets and improvements thereon.

(b) Second Lien Convertible Notes. On August 4, 2020, OpCo entered into that certain Note Purchase Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, including by that certain Amendment No. 1 to Secured Convertible Promissory Notes and Note Purchase Agreement dated August 31, 2020 and that certain Amendment No. 2 to Secured Convertible Promissory Notes and Note Purchase Agreement dated March 31, 2023 (together, the “Note Amendment”), the “Note Purchase Agreement”) by and among OpCo, the investors from time to time party thereto (the “Second Lien Convertible Noteholders”) and collectively with the Second Lien Agent (as defined below), the “Prepetition Second Lien Secured Parties”, together with the Prepetition First Lien Secured Parties, the “Prepetition Secured Parties”), the guarantors, if any, from time to time party thereto and CSI GP I LLC, as collateral agent (the “Second Lien Agent” and, together with the First Lien Agent, the “Agents”). As of the Petition Date, there was not less than \$177.2 million in principal amount of convertible notes (as amended by the Note Amendments, the “Second Lien Convertible Notes”) outstanding under the Note Purchase Agreement and Second Lien Convertible Notes.<sup>3</sup>

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<sup>3</sup> The Prepetition Second Lien Secured Parties believe that there may be in excess of \$265 million in principal amount of convertible notes outstanding under the Note Purchase Agreement and Second Lien Convertible Notes and continue to evaluate whether certain amounts have come due and owing under the Note Purchase Agreement and Second Lien Convertible Notes. The Debtors disagree. Notwithstanding anything in this Second Interim

(c) Second Lien Security Agreement. In connection with the Note Purchase Agreement and to secure its obligations under the Second Lien Convertible Notes (the “Prepetition Second Lien Obligations” and, together with the Prepetition First Lien Obligations, the “Prepetition Obligations”), OpCo entered into that certain Security Agreement, dated as of August 4, 2020 (as amended, amended and restated, supplemented or otherwise modified, the “Second Lien Security Agreement” and, collectively with the Note Purchase Agreement, Second Lien Convertible Notes, and any documents executed in connection with the foregoing, the “Prepetition Second Lien Documents”) by and between OpCo, as Grantor, and the Second Lien Agent, as Collateral Agent under the Note Purchase Agreement. In accordance with the Second Lien Security Agreement, OpCo granted valid and perfected second priority liens and security interests (the “Prepetition Second Liens,” together with the Prepetition First Liens, the “Prepetition Liens”) to the Second Lien Agent, as security for the Prepetition Second Lien Obligations, in the Prepetition Collateral.

(d) Intercreditor Agreement. The First Lien Agent and the Second Lien Agent are parties to that certain Intercreditor Agreement, dated as of August 4, 2020 (as amended, amended and restated, supplemented or otherwise modified, the “Intercreditor Agreement” and, together with the Prepetition First Lien Loan Documents and Prepetition Second Lien Documents, the “Prepetition Loan Documents”), which governs the respective rights and remedies of the First Lien Agent and the Second Lien Agent with respect to the Prepetition Collateral.

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Order to the contrary, nothing in this Second Interim Order shall be deemed to waive, adjudicate, enter a finding of fact or conclusion of law with respect to, or otherwise prejudice any argument by any party (or the ability of any party to make any such argument) regarding: (a) whether the principal amount due and owing under the Note Purchase Agreement and Second Lien Convertible Notes is, or is not, in excess of \$177.2 million; or (b) the extent which any party has, or does not have, any valid unavoidable claim (as defined in section 101 of the Bankruptcy Code) against the Debtors on account of, or related to, Section 2.2 of each of the Second Lien Convertible Notes (*Payment upon a Liquidation Event or Deemed Liquidation Event*) (any such claim or claims, individually and collectively, a “Liquidation Payment Amount Claim”).

(e) as of the Petition Date, pursuant to the Prepetition Second Lien Documents and applicable law, the Prepetition Second Lien Secured Parties hold valid, enforceable, secured, and allowable claims against the Debtors in an aggregate principal amount no less than \$177.2 million, plus any and all other accrued and unpaid interest, fees, expenses (including advisors fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition Second Lien Documents), disbursements, charges, claims, indemnities and other costs and obligations of whatever nature incurred in connection therewith, in each case which are chargeable or otherwise reimbursable under the Prepetition Second Lien Documents and applicable law (such non-principal amounts, collectively, the “Additional Second Lien Amounts”), but excluding (i) any Liquidation Payment Amount Claim, (ii) any Additional Second Lien Amounts not chargeable or otherwise reimbursable under the Prepetition Second Lien Documents on account of their relationship to any Liquidation Payment Amount Claim and (iii) any Additional Second Lien Amounts representing default interest not chargeable or otherwise reimbursable under the Prepetition Second Lien Documents or otherwise disallowed by a final, non-appealable order of a court of competent jurisdiction (the foregoing obligations described in this Paragraph, the “Agreed Second Lien Obligations”);<sup>4</sup>

(f) all of the Agreed Second Lien Obligations constitute the legal, valid, binding and unconditional obligations of the Debtors to the Prepetition Second Lien Secured

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<sup>4</sup> As noted above, the Prepetition Second Lien Secured Parties believe that there may be in excess of \$265 million in principal amount of convertible notes outstanding under the Note Purchase Agreement and Second Lien Convertible Notes. Nothing in this Second Interim Order, however, shall be deemed to waive, adjudicate, enter a finding of fact or conclusion of law with respect to, or otherwise prejudice any argument by any party (or the ability of any party to make any such argument) regarding: (a) whether the principal amount due and owing under the Note Purchase Agreement and Second Lien Convertible Notes is, or is not, in excess of \$177.2 million; or (b) the extent which any party has, or does not have, any valid unavoidable Liquidation Payment Amount Claim.



Parties, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code);

(g) no portion of the Agreed Second Lien Obligations or any payments made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Loan Documents prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or regulation or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Agreed Second Lien Obligations or Prepetition First Lien Obligations;

(h) the Prepetition First Lien Obligations are secured by continuing, legal, valid, binding, properly perfected, enforceable, non-avoidable first priority liens on and security interests in all of the Prepetition Collateral, which Prepetition First Liens (i) are not subject to any contest, avoidance, recharacterization, subordination (whether equitable, contractual or otherwise) (except as expressly set forth in subclause (ii) below), recovery, reduction, attachment, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross claim, set-off, offset, challenge, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any nature under the Bankruptcy Code or any other applicable law or regulation or otherwise; and (ii) are and remain senior in priority over any and

all other liens on and security interests in the Prepetition Collateral, subject only to the Carve-Out and Senior Permitted Liens (as defined below).

(i) the Prepetition Second Lien Obligations are secured by continuing, legal, valid, binding, properly perfected, enforceable, non-avoidable second priority liens on and security interests in all of the Prepetition Collateral, which Prepetition Second Liens (i) secure, at a minimum, all of the Agreed Second Lien Obligations, (ii) are not subject to any contest, avoidance, recharacterization, subordination (whether equitable, contractual or otherwise) (except as expressly set forth in subclause (iii) below), recovery, reduction, attachment, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross claim, set-off, offset, challenge, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any nature under the Bankruptcy Code or any other applicable law or regulation or otherwise; and (iii) are and remain senior in priority over any and all other liens on and security interests in the Prepetition Collateral, subject only to Prepetition First Liens, the Senior Adequate Protection Liens, the Carve-Out and Senior Permitted Liens (as defined below);

(j) the Prepetition Secured Parties duly perfected the Prepetition Liens in the Prepetition Collateral by, among other things, filing financing statements, and, where necessary, possessing the relevant instruments, certificates, or other property;

(k) as of the Petition Date, all or substantially all of the Debtors' cash, including the cash in their deposit accounts and other accounts, wherever located, whether as original collateral or proceeds of collateral, constitutes Cash Collateral (as defined below) and is Prepetition Collateral of the Prepetition Secured Parties;

(l) none of the Prepetition Secured Parties constitutes a control person or insider of the Debtors by virtue of any of the actions taken by any of them in respect of or in

connection with (a) making the decision to consent to the use of Cash Collateral, (b) extending other financial accommodations to the Debtors under this Second Interim Order, (c) making the decision to make the loans and financial accommodations under the Prepetition Loan Documents, (d) administering the loans and financial accommodations extended under the Prepetition Loan Documents, (e) extending other financial accommodations to the Debtors under the Prepetition Loan Documents, or (f) making the decision to collect the indebtedness and obligations of the Debtors, and the Prepetition Secured Parties are not exercising control over any operations of the Debtors or acting in any way as a responsible person, or as an owner or operator under any applicable law; and

(m) the Prepetition Secured Parties are entitled, pursuant to sections 361, 362(c)(2), 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, including the Cash Collateral, to the extent set forth herein, in exchange for (a) the use of Cash Collateral, (b) the subordination of the Prepetition Obligations to the Carve Out, and (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

G. Relief Requested. By the Motion, the Debtors requested authority to use Cash Collateral through the Termination Date (as defined below) on the terms and conditions set forth herein.

H. Necessity for Relief Requested; Immediate and Irreparable Harm. The Debtors have requested immediate entry of this Second Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The Debtors' continued access to sufficient liquidity through the use of Cash Collateral is critical to their ability to operate their business, maximize the value of their estates, and facilitate a successful reorganization, the absence of which would result in immediate and

irreparable harm to the Debtors, their estates, and their creditors. Without the continued use of Cash Collateral, the Debtors would not have sufficient available sources of working capital to pay payroll and other operating expenses, maintain their assets, administer the Chapter 11 Cases or proceed with their reorganization or sale efforts, to the severe detriment of their estates and creditors. Accordingly, further interim relief as requested in the Motion is necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors and for the continued operation of Debtors' business and the management and preservation of their assets.

I. Good Cause. Good cause has been shown for entry of this Second Interim Order, and the entry of this Second Interim Order is in the best interests of the Debtors and their estates and creditors. Among other things, the relief granted herein will minimize disruption of the Debtors' business and permit the Debtors to meet payroll and other expenses necessary to continue operations. The terms of the Debtors' use of Cash Collateral and proposed adequate protection arrangements, as set forth in the First Interim Order and this Second Interim Order, are fair and reasonable under the circumstances, and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

**BASED UPON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. Approval of Motion. The relief requested in the Motion is granted on an interim basis as set forth herein. Except as otherwise expressly provided in this Second Interim Order, any objection to the entry of this Second Interim Order that has not been withdrawn, waived, resolved or settled, is hereby denied and overruled on the merits, but without prejudice to relief that may be granted on a final basis.

2. Authorization to Use Cash Collateral. Pursuant to the terms and conditions of this Second Interim Order, the Debtors are authorized to use Cash Collateral in a manner consistent

with their ordinary course of business or as otherwise authorized by the Bankruptcy Court after notice and a hearing for the period (the “Specified Period”) from the Petition Date through the Termination Date.

3. Termination Date. The Debtors’ authorization to use Cash Collateral (other than to fund the Carve-Out as provided below) pursuant to this Second Interim Order shall terminate upon the earliest to occur of (the “Termination Date”): (i) 5:00 p.m. (prevailing Eastern Time) on September 10, 2023 (the “Interim Period”), *provided* that if a further interim order or final order is entered prior thereto, the Debtors’ authorization to use Cash Collateral shall continue to the extent provided for therein; and (ii) subject to Paragraph 6 hereof, upon the expiration of the Termination Notice Period following the occurrence and continuance of an Event of Default (as defined below) beyond the Cure Period (as defined below), if applicable; *provided* that the Debtors can extend the Interim Period with the prior written consent of each of the Agents (which consent can be provided through email from counsel to the Agents); *provided* that if the Interim Period is extended in accordance with this Paragraph 3, the Debtors shall file a notice of such extension on the docket of these Chapter 11 Cases reasonably promptly.

4. Adequate Protection. The Prepetition Secured Parties are hereby granted the following (collectively, the Adequate Protection Obligations):

(a) Senior Adequate Protection Liens. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for any postpetition diminution in value of the First Lien Agent’s interest (solely to the extent that such interests are valid, binding, enforceable, non-avoidable, and perfected as of the Petition Date) in the Prepetition Collateral (including the Cash Collateral) to the fullest extent provided for in the Bankruptcy Code (the “First Lien Diminution in Value”), the First Lien Agent for the benefit of the Prepetition First Lien Secured Parties is

hereby granted additional and replacement liens (the “Senior Adequate Protection Liens”) on any and all presently owned and hereafter acquired personal property, real property, and all other assets of the Debtors, together with any proceeds thereof (collectively, the “Post-Petition Collateral”), having the priority set forth in Paragraph 4(c) below. Notwithstanding the foregoing, the Post-Petition Collateral shall not include any causes of action under chapter 5 of the Bankruptcy Code (collectively, “Avoidance Actions”) but, subject to entry of a Final Order (as defined below), shall include any proceeds thereof.

(b) Junior Adequate Protection Liens. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for any postpetition diminution in value of the Second Lien Agent’s interests (solely to the extent that such interests are valid, binding, enforceable, non-avoidable, and perfected as of the Petition Date) in the Prepetition Collateral (including the Cash Collateral) to the fullest extent permitted by the Bankruptcy Code (the “Second Lien Diminution in Value”), the Second Lien Agent for the benefit of the Prepetition Second Lien Secured Parties is hereby granted additional and replacement liens (the “Junior Adequate Protection Liens,” and collectively with the Senior Adequate Protection Liens, the “Adequate Protection Liens”) on the Post-Petition Collateral, having the priority set forth in Paragraph 4(c) below.

(c) Priority of Adequate Protection Liens.

(i) The Senior Adequate Protection Liens on the Post-Petition Collateral shall be junior only to (A) any lien that was validly perfected and unavoidable as of the Petition Date (or subsequently perfected in accordance with section 546 of the Bankruptcy Code) and senior in priority to the Prepetition Liens (collectively, the “Senior Permitted Liens”) and (B) the Carve-Out (as defined below). Subject to the Intercreditor Agreement, the Senior Adequate

Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the Post-Petition Collateral.

(ii) Subject to the Intercreditor Agreement, the Junior Adequate Protection Liens on the Post-Petition Collateral shall be junior only to the (A) Prepetition First Liens, (B) Senior Adequate Protection Liens, (C) Prepetition Second Liens, (D) Senior Permitted Liens, and (E) the Carve-Out. The Junior Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, and claims against any of the Post-Petition Collateral.

(iii) The Adequate Protection Liens shall be automatically perfected, valid, and enforceable against and binding upon the Debtors, their estates, and any successors thereto, and the parties shall not be required to enter into any additional security agreements to create, memorialize, and/or perfect any such liens, or to file financing statements, mortgages, or other instruments with any other filing authority or take any other action to perfect any such Adequate Protection Liens. If, however, the First Lien Agent or Second Lien Agent, in their sole and absolute discretion shall elect for any reason to enter into, file, record or serve any such financing statements or other documents with respect to any such Adequate Protection Liens, then the Debtors shall execute same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time and on the date of the docket entry of the First Interim Order.

(iv) Subject in all respects to the Carve Out (as defined herein), the Adequate Protection Liens shall not be subject to sections 506(c) (upon entry of a Final Order), 510 (other than as provided in the Intercreditor Agreement), 549, 550, or 551 of the Bankruptcy Code. Subject to Paragraph 7 hereof, the Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without

limitation, any trustee or other estate representative appointed in the Debtors' Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Debtors' Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (each, a "Successor Case").

(d) Adequate Protection Superpriority Claims.

(i) Senior Adequate Protection Superpriority Claim. As further adequate protection, the First Lien Agent for the benefit of the First Lien Secured Parties is hereby granted, to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Chapter 11 Cases to the extent of any postpetition First Lien Diminution in Value (the "Senior Adequate Protection Superpriority Claim"), senior to all other administrative claims, other than the Carve-Out, and shall otherwise be subject to the Intercreditor Agreement.

(ii) Junior Adequate Protection Superpriority Claim. As further adequate protection, the Second Lien Agent is hereby granted, to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Chapter 11 Cases to the extent of any postpetition Second Lien Diminution in Value (the "Junior Adequate Protection Superpriority Claim") and with the Senior Adequate Protection Superpriority Claim, the "Adequate Protection Superpriority Claims"), senior to all other administrative claims, other than the Senior Adequate Protection Superpriority Claim and the Carve-Out, and otherwise subject to the Intercreditor Agreement.

(e) Adequate Protection Payments. Solely until the Termination Date, the Debtors shall pay to the Second Lien Agent for the benefit of the Prepetition Second Lien Secured Parties all accrued and unpaid interest (including, for the avoidance of doubt, interest accruing and



becoming due after the Petition Date) in the form of (i) periodic cash payments at the non-default rate and (ii) payment of interest in kind (“PIK Interest”) at the non-default rate,<sup>5</sup> in each case ((i) and (ii)), when such payments would have been due under the Notes Purchase Agreement without regard to any acceleration of the Second Lien Convertible Notes on account of the commencement of these Chapter 11 Cases (the “Adequate Protection Payments”).

(f) Reporting.

(i) The “Revised Initial Budget” is attached hereto as Exhibit A and constitutes the “Budget.” Not later than the last business day of the first full four-week period following the Petition Date (and each four-week period thereafter), the Debtors shall provide the Agents with the Debtors’ estimate of cash receipts and cash disbursements for the following thirteen (13) weeks, with detail consistent with the Revised Initial Budget (each, a “Proposed Budget”). For the avoidance of doubt, the first Proposed Budget following the Revised Initial Budget shall be delivered no later than September 8, 2023. Upon approval by each of the Agents (not to be unreasonably withheld), such Proposed Budget shall become the “Budget” for the period covered thereby; *provided*, that such Proposed Budget shall automatically become the Budget if not expressly rejected by an Agent (email being sufficient) within three business days. In addition, not later than August 23rd, 2023, and not later than the third business day of each week thereafter, the Debtors shall provide the Agents with a report, as of the preceding Saturday of each such week, comparing actual cash receipts and disbursements for such immediately preceding week (as well as cumulative to the Petition Date) to the estimated cash receipts and disbursements for such week or cumulative period reflected in the Budget (such reports, each a “Weekly Cash Report”).

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<sup>5</sup> Nothing in this Second Interim Order shall prejudice (a) any argument by the Prepetition Second Lien Secured Parties that their claims under the Note Purchase Agreement include claims for PIK Interest at the default rate calculated from the Petition Date or (b) any argument of the Debtors opposing any such claim.

(ii) Further, the Debtors shall provide: (a) reports to the First Lien Agent as required under Sections 8.1, 8.2.1, and 8.3.1 of the Senior Credit Agreement, (b) reports to the Second Lien Agent as required under the Prepetition Second Lien Documents to the extent the Debtors have been providing such reports on a regular basis prior to the Petition Date, (c) such other financial reports that are reasonably requested by any of the Agents or any of their representatives and agents, (d) the Debtors shall cause their representatives and agents to make themselves reasonably available to discuss the Debtors' affairs, financial condition, properties, business, operations, and accounts with the representatives and agents of the Agents, and (e) the Debtors shall permit representatives of the Agents to visit and inspect the Prepetition Collateral on a one time basis prior to the Termination Date (and more frequently after the Termination Date as permitted in accordance with Section 7.1(b) of the Note Purchase Agreement).

(iii) Each document delivered to the Agents pursuant to this Paragraph 4(f) shall also be delivered via email to counsel thereto, Holland & Knight LLP, Attn: Robert Jones (robert.jones@hklaw.com) and Brent McIlwain (brent.mcilwain@hklaw.com), and Sidley Austin LLP, Attn: Thomas R. Califano (tom.califano@sidley.com), Dennis M. Twomey (dtwomey@sidley.com), and Jackson T. Garvey (jgarvey@sidley.com), and Pachulski Stang Zhiel & Jones LLP, Attn: Laura Davis Jones (ljones@pszjlaw.com).

(g) Insurance. The Debtors shall maintain casualty and loss insurance coverage for the Prepetition Collateral no less favorable to the Prepetition Secured Parties than the coverage maintained prepetition.

(h) Postpetition Fees & Expenses.

(i) As further adequate protection, but subject in all respects to Paragraph 4(h)(ii) below, solely until the Termination Date, the Debtors shall pay or reimburse

(i) the First Lien Agent for all reasonable and documented fees and out-of-pocket expenses incurred by it (including the reasonable and documented fees and out-of-pocket expenses of counsel to the First Lien Agent) in connection with the Chapter 11 Cases, including the reasonable cost of any audits/field exams of the Prepetition Collateral, in an amount not to exceed \$60,000, whether incurred prior to or after the Petition Date, and (ii) the Second Lien Agent for all reasonable and documented fees and out-of-pocket expenses incurred by it (including the reasonable and documented fees and out-of-pocket expenses of counsel and a financial advisor (including any success fee earned by such financial advisor on terms reasonably acceptable to the Debtors)) (collectively, the “Second Lien Advisors”) to the Second Lien Agent in connection with these Chapter 11 Cases).

(ii) None of the fees and expenses payable pursuant to this Paragraph 4(h) shall be subject to separate approval by this Court, but the Agents shall provide copies of any such invoices to the U.S. Trustee, the Debtors, and the Committee (the “Notice Parties”). The invoices for such fees and expenses may be in summary form only (provided that they include sufficient detail to demonstrate reasonableness), and shall not be subject to application or allowance by the Court. The Notice Parties may object to the reasonableness of such fees and expenses within ten (10) business days of the receipt of an invoice detailing such fees and expenses, and this Court shall resolve any dispute as to the reasonableness of any such fees and expenses that cannot be consensually resolved, and any professionals retained by the First Lien Agent and Second Lien Agent, as applicable, in connection herewith shall not be required to file any interim or final fee application with respect thereto. Promptly following the completion of the ten (10) business day objection period (the “Fee Objection Period”), if no objection is made or following the resolution of any dispute regarding the fees and expenses payable pursuant to this

paragraph, the Debtor shall pay the professional fees and expenses provided for in this paragraph within two (2) business days. To the extent any of the Notice Parties in good faith believe an invoice for fees and expenses is unreasonable (the disputed portion of any such invoice, a “Disputed Invoice”), the Debtors, the applicable Notice Party, and the applicable Agent shall meet and confer regarding the Disputed Invoice. If the parties are unable to resolve any dispute regarding a Disputed Invoice within five (5) business days after meeting and conferring, any such party may request that this Court adjudicate the dispute. For the avoidance of doubt, the undisputed portion of any Disputed Invoice shall be paid within five (5) business days after the completion of the Fee Objection Period regardless of any ongoing dispute resolution pertaining to such Disputed Invoice.

(i) Letters of Credit. The Debtors shall cash collateralize the Prepetition Letters of Credit by depositing funds in an amount equal to 103% of the face amount of the Prepetition Letters of Credit into a segregated account with the First Lien Agent on customary terms that are reasonably acceptable to the First Lien Agent (the “L/C Cash Collateral”). The First Lien Agent shall be authorized to draw upon such L/C Cash Collateral and apply the L/C Cash Collateral to the obligations under the First Lien Credit Facility if there is a corresponding draw upon the Prepetition Letters of Credit (and to pay letter of credit fees that come due in accordance with the Senior Credit Agreement), in either case, without the need for any further order of this Court (including to modify the automatic stay).

5. Events of Default. The occurrence of any of the following events during the Interim Period, unless waived by the First Lien Agent and the Second Lien Agent in writing, shall constitute an event of default hereunder (each, an “Event of Default”):

(a) The Debtors' failure to perform, in any material respect, any of their obligations under this Second Interim Order;

(b) Upon the Debtors' delivery of each Weekly Cash Report in accordance with Paragraph 4(f)(i) of this Second Interim Order, the amount of the Debtors' actual aggregate operating disbursements for the period commencing on the Petition Date and ending on the last date reflected in the most recent Weekly Cash Report (the "Testing Period"), as reflected in the Weekly Cash Reports, exceeds the amount of the projected aggregate operating disbursements on a cumulative basis as set forth in the Budget for such Testing Period by more than fifteen percent (15%) (any variance not exceeding such maximum permitted variance, a "Permitted Variance").

(c) Dismissal of any of the Chapter 11 Cases or conversion of any of the Chapter 11 Cases to chapter 7 or the Debtors' application for any such dismissal or conversion (and such application is not withdrawn within five (5) days of the filing thereof);

(d) The appointment of a chapter 11 trustee or examiner with expanded powers in any of the Chapter 11 Cases unless the Court orders otherwise;

(e) The failure of the Debtors to make any payment under this Second Interim Order to either Agent when due;

(f) The Court shall have entered an order reversing, amending, supplementing, staying, vacating, or otherwise modifying this Second Interim Order in a manner materially adverse to the Prepetition Secured Parties without the prior written consent of each of the Agents;

(g) This Second Interim Order ceases, for any reason (other than by reason of the express written agreement by the Agents or the supersession of this Second Interim Order by the Final Order), to be in full force and effect in any material respect, or any Debtor so asserts in writing, or the Adequate Protection Liens or Adequate Protection Superpriority Claims created by

this Second Interim Order cease in any material respect to be enforceable and of the same effect and priority purported to be created hereby or any Debtor so asserts in writing;

(h) The date of the Debtors' filing an application, motion, or other pleading for the approval of any superpriority claim or any lien in these Chapter 11 Cases that is *pari passu* with or senior to the Adequate Protection Superpriority Claims or the Adequate Protection Liens without the prior written consent of the Prepetition Secured Parties;

(i) The date any of the Debtors files any pleading or commences any action against the Prepetition Secured Parties challenging the validity or enforceability of the Prepetition Obligations or the Prepetition Liens or seeking to avoid, disallow, subordinate, or recharacterize any claim, lien, or interest held by any of the Prepetition Secured Parties arising under or related to the Prepetition Obligations (or if the Debtor supports any such motion, pleading, application or adversary proceeding commenced by any third party); *provided* that nothing herein shall prohibit the Debtors from filing any motion or pleading or commencing or continuing any action (a) seeking authorization to use cash collateral, including by making any argument that the principal amount owed under the Prepetition Second Lien Documents as of the Petition Date is limited to the Agreed Second Lien Obligations in connection therewith or (b) with regard to good faith disputes over the payment of expenses and fees, and in each case ((a) and (b)), no such filing shall constitute an Event of Default hereunder; *provided, further*, nothing herein shall be deemed to be an acknowledgment, representation, or agreement by the Debtors with respect to the Prepetition Secured Parties' liens or claims, other than, but subject in all respect to the terms of any further interim or final order, as expressly set forth in the Debtors' Stipulations;

(j) The Court shall have entered an order terminating the Debtors' exclusivity under Bankruptcy Code section 1121, unless consented to in writing by the Agents;

(k) The Court shall have entered an order granting relief from the automatic stay to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any of the Prepetition Collateral or Adequate Protection Collateral which has an aggregate value in excess of \$500,000;

(l) The filing of any pleading by any Debtor opposing, or in support of any other person's opposition to, any motion filed in the Court by any Agent or Prepetition Secured Party seeking confirmation of the amount of its claims or the validity or enforceability of the Prepetition Liens or the Adequate Protection Liens, except any pleading with regard to (a) good faith disputes over the payment of expenses and fees or (b) the Prepetition Second Lien Secured Parties' claims being limited to the Agreed Second Lien Obligations, and in each case ((a) and (b)), no such filing shall constitute an Event of Default hereunder; and

(m) Any lien, claim, interest or priority status, other than the Carve Out and any Senior Permitted Liens, having a lien or administrative priority superior to or pari passu with that of the Adequate Protection Superpriority Claims, the Prepetition Liens, or the Adequate Protection Liens shall be granted while any portion of the Adequate Protection Superpriority Claims remain outstanding, without the prior written consent of the Agents; *provided*, that notwithstanding anything in this Second Interim Order to the contrary, an Event of Default shall not be deemed to occur if the Debtors seek approval of debtor in possession financing, including, without limitation, debtor in possession financing which primes existing liens, to the extent (i) such debtor in possession financing provides for payment in full of the Adequate Protection Obligations or (ii) the Agents otherwise provide their prior written consent.

Upon the occurrence and during the continuation of any Event of Default (other than an Event of Default under Paragraphs 5(c), (d), (f), (g), (i), or (l)), the First Lien Agent or the Second Lien

Agent may deliver a written notice of an Event of Default (a “Default Notice”), which Default Notice shall be given by email to counsel to the Debtors, counsel to the First Lien Agent, counsel to the Second Lien Agent, the U.S. Trustee, and counsel to any Committee. The Debtors shall have two (2) business days from the date of delivery of such Default Notice to cure such noticed Event of Default (the “Cure Period”). The Cure Period shall not apply to any Event of Default under Paragraphs 5(c), (d), (f), (g), (i), or (l). If an Event of Default is not cured by the end of the Cure Period (other than with respect to the Carve-Out), then the procedures set forth in Paragraph 6 shall apply with respect to the Debtors’ continued authorization to use Cash Collateral pursuant to this Second Interim Order.

6. Rights and Remedies upon Event of Default. Upon the occurrence and during the continuation of an Event of Default (after giving effect to any relevant Cure Period), notwithstanding the provisions of Bankruptcy Code section 362, either Agent may (a) provide notice to the Debtors (such notice, a “Termination Notice”) that (i) their consent to use Cash Collateral pursuant hereto will terminate at the end of the Termination Notice Period (as defined below) (other than with respect to the Carve-Out) and/or (ii) the application of the Carve Out has occurred as provided in Paragraph 9 below and/or (b) file an appropriate pleading with the Court and seek an emergency hearing on notice for relief from the automatic stay to exercise rights and remedies to the extent available in accordance with the applicable Prepetition Loan Documents, this Second Interim Order, and applicable law, and the Debtors shall not oppose the holding of such emergency hearing. Five (5) business days after a Termination Notice has been delivered (the “Termination Notice Period”), unless otherwise ordered or extended by the Court, the Debtors’ authorization to use the Agents’ cash collateral pursuant to this Second Interim Order shall terminate (other than with respect to the Carve-Out). During the Termination Notice Period,



the Debtors, any Creditors' Committee, and/or any party in interest shall be entitled to seek an emergency hearing with the Court and the Prepetition Secured Parties shall not oppose such emergency hearing for the purpose of contesting, among other things, whether an Event of Default has occurred or is continuing or seeking approval for the non-consensual use of Cash Collateral, and the Termination Notice Period shall be automatically extended (and the Debtors' authorization to use Cash Collateral shall continue in accordance herewith) to the extent reasonably necessary to accommodate the Court's schedule to hold such an emergency hearing and adjudicate the dispute. Unless the Court orders otherwise, the automatic stay, as to the Prepetition Secured Parties (solely with respect to the use of Cash Collateral to the extent permitted hereunder) shall automatically be terminated at the end of the Termination Notice Period without further notice or order. Notwithstanding anything to the contrary herein, upon the declaration of an Event of Default, the delivery of a Termination Notice, the expiration of the Termination Notice Period or the occurrence of the Termination Date, all of the rights, remedies, benefits, and protections provided to the Prepetition Secured Parties under this Second Interim Order shall survive. Neither section 105 of the Bankruptcy Code nor any other provision of the Bankruptcy Code or applicable law shall be utilized to prohibit the exercise, enjoyment and enforcement of any rights, benefits, privileges and remedies set forth in this paragraph.

7. Binding Effect of Stipulations; Challenge Period. The Debtors' Stipulations are immediately binding on the Debtors. Each Stipulation is binding on all parties-in-interest, including any trustee appointed in the Chapter 11 Cases or any Successor Case) for all purposes unless the Committee, or any creditor or other party-in-interest (in either case which has obtained the requisite standing) timely commences an adversary proceeding, or files a motion requesting standing to file an adversary proceeding and attaching the adversary complaint such party-in-

interest seeks standing to file, against the applicable Prepetition Secured Parties for the purpose of challenging the validity, extent, priority, perfection and enforceability of the prepetition secured debt under the applicable Prepetition Loan Documents, or the liens, claims and security interests in the Prepetition Collateral in favor of the applicable Prepetition Secured Parties, or otherwise asserting any claims or causes of action against the applicable Prepetition Secured Parties on behalf of the Debtors' estates (a "Challenge") and to the extent such Challenge is successful. In the event of a successful Challenge, all of the Debtors' Stipulations shall be deemed to be binding on the Debtors and all parties-in-interest, including with respect to the validity, extent, priority, perfection and enforceability of the prepetition secured debt under the Prepetition Loan Documents or the liens, claims and security interests in the Prepetition Collateral in favor of the Prepetition Secured Parties, except to the extent explicitly set forth in any order of this Court sustaining such successful Challenge. Nothing contained in this Second Interim Order is deemed to confer standing on any Committee or any other party in interest to commence such an adversary proceeding. A Challenge is timely if it is commenced or filed, as applicable:

- i) in the case of the Creditors' Committee (or any other committee appointed in the Chapter 11 Case), no later than 75 days after entry of this Second Interim Order;
- ii) in the case that a chapter 7 or chapter 11 trustee is appointed or elected within 60 days after the Petition Date (including following a conversion of these Chapter 11 Cases to cases under chapter 7), then in the case of such chapter 7 or chapter 11 trustee, no later than the longer of 60 days from the Petition Date or 30 days from the appointment of such chapter 7 or chapter 11 trustee; or
- iii) in the case of any other party in interest, no later than 60 days after the Petition Date,

((i) through (iii), collectively, the "Challenge Period"). In the event that there is a timely successful Challenge brought pursuant to this Paragraph 7, the Court shall retain jurisdiction to fashion an appropriate remedy.

8. Modification of Automatic Stay. The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to effectuate all of the terms and provisions of this Second Interim Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Obligations; (b) permit the Debtors to perform such acts as the Prepetition Secured Parties may request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the Prepetition Secured Parties under this Second Interim Order; and (d) authorize the Debtors to pay, and the Prepetition Secured Parties to retain and apply, any payments made in accordance with the terms of this Second Interim Order.

9. Carve-Out. (a) For purposes of this Order, the “Carve-Out” shall mean: (i) fees owing to the U.S. Trustee incurred in connection with the Chapter 11 Case, (ii) fees and expenses of a chapter 7 trustee in an amount not to exceed \$25,000, (iii) professional fees, expenses and disbursements incurred by professional persons employed by the Debtors or any Committee (including any fees and expenses of the members of any Committee) (“Professional Fees”) at any time prior to the Termination Date (the “Pre-Trigger Carve-Out”) and (iv) Professional Fees incurred after the Termination Date in an amount not to exceed \$4,000,000 (the “Post-Trigger Date Carve-Out”).

(b) The Debtors shall be authorized to transfer cash-on-hand from time to time in the amount equal to the total budgeted fees and expenses of the Estate Professionals for the subsequent two-week period in the Budget (plus any true-up necessary for prior periods) into a segregated account not subject to the control of the Prepetition Secured Parties (the “Professional Fee Escrow”). The Debtors shall be authorized to use funds held in the Professional Fee Escrow to pay Professional Fees as they become allowed and payable pursuant to the Bankruptcy Code,

the Bankruptcy Rules, the Local Rules, and any applicable interim or final orders of this Court; *provided*, that the Debtors' obligations to pay allowed Professional Fees shall not be limited or be deemed limited to funds held in the Professional Fee Escrow. Upon the delivery of a Termination Notice, the Debtors shall utilize all cash on hand, to transfer into the Professional Fee Escrow cash in an amount equal to all accrued but unpaid Allowed Professional Fees as of the first business day following delivery of a Termination Notice plus an amount sufficient to ensure that the Professional Fee Escrow is equal to the Pre-Trigger Carve-Out and the Post-Trigger Date Carve-Out (collectively, the "Estate Professionals Carve Out Amount"). Funds in the Professional Fee Escrow shall be held in trust and available solely to pay Professional Fees.

(c) The Prepetition Secured Parties shall retain an automatically perfected and continuing security interest in any residual interest in the Professional Fee Escrow available following satisfaction in full of all obligations benefiting from the Carve-Out.

(d) For the avoidance of doubt and notwithstanding anything to the contrary, the Carve Out shall be senior to all liens and claims (other than any applicable Senior Permitted Liens), any liens and claims granted as adequate protection (including the Adequate Protection Liens and Adequate Protection Superpriority Claims), and all liens and claims under the First Lien Credit Facility and Note Purchase Agreement.

(e) Until the Prepetition Obligations (to the extent allowed) have been indefeasibly paid in full, without further order of the Court, the payment of Professional Fees and the Professional Fee Escrow Carve Out Amount shall not be paid out of the Prepetition Collateral for any fees and expenses, if any, incurred in connection with the initiation, joinder, or prosecution of any action contesting the indebtedness owed to the Prepetition Secured Parties or the validity

of any liens granted to any of such parties, other than to assert that the principal amount owed under the Prepetition Second Lien Documents is limited to \$177.2 million (plus accrued interest).

10. Subject to the entry of the Final Order, effective as of the time of commencement of the Debtors' bankruptcy case on the Petition Date, the Debtors waive irrevocably all claims and rights, if any, it or its estates might otherwise assert against the Prepetition Collateral of the Prepetition Secured Parties pursuant to Bankruptcy Code section 506(c).

11. Section 552(b). In light of the subordination of their liens and superpriority administrative claims of the Prepetition Secured Parties to the Carve-Out, subject to entry of a Final Order, each of the Prepetition Secured Parties is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply to any of the Prepetition Secured Parties with respect to the proceeds, products, rents, issues or profits of any of the Prepetition Collateral, and no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, may be charged against proceeds, product, offspring or profits from any of the Prepetition Collateral under section 552(b) of the Bankruptcy Code. Subject to entry of a Final Order, the Debtors irrevocably waive, and agree not to assert, any claim or right under section 552 of the Bankruptcy Code seeking to avoid the imposition of the liens pursuant to the Prepetition Loan Documents, or the Adequate Protection Liens on any property acquired by any of the Debtors or any of their estates or, subject to the Carve-Out and entry of a Final Order, seeking to surcharge any costs or expenses incurred in connection with the preservation, protection, or enhancement of, or realization by, the Prepetition Secured Parties upon the Prepetition Collateral, as applicable.

12. Payments Free and Clear. Subject and subordinate to the Carve Out and Paragraph 7 of this Second Interim Order, any and all proceeds remitted to the Agents pursuant to the terms of this Second Interim Order (including any L/C Cash Collateral drawn by First Lien Agent pursuant to Paragraph 4(i) of this Second Interim Order) or any subsequent order of this Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including, without limitation, but subject to entry of the Final Order, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552(b) of the Bankruptcy Code.

13. No Marshaling. Subject only to and effective upon entry of the Final Order, the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral, and proceeds of the Prepetition Collateral shall be received and applied pursuant to this Second Interim Order and the Prepetition Loan Documents notwithstanding any other agreement or provision to the contrary. Subject only to and effective upon entry of the Final Order, and without limiting the generality of the immediately preceding sentence, no party shall be entitled to marshal (directly or indirectly) the disposition of the Prepetition Collateral after an Event of Default.

14. Continuation of Prepetition Liens. Subject to the rights set forth in Paragraph 7, until the Prepetition Secured Parties are Paid in Full, all liens and security interests of the Prepetition Secured Parties (including, without limitation, the Adequate Protection Liens) shall remain valid and enforceable with the same continuing priority as provided in the Prepetition Loan Documents and described or otherwise provided for herein. The term “Paid in Full” or “Payment in Full” means (a) the indefeasible payment in full in cash of all of the Prepetition Obligations and Adequate Protection Obligations, as applicable, and in each case, solely to the extent allowed

(including the cash collateralization of any letters of credit) and (b) unless the Challenge Period has terminated without a successful challenge being commenced, the applicable Prepetition Secured Parties shall have received a release from each Debtor and the Creditors' Committee (if any) of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages, and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities with respect to the applicable Prepetition Obligations and the Adequate Protection Obligations in form and substance acceptable to the applicable Agents.

15. Proofs of Claim. The Prepetition First Lien Secured Parties are not required to file proofs of claim in any of these Chapter 11 Cases, and the Prepetition Second Lien Secured Parties are not required to file proofs of claim in any of these Chapter 11 Cases on account of Agreed Second Lien Obligations. However, to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, each Agent is authorized, in accordance with any applicable bar order entered by this Court, to file in the Debtors' lead Chapter 11 Case for Proterra, Inc., Case No. 23-11120 (BLS), a master proof of claim on behalf of the applicable Prepetition Secured Parties on account of any and all off its claims arising under the applicable Prepetition Loan Documents and hereunder (a "Master Proof of Claim") against each of the Debtors.

16. Granting of Additional Liens and Interests. Nothing in this Second Interim Order shall authorize, other than in the ordinary course of the Debtors' business, the sale, transfer, lease, encumbrance, or other disposition of any assets of the Debtors or their estates, except as permitted in the Prepetition Loan Documents and this Second Interim Order, and approved by the Court to the extent required under applicable bankruptcy law.

17. Delivery of Pleadings. The Debtors will use reasonable efforts to deliver to counsel to the Agents copies of any pleadings or motions to be filed by or on behalf of any Debtor in these Chapter 11 Cases at least two (2) business days prior to such filing (or, if not practicable, as soon as reasonably practicable); *provided* that nothing in this Paragraph 17 shall require the Debtors to deliver to counsel to the Second Lien Agent copies of any of the following pleadings or motions prior to filing: (a) any pleadings or motions with regard to (1) good faith disputes over the payment of expenses, fees and default interest or (2) the Prepetition Second Lien Secured Parties' claims being limited to the Agreed Second Lien Obligations; or (b) while any of the Prepetition Second Lien Secured Parties or their affiliates are bidders or potential bidders in any postpetition bidding process involving assets of the Debtors, any pleadings or motions regarding that postpetition bidding process (including the status or results thereof).

18. Survival. The provisions of this Second Interim Order and any actions taken pursuant hereto shall survive entry of any order (a) confirming any plan of reorganization in any of these Chapter 11 Cases, (b) converting any of these cases to a case under chapter 7 of the Bankruptcy Code, (c) dismissing any of these cases or any Successor Case, or (d) pursuant to which this Court abstains from hearing any of the cases or any Successor Case, and accordingly, notwithstanding the entry of any such order, the terms and provisions of this Second Interim Order, including the claims, liens, security interests and other protections granted to the Prepetition Secured Parties pursuant to this Second Interim Order as of the date of such order, shall continue in these Chapter 11 Cases, in any Successor Case, or following dismissal of these Chapter 11 Cases or any Successor Case, and shall maintain their priority as provided by this Second Interim Order and not be modified, altered or impaired in any way as a result thereof until all of the Prepetition Obligations and Adequate Protection Obligations have been Paid in Full.



19. No Waiver. Other than as provided in this Second Interim Order, nothing in this Second Interim Order shall be construed in any way as a waiver or relinquishment of any rights that the Debtors or the Prepetition Secured Parties may have to bring or be heard on any matter brought before this Court.

20. Reversal, Modification, Vacatur, or Stay. Any reversal, modification, vacatur, or stay of any or all of the provisions of this Second Interim Order (other than in accordance with an order entered at a hearing approving the Motion on a final basis, the “Final Order”) shall not affect the validity, priority, or enforceability of any Adequate Protection Liens or superpriority claims granted hereunder, in each case, which has incurred prior to the effective date of such reversal, modification, vacatur, or stay. Notwithstanding any reversal, modification, vacatur, or stay (other than in accordance with a Final Order), (a) this Second Interim Order shall govern, in all respects, any use of Cash Collateral or Adequate Protection Lien incurred by the Debtors prior to the effective date of such reversal, modification, vacatur, or stay and (b) the Agents shall be entitled to all benefits and protections granted by this Second Interim Order with respect to any such use of Cash Collateral or such Adequate Protection Lien incurred by the Debtors prior to such reversal, vacatur or stay.

21. Reservation of Rights. Except as otherwise expressly set forth herein, this Second Interim Order and the transactions contemplated hereby shall be without prejudice to the Debtors’ right to seek the continuing use of Cash Collateral, including following a Termination Event, and/or the approval of any debtor-in-possession financing. None of the Adequate Protection Liens shall prime or otherwise be senior in right or priority to any validly perfected and unavoidable lien or similar right (including with respect to letters of credit and any cash or other collateral of the sureties) of the Debtors’ sureties as of the Petition Date, and nothing herein shall alter, limit,

modify, or impair the rights of the Debtors' sureties including, without limitation, subrogation, trust or other rights, under any of their bonds, bonded contracts, in any proceeds of the bonded contracts, letters of credit, cash or other surety collateral, and/or under any of their respective indemnity agreements, or otherwise, and all such rights and interests are reserved and preserved.

22. Findings of Fact and Conclusions of Law. This Second Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon the entry thereof. To the extent that any findings of fact are determined to be conclusions of law, such findings of fact shall be adopted as such; and to the extent that any conclusions of law are determined to be findings of fact, such conclusions of law shall be adopted as such.

23. No Third-Party Rights. Except as explicitly provided for herein, this Second Interim Order does not create any third party rights for the benefit of any creditor, equity holder or other third party entity or any direct, indirect or incidental beneficiary thereof.

24. Final Hearing. A Final Hearing on the relief requested in the Motion is scheduled for September 7, 2023, at 11:00 a.m. (prevailing Eastern time) before this Court. In accordance with the Local Rules, the Debtors shall serve, or cause to be served, by first class mail or other appropriate method of service, a copy of the Motion (to the extent the Motion was not previously served on a party) and this Second Interim Order on (i) the Notice Parties, (ii) any party that has filed a request for notices with this Court, and (iii) counsel to any Creditors' Committee. Any responses or objections to final approval of the Motion shall be made in writing, conform to the applicable Bankruptcy Rules and Local Rules, be filed with this Court, set forth the name of the objecting party, the basis for the objection, and the specific grounds therefor and be served on the following parties: (a) proposed counsel for the Debtors, (i) Paul, Weiss, Rifkind, Wharton &

Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn. Paul Basta (pbasta@paulweiss.com) and Robert Britton (rbritton@paulweiss.com), and (ii) Young Conaway Stargatt & Taylor LLP, 1000 North Street, Wilmington, Delaware, 19801 Attn: Pauline K. Morgan (pmorgan@ycst.com) and Andrew L. Magaziner (amagaziner@ycst.com); (b) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Linda J. Casey (linda.casey@usdoj.gov); (c) counsel to the Second Lien Agent, (i) Sidley Austin LLP, 787 Seventh Ave, New York, NY 10019, Attn: Thomas R. Califano (tom.califano@sidley.com), Dennis M. Twomey (dtwomey@sidley.com), and Jackson T. Garvey (jgarvey@sidley.com) and (ii) Pachulski Stang Zhiel & Jones LLP, Attn: Laura Davis Jones (ljones@pszjlaw.com); and (d) counsel to the First Lien Agent, Holland & Knight LLP, One Arts Plaza, 1722 Routh Street, Suite 1500, Dallas, Texas 75201 Attn: Robert Jones (robert.jones@hklaw.com) and Brent McIlwain (brent.mcilwain@hklaw.com) by the objection deadline that may be established in a notice of Final Hearing.

25. Order Effective Upon Entry. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Second Interim Order shall be immediately effective and enforceable upon its entry.

26. Retention of Jurisdiction. This Court has and will retain jurisdiction to enforce this Second Interim Order in accordance with its terms.

**EXHIBIT A**

**Revised Initial Budget**

**Proterra, Inc.**

	<i>Week 1</i>	<i>Week 2</i>	<i>Week 3</i>	<i>Week 4</i>	<i>Week 5</i>	<i>Week 6</i>	<i>Week 7</i>	<i>Week 8</i>	<i>Week 9</i>	<i>Week 10</i>	<i>Week 11</i>	<i>Week 12</i>	<i>Week 13</i>
<i>Week ending:</i>	<i>8/13</i>	<i>8/20</i>	<i>8/27</i>	<i>9/3</i>	<i>9/10</i>	<i>9/17</i>	<i>9/24</i>	<i>10/1</i>	<i>10/8</i>	<i>10/15</i>	<i>10/22</i>	<i>10/29</i>	<i>11/5</i>
<i>\$ in 000s</i>	<i>Act</i>	<i>Act</i>	<i>Fct</i>	<i>Fct</i>	<i>Fct</i>	<i>Fct</i>	<i>Fct</i>	<i>Fct</i>	<i>Fct</i>	<i>Fct</i>	<i>Fct</i>	<i>Fct</i>	<i>Fct</i>
<b>Receipts:</b>													
Receipts	3,131	5,411	12,982	6,577	5,862	15,142	6,417	5,016	9,339	7,074	7,074	9,718	9,873
Other	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts	3,131	5,411	12,982	6,577	5,862	15,142	6,417	5,016	9,339	7,074	7,074	9,718	9,873
<b>Disbursements:</b>													
Vendor Payments	(651)	(19)	(8,108)	(7,141)	(19,483)	(11,313)	(8,742)	(6,460)	(1,551)	(4,432)	(1,550)	(2,117)	(1,504)
Payroll & Related	(816)	(4,652)	-	(5,957)	-	(5,957)	-	(5,957)	-	(4,960)	-	(4,901)	-
Rent & Lease Payments	-	-	-	(864)	-	-	-	(825)	-	-	-	-	(823)
Utilities	(1)	(22)	(8)	(84)	(39)	(53)	(16)	(53)	(16)	(53)	(16)	(53)	(16)
Freight & Shipping	-	(29)	(74)	(295)	(258)	(147)	(147)	(147)	(147)	(147)	(147)	(147)	(147)
Taxes	-	-	(5)	(1,044)	(17)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)
Insurance	-	-	-	-	-	-	-	-	-	-	-	-	-
CAPEX	-	-	(503)	(208)	(900)	(900)	(900)	(900)	(900)	(900)	(900)	(900)	(900)
TPI Payments	-	-	-	-	-	-	-	-	-	-	-	-	-
LG Payments	-	-	-	-	-	(6,380)	-	-	-	(6,380)	-	-	-
Total Disbursements	(1,468)	(4,722)	(8,697)	(15,594)	(20,696)	(24,760)	(9,815)	(14,352)	(2,624)	(16,883)	(2,623)	(8,128)	(3,400)
Net Operating Cash Flow	1,662	689	4,285	(9,016)	(14,834)	(9,618)	(3,398)	(9,336)	6,716	(9,809)	4,450	1,589	6,474
<b>Financing &amp; Restructuring Activities:</b>													
Interest & Fees	-	-	-	74	-	-	-	(2,205)	-	-	-	-	14
Professional Fees	(400)	-	-	-	(1,334)	-	-	(150)	(3,824)	(1,619)	-	-	(4,780)
Other Restructuring	-	-	-	(1,250)	-	-	-	-	(316)	-	-	-	-
Total Financing & Restruct.	(400)	-	-	(1,176)	(1,334)	-	-	(2,355)	(4,141)	(1,619)	-	-	(4,766)
Net Cash Flow	1,262	689	4,285	(10,192)	(16,168)	(9,618)	(3,398)	(11,691)	2,575	(11,428)	4,450	1,589	1,708
<b>Cash Roll Forward</b>													
Bg. Cash Balance	138,292	139,677	140,480	144,765	134,573	118,405	108,788	105,389	93,698	96,273	84,845	89,295	90,884
Net Operating Cash Flow	1,662	689	4,285	(9,016)	(14,834)	(9,618)	(3,398)	(9,336)	6,716	(9,809)	4,450	1,589	6,474
Financing & Restruct.	(400)	-	-	(1,176)	(1,334)	-	-	(2,355)	(4,141)	(1,619)	-	-	(4,766)
Actual to Frct Adj.	123	114	-	-	-	-	-	-	-	-	-	-	-
Total Cash Held (Excludes Restricted Cash)	139,677	140,480	144,765	134,573	118,405	108,788	105,389	93,698	96,273	84,845	89,295	90,884	92,592
ABL Availability (Estim.)	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash & Liquidity	139,677	140,480	144,765	134,573	118,405	108,788	105,389	93,698	96,273	84,845	89,295	90,884	92,592

**Exhibit C**

**Blackline**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	)	
	)	Chapter 11
PROTERRA INC, <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 23-11120 (BLS)
	)	
Debtors.	)	(Jointly Administered)
	)	

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[Ref. Docket Nos. 44, 72](#)

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**SECOND INTERIM ORDER (I) AUTHORIZING  
THE DEBTORS TO USE CASH COLLATERAL,  
(II) GRANTING ADEQUATE PROTECTION, (III) MODIFYING  
THE AUTOMATIC STAY, AND (IV) GRANTING RELATED RELIEF**

---

Upon the motion (the “Motion”) of the above-captioned debtors and debtors-in-possession (together, the “Debtors”)<sup>2</sup> seeking entry of an interim order (~~this “Interim Order”s~~) and a final order, [\(collectively, the “Cash Collateral Orders”\)](#), pursuant to sections 105, 361, 362, 363 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “Bankruptcy Code”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) providing for:

(a) authorization for the Debtors to (1) use “cash collateral” (as such term is defined in section 363(a) of the Bankruptcy Code) pursuant to section 363 of the Bankruptcy Code (the “Cash Collateral”) and (2) provide adequate protection to the Prepetition Secured

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Protterra Inc (1379); and Protterra Operating Company, Inc. (8459). The location of the Debtors’ service address is: 1815 Rollins Road, Burlingame, California 94010.

<sup>2</sup> Capitalized terms used but not otherwise herein defined shall have the [respective](#) meanings ascribed to such terms in the Motion [and the First Interim Order \(as defined below\), as applicable.](#)

Parties (as defined below) with respect to the diminution in value, if any, of the interest of the First Lien Agent and Second Lien Agent (as defined below) in the Prepetition Collateral (as defined below), including Cash Collateral, on the terms described herein;

(b) scheduling, pursuant to Bankruptcy Rule 4001, a ~~further interim~~final hearing (the “~~Second Interim~~Final Hearing”) for this Court to consider the relief requested in the Motion on a ~~further interim or~~ final basis;

(c) modifying the automatic stay arising under section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of ~~this Interim Order~~the Cash Collateral Orders; and

(d) granting related relief.

~~The Interim Hearing~~An interim hearing on the Motion having been held by this Court on August 10, 2023, ~~and upon the record made by the Debtors at the Interim Hearing, including without limitation, the admission into evidence of (i) the Declaration of Gareth T. Joyce in Support of Chapter 11 Petitions and First Day Motions (the “First Day Declaration”) filed on the date hereof (the “Petition Date”), (ii) the Declaration of Justin D. Pugh in Support of Debtors’ (I) Cash Collateral Motion and (II) Vendor Claimants’ Motion (the “Pugh Declaration”), and (iii) Declaration of John Kimm in Support of the Debtors’ Motion for Entry of: (I) an Order (A) Approving Bidding Procedures to Govern the Sale of All or Substantially All of the Debtors’ Assets Pursuant to Section 363 of the Bankruptcy Code, (B) Approving Procedures Regarding Entry into One or More Stalking Horse Agreements (C) Establishing Procedures for the Assumption and Assignment of Executory Contracts and Unexpired Leases, (D) Approving the Form and Manner of the Notice of Assumption and Assignment of Executory Contracts and Unexpired Leases, (E) Schedule Auctions of for the Sales of the Company Assets~~



~~and Hearings to Consider Approval of the Sales and Approving the Form and Manner of the Notice Thereof, (F) Approving Certain Wind-Down Procedures, and (G) Granting Related Relief; and (II) An Order (A) Authorizing and Approving the Debtors' Entry into One or More Asset Purchase Agreements, (B) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of Liens, (C) Approving the Assumption and Assignment of the Assumed Executory Contracts and Unexpired Leases, and (D) Granting Related Relief (the "Kim Declaration")~~; and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 2002, 4001 and 9014; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved, or overruled by the Court; and 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 Second Interim Hearing, and this Court having found that authorization to use Cash Collateral as provided herein and the other terms of this Interim Order are otherwise fair and reasonable, in the best interests of the Debtors and their estates and essential for the continuation of the Debtors' business; and after due deliberation and consideration, and for good and sufficient cause appearing therefor; (the "First Interim Hearing"), after which the Court considered the Motion, and the evidence submitted at the First Interim Hearing, to consider entry of the Interim Order (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection, (III), Modifying the Automatic Stay, and (IV) Granting Related Relief [ECF No. 72] (the "First Interim Order"); and this Court having entered the First Interim Order which provides that if a second interim hearing is not necessary, the Court may enter another interim order approving the relief requested in the Motion on an interim basis without further hearing; and a stipulation having been filed contemporaneously herewith by the Debtors

and the Prepetition Secured Parties regarding such parties' agreement relating to use of Cash Collateral for a further interim period on the terms set forth herein (the "CC Stipulation"); and this Court having determined that the relief requested in the CC Stipulation and entry of this second interim order granting the Motion an on interim basis (this "Second Interim Order") is proper; and

**BASED UPON THE RECORD ESTABLISHED AT THE FIRST INTERIM HEARING AND THE CC STIPULATION, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

A. Jurisdiction and Venue. This Court has jurisdiction over the Chapter 11 Cases, the Motion, and the parties and property affected hereby 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 (the "Amended Standing Order"). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

B. Petition Date. On August 7, 2023, each of the Debtors filed a voluntary petition with this Court commencing cases under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases"). The Debtors continue to operate their business and manage their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in these Chapter 11 Cases.

C. Notice. Notice of the Motion and the Interim Hearing ~~has been~~was provided to: (a) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"); (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the United States Attorney's Office for the District of Delaware; (d) the Internal Revenue Service; (e) the state attorneys general for states in which the Debtors conduct business; (f) the

Securities and Exchange Commission; (g) counsel to the Second Lien Agent; (h) counsel to First Lien Agent; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. Under the circumstances, notice of the Motion, as it relates to this [Second Interim](#) Order, complies with the Bankruptcy Code and the Bankruptcy Rules, including, without limitation, sections 102(1) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 4001(b), (c), and (d), and 9014.

D. Cash Collateral. The Debtors require the use of Cash Collateral to operate their business and pay certain obligations.

E. Committee Formation. ~~Neither~~[On August 24, 2023, the U.S. Trustee appointed](#) an official committee of unsecured creditors (the “Creditors’ Committee”) ~~nor any other official committee (each, a “Committee”) has been appointed~~ in these Chapter 11 Cases [\[Docket No. 126\]](#).

F. Debtors’ Representations. ~~The Debtors represent as follows:~~ Stipulations. In requesting use of their Prepetition Collateral, including Cash Collateral, and in exchange for and as a material inducement to the Prepetition Secured Parties’ agreement to permit consensual use of their Prepetition Collateral, including Cash Collateral, the Debtors acknowledge, represent, stipulate, and agree, subject to the challenge rights set forth in Paragraph 7 below (but subject to the limitations thereon contained therein), as follows (collectively, the “Debtors’ Stipulations” or “Stipulations”):

(a) First Lien Credit Facility. As more fully described in the First Day Declaration and the Motion, on May 8, 2019, Debtor Proterra Operating Company, Inc. (f/k/a Proterra Inc) (“OpCo”) entered into that certain Loan, Guaranty and Security Agreement (as amended, amended and restated, supplemented or otherwise modified, the “Senior Credit

Agreement”), by and among OpCo, the lenders from time to time thereto (collectively, the “Prepetition First Lien Lenders”), the issuing bank(s) party thereto (the “Issuing Bank”), and Bank of America, N.A. (“Bank of America”), as administrative agent (the “First Lien Agent” and, together with the Prepetition First Lien Lenders and the Issuing Bank, the “Prepetition First Lien Secured Parties”), which provides for a revolving credit facility in the maximum principal amount of \$75.0 million, including a \$25.0 million letter of credit (the “First Lien Credit Facility”). As of the Petition Date, no amounts were outstanding under the First Lien Credit Facility, other than approximately \$21.9 million in face amount of issued and outstanding letters of credit (collectively, the “Prepetition Letters of Credit” and, together with the Senior Credit Agreement, the “Prepetition First Lien Loan Documents”). As security for OpCo’s obligations under, and pursuant to the terms of, the Senior Credit Agreement (the “Prepetition First Lien Obligations”), OpCo granted to the First Lien Agent for the benefit of the Prepetition First Lien Secured Parties valid and perfected first priority liens and security interests (the “Prepetition First Liens”) on substantially all of OpCo’s assets (collectively, the “Prepetition Collateral”), including OpCo’s cash, accounts receivable, and inventory, but excluding certain assets expressly excluded from “Collateral” under the terms of the Senior Credit Agreement, including fee-owned real property, any leasehold interests in real property and certain related assets and improvements thereon.

(b) Second Lien Convertible Notes. On August 4, 2020, OpCo entered into that certain Note Purchase Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, including by that certain Amendment No. 1 to Secured Convertible Promissory Notes and Note Purchase Agreement dated August 31, 2020 and that certain Amendment No. 2 to Secured Convertible Promissory Notes and Note Purchase

Agreement dated March 31, 2023 (together, the “Note Amendment”), the “Note Purchase Agreement”) by and among OpCo, the investors from time to time party thereto (the “Second Lien Convertible Noteholders” and collectively with the Second Lien Agent (as defined below), the “Prepetition Second Lien Secured Parties”, together with the Prepetition First Lien Secured Parties, the “Prepetition Secured Parties”), the guarantors, if any, from time to time party thereto and CSI GP I LLC, as collateral agent (the “Second Lien Agent,” and, together with the First Lien Agent, the “Agents”). As of the Petition Date, there ~~is~~was not less than \$177.2 million in principal amount of convertible notes (as amended by the Note Amendments, the “Second Lien Convertible Notes”) outstanding under the Note Purchase Agreement and Second Lien Convertible Notes.<sup>3</sup>

(c) Second Lien Security Agreement. In connection with the Note Purchase Agreement and to secure its obligations under the Second Lien Convertible Notes (the “Prepetition Second Lien Obligations” and, together with the Prepetition First Lien Obligations, the “Prepetition Obligations”), OpCo entered into that certain Security Agreement, dated as of August 4, 2020 (as amended, amended and restated, supplemented or otherwise modified, the “Second Lien Security Agreement” and, collectively with the Note Purchase Agreement, Second Lien Convertible Notes, and any documents executed in connection with the foregoing, the

<sup>3</sup> The Prepetition Second Lien Secured Parties believe that there may be in excess of \$265 million in principal amount of convertible notes outstanding under the Note Purchase Agreement and Second Lien Convertible Notes and continue to evaluate whether certain amounts have come due and owing under the Note Purchase Agreement and Second Lien Convertible Notes. The Debtors disagree. ~~This Interim Order does not prejudice~~Notwithstanding anything in this Second Interim Order to the contrary, nothing in this Second Interim Order shall be deemed to waive, adjudicate, enter a finding of fact or conclusion of law with respect to, or otherwise prejudice any argument by any party (or the ability of any party to ~~argue~~make any such argument) regarding: (a) whether the principal amount due and owing under the Note Purchase Agreement and Second Lien Convertible Notes is, or is not, in excess of \$177.2 million; or (b) the extent which any party has, or does not have, any valid unavoidable claim (as defined in section 101 of the Bankruptcy Code) against the Debtors on account of, or related to, Section 2.2 of each of the Second Lien Convertible Notes (Payment upon a Liquidation Event or Deemed Liquidation Event) (any such claim or claims, individually and collectively, a “Liquidation Payment Amount Claim”).

“Prepetition Second Lien Documents”) by and between OpCo, as Grantor, and the Second Lien Agent, as Collateral Agent under the Note Purchase Agreement. In accordance with the Second Lien Security Agreement, OpCo granted valid and perfected second priority liens and security interests (the “Prepetition Second Liens,” **together with the Prepetition First Liens, the “Prepetition Liens”**) to the Second Lien Agent, as security for the Prepetition Second Lien Obligations, in the Prepetition Collateral.

(d) Intercreditor Agreement. The First Lien Agent and the Second Lien Agent (~~collectively, the “Agents”~~) are parties to that certain Intercreditor Agreement, dated as of August 4, 2020 (as amended, amended and restated, supplemented or otherwise modified, the “Intercreditor Agreement” and, together with the Prepetition First Lien Loan Documents and Prepetition Second Lien Documents, the “Prepetition Loan Documents”), which governs the respective rights and remedies of the First Lien Agent and the Second Lien Agent with respect to the Prepetition Collateral.

**(e) as of the Petition Date, pursuant to the Prepetition Second Lien Documents and applicable law, the Prepetition Second Lien Secured Parties hold valid, enforceable, secured, and allowable claims against the Debtors in an aggregate principal amount no less than \$177.2 million, plus any and all other accrued and unpaid interest, fees, expenses (including advisors fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition Second Lien Documents), disbursements, charges, claims, indemnities and other costs and obligations of whatever nature incurred in connection therewith, in each case which are chargeable or otherwise reimbursable under the Prepetition Second Lien Documents and applicable law (such non-principal amounts, collectively, the “Additional Second Lien Amounts”), but excluding (i) any Liquidation**

Payment Amount Claim, (ii) any Additional Second Lien Amounts not chargeable or otherwise reimbursable under the Prepetition Second Lien Documents on account of their relationship to any Liquidation Payment Amount Claim and (iii) any Additional Second Lien Amounts representing default interest not chargeable or otherwise reimbursable under the Prepetition Second Lien Documents or otherwise disallowed by a final, non-appealable order of a court of competent jurisdiction (the foregoing obligations described in this Paragraph, the “Agreed Second Lien Obligations”);<sup>4</sup>

(f) all of the Agreed Second Lien Obligations constitute the legal, valid, binding and unconditional obligations of the Debtors to the Prepetition Second Lien Secured Parties, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code);

(g) no portion of the Agreed Second Lien Obligations or any payments made to the Prepetition Secured Parties or applied to or paid on account of the obligations owing under the Prepetition Loan Documents prior to the Petition Date is subject to any contest, avoidance, reduction, recharacterization, subordination (whether equitable, contractual or otherwise), recovery, reduction, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross-claim, set-off, offset, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any kind or nature under the Bankruptcy Code or any other applicable law or

<sup>4</sup> As noted above, the Prepetition Second Lien Secured Parties believe that there may be in excess of \$265 million in principal amount of convertible notes outstanding under the Note Purchase Agreement and Second Lien Convertible Notes. Nothing in this Second Interim Order, however, shall be deemed to waive, adjudicate, enter a finding of fact or conclusion of law with respect to, or otherwise prejudice any argument by any party (or the ability of any party to make any such argument) regarding: (a) whether the principal amount due and owing under the Note Purchase Agreement and Second Lien Convertible Notes is, or is not, in excess of \$177.2 million; or (b) the extent which any party has, or does not have, any valid unavoidable Liquidation Payment Amount Claim.

regulation or otherwise and the Debtors do not possess, and shall not assert, any claim, counterclaim, setoff or defense of any kind, nature or description that would in any way affect the validity, enforceability and non-avoidability of any Agreed Second Lien Obligations or Prepetition First Lien Obligations;

(h) the Prepetition First Lien Obligations are secured by continuing, legal, valid, binding, properly perfected, enforceable, non-avoidable first priority liens on and security interests in all of the Prepetition Collateral, which Prepetition First Liens (i) are not subject to any contest, avoidance, recharacterization, subordination (whether equitable, contractual or otherwise) (except as expressly set forth in subclause (ii) below), recovery, reduction, attachment, recoupment, disallowance, impairment, rejection, attack, effect, counterclaim, cross claim, set-off, offset, challenge, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any nature under the Bankruptcy Code or any other applicable law or regulation or otherwise; and (ii) are and remain senior in priority over any and all other liens on and security interests in the Prepetition Collateral, subject only to the Carve-Out and Senior Permitted Liens (as defined below).

(i) the Prepetition Second Lien Obligations are secured by continuing, legal, valid, binding, properly perfected, enforceable, non-avoidable second priority liens on and security interests in all of the Prepetition Collateral, which Prepetition Second Liens (i) secure, at a minimum, all of the Agreed Second Lien Obligations, (ii) are not subject to any contest, avoidance, recharacterization, subordination (whether equitable, contractual or otherwise) (except as expressly set forth in subclause (iii) below), recovery, reduction, attachment, recoupment, disallowance, impairment, rejection, attack, effect,



counterclaim, cross claim, set-off, offset, challenge, defense or any other claim (as defined in the Bankruptcy Code) of any kind, cause of action or any other challenge of any nature under the Bankruptcy Code or any other applicable law or regulation or otherwise; and (iii) are and remain senior in priority over any and all other liens on and security interests in the Prepetition Collateral, subject only to Prepetition First Liens, the Senior Adequate Protection Liens, the Carve-Out and Senior Permitted Liens (as defined below);

(j) the Prepetition Secured Parties duly perfected the Prepetition Liens in the Prepetition Collateral by, among other things, filing financing statements, and, where necessary, possessing the relevant instruments, certificates, or other property;

(k) as of the Petition Date, all or substantially all of the Debtors' cash, including the cash in their deposit accounts and other accounts, wherever located, whether as original collateral or proceeds of collateral, constitutes Cash Collateral (as defined below) and is Prepetition Collateral of the Prepetition Secured Parties;

(l) none of the Prepetition Secured Parties constitutes a control person or insider of the Debtors by virtue of any of the actions taken by any of them in respect of or in connection with (a) making the decision to consent to the use of Cash Collateral, (b) extending other financial accommodations to the Debtors under this Second Interim Order, (c) making the decision to make the loans and financial accommodations under the Prepetition Loan Documents, (d) administering the loans and financial accommodations extended under the Prepetition Loan Documents, (e) extending other financial accommodations to the Debtors under the Prepetition Loan Documents, or (f) making the decision to collect the indebtedness and obligations of the Debtors, and the Prepetition

Secured Parties are not exercising control over any operations of the Debtors or acting in any way as a responsible person, or as an owner or operator under any applicable law; and

(m) the Prepetition Secured Parties are entitled, pursuant to sections 361, 362(c)(2), 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their respective interests in the Prepetition Collateral, including the Cash Collateral, to the extent set forth herein, in exchange for (a) the use of Cash Collateral, (b) the subordination of the Prepetition Obligations to the Carve Out, and (c) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code.

G. Relief Requested. By the Motion, the Debtors requested authority to use Cash Collateral through the Termination Date (as defined below) on the terms and conditions set forth herein.

H. Necessity for Relief Requested; Immediate and Irreparable Harm. The Debtors have requested immediate entry of this Second Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The Debtors' continued access to sufficient liquidity through the use of Cash Collateral is critical to their ability to operate their business, maximize the value of their estates, and facilitate a successful reorganization, the absence of which would result in immediate and irreparable harm to the Debtors, their estates, and their creditors. Without the continued use of Cash Collateral, the Debtors would not have sufficient available sources of working capital to pay payroll and other operating expenses, maintain their assets, administer the Chapter 11 Cases or proceed with their reorganization or sale efforts, to the severe detriment of their estates and creditors. Accordingly, ~~the~~ further interim relief as requested in the Motion is necessary, essential, and appropriate to avoid immediate and irreparable harm to the Debtors and for the continued operation of Debtors' business and the management and preservation of their assets.

I. Good Cause. Good cause has been shown for entry of this [Second](#) Interim Order, and the entry of this [Second](#) Interim Order is in the best interests of the Debtors and their estates and creditors. Among other things, the relief granted herein will minimize disruption of the Debtors' business and permit the Debtors to meet payroll and other expenses necessary to continue operations. The terms of the Debtors' use of Cash Collateral and proposed adequate protection arrangements, as set forth in [the First Interim Order and](#) this [Second](#) Interim Order, are fair and reasonable under the circumstances, and reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

**BASED UPON THE FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:**

1. Approval of Motion. The relief requested in the Motion is granted on an interim basis as set forth herein. Except as otherwise expressly provided in this [Second](#) Interim Order, any objection to the entry of this [Second](#) Interim Order that has not been withdrawn, waived, resolved or settled, is hereby denied and overruled on the merits, but without prejudice to relief that may be granted on a final basis.

2. Authorization to Use Cash Collateral. Pursuant to the terms and conditions of this [Second](#) Interim Order, the Debtors are authorized to use Cash Collateral in a manner consistent with their ordinary course of business or as otherwise authorized by the Bankruptcy Court after notice and a hearing for the period (the "Specified Period") from the Petition Date through the Termination Date ~~(as defined below)~~.

3. Termination Date. The Debtors' authorization to use Cash Collateral (other than to fund the Carve-Out as provided below) pursuant to this [Second](#) Interim Order shall terminate upon the earliest to occur of (the "Termination Date"): (i) 5:00 p.m. (prevailing Eastern Time) on ~~the 14th day after entry of this Interim Order~~ [September 10, 2023](#) (the "Interim Period"),

*provided* that if a further interim order or final order is entered prior thereto, the Debtors' authorization to use Cash Collateral shall continue to the extent provided for therein; and (ii) subject to Paragraph 6 hereof, upon the expiration of the Termination Notice Period following the occurrence and continuance of an Event of Default (as defined below) beyond the Cure Period (as defined below), ~~as if~~ applicable; *provided* that the Debtors can extend the Interim Period with the prior written consent of each of the Agents (which consent can be provided through email from counsel to the Agents); *provided* that if the Interim Period is extended in accordance with this ~~Section~~Paragraph 3, the Debtors shall file a notice of such extension on the docket of these Chapter 11 Cases reasonably promptly.

4. Adequate Protection. The Prepetition Secured Parties are hereby granted the following (collectively, the Adequate Protection Obligations):

(a) Senior Adequate Protection Liens. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for any postpetition diminution in value of the First Lien Agent's interest (solely to the extent that such interests are valid, binding, enforceable, non-avoidable, and perfected as of the Petition Date) in the Prepetition Collateral (including the Cash Collateral) to the fullest extent provided for in the Bankruptcy Code (the "First Lien Diminution in Value"), the First Lien Agent for the benefit of the Prepetition First Lien Secured Parties is hereby granted additional and replacement liens (the "Senior Adequate Protection Liens") on any and all presently owned and hereafter acquired personal property, real property, and all other assets of the Debtors, together with any proceeds thereof (collectively, the "Post-Petition Collateral"), having the priority set forth in ~~paragraph~~Paragraph 4(c) below. Notwithstanding the foregoing, the Post-Petition Collateral shall not include any causes of action under chapter 5 of the Bankruptcy Code ~~or the proceeds thereof~~ (collectively, "Avoidance

Actions”) but, subject to entry of a Final Order (as defined below), shall include any proceeds thereof.

(b) Junior Adequate Protection Liens. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection for any postpetition diminution in value of the Second Lien Agent’s interests (solely to the extent that such interests are valid, binding, enforceable, non-avoidable, and perfected as of the Petition Date) in the Prepetition Collateral (including the Cash Collateral) to the fullest extent permitted by the Bankruptcy Code (the “Second Lien Diminution in Value”), the Second Lien Agent for the benefit of the Prepetition Second Lien Secured Parties is hereby granted additional and replacement liens (the “Junior Adequate Protection Liens,” and collectively with the Senior Adequate Protection Liens, the “Adequate Protection Liens”) on the Post-Petition Collateral, having the priority set forth in ~~paragraph~~Paragraph 4(c) below.

(c) Priority of Adequate Protection Liens.

(i) The Senior Adequate Protection Liens on the Post-Petition Collateral shall be junior only to (A) any lien that was validly perfected and unavoidable as of the Petition Date (or subsequently perfected in accordance with section 546 of the Bankruptcy Code) and senior in priority to the Prepetition Liens (collectively, the “Senior Permitted Liens”) and (B) the Carve-Out (as defined below). Subject to the Intercreditor Agreement, the Senior Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, or claims against any of the Post-Petition Collateral.

(ii) Subject to the Intercreditor Agreement, the Junior Adequate Protection Liens on the Post-Petition Collateral shall be junior only to the (A) Prepetition First Liens, (B) Senior Adequate Protection Liens, (C) Prepetition Second Liens, (D) Senior Permitted

Liens, and (E) the Carve-Out. The Junior Adequate Protection Liens shall otherwise be senior to all other security interests in, liens on, and claims against any of the Post-Petition Collateral.

(iii) The Adequate Protection Liens shall be automatically perfected, valid, and enforceable against and binding upon the Debtors, their estates, and any successors thereto, and the parties shall not be required to enter into any additional security agreements to create, memorialize, and/or perfect any such liens, or to file financing statements, mortgages, or other instruments with any other filing authority or take any other action to perfect any such Adequate Protection Liens. If, however, the First Lien Agent or Second Lien Agent, in their sole and absolute discretion shall elect for any reason to enter into, file, record or serve any such financing statements or other documents with respect to any such Adequate Protection Liens, then the Debtors shall execute same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time and on the date of the docket entry of ~~this~~the First Interim Order.

(iv) Subject in all respects to the Carve Out (as defined herein), the Adequate Protection Liens shall not be subject to sections 506(c) (upon entry of a Final Order), 510 (other than as provided in the Intercreditor Agreement), 549, 550, or 551 of the Bankruptcy Code. Subject to Paragraph 7 hereof, the Adequate Protection Liens shall be enforceable against and binding upon the Debtors, their estates and any successors thereto, including, without limitation, any trustee or other estate representative appointed in the Debtors' Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon the conversion of any of the Debtors' Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (each, a "Successor Case").

(d) Adequate Protection Superpriority Claims.

(i) Senior Adequate Protection Superpriority Claim. As further adequate protection, the First Lien Agent for the benefit of the First Lien Secured Parties is hereby granted, to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Chapter 11 Cases to the extent of any postpetition First Lien Diminution in Value (the “Senior Adequate Protection Superpriority Claim”), senior to all other administrative claims, other than the Carve-Out, and shall otherwise be subject to the Intercreditor Agreement.

(ii) Junior Adequate Protection Superpriority Claim. As further adequate protection, the Second Lien Agent is hereby granted, to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Chapter 11 Cases to the extent of any postpetition Second Lien Diminution in Value (the “Junior Adequate Protection Superpriority Claim” and with the Senior Adequate Protection Superpriority Claim, the “Adequate Protection Superpriority Claims”), senior to all other administrative claims, other than the Senior Adequate Protection Superpriority Claim and the Carve-Out, and otherwise subject to the Intercreditor Agreement.

(e) Adequate Protection Payments. Solely until the Termination Date, the Debtors shall pay to the Second Lien Agent for the benefit of the Prepetition Second Lien Secured Parties all accrued and unpaid interest (including, for the avoidance of doubt, interest accruing and becoming due after the Petition Date) in the form of (i) periodic cash payments at the non-default rate and (ii) payment of interest in kind (“PIK Interest”) at the non-default rate,<sup>45</sup>

<sup>45</sup> Nothing in this Second Interim Order shall prejudice (a) any argument by the Prepetition Second Lien Secured Parties that their claims under the Note Purchase Agreement include claims for PIK Interest at the default rate calculated from the Petition Date or (b) any argument of the Debtors opposing any such claim.

in each case ((i) and (ii)), when such payments would have been due under the Notes Purchase Agreement without regard to any acceleration of the Second Lien Convertible Notes on account of the commencement of these Chapter 11 Cases (the “Adequate Protection Payments”).

(f) Reporting.

(i) The “Revised Initial Budget” is attached hereto as **Exhibit A** and constitutes the “Budget.” Not later than the last business day of the first full four-week period following the Petition Date (and each four-week period thereafter), the Debtors shall provide the Agents with the Debtors’ estimate of cash receipts and cash disbursements for the following thirteen (13) weeks, with detail consistent with the Revised Initial Budget (each, a “Proposed Budget”). **For the avoidance of doubt, the first Proposed Budget following the Revised Initial Budget shall be delivered no later than September 8, 2023.** Upon approval by each of the Agents (not to be unreasonably withheld), such Proposed Budget shall become the “Budget” **for the period covered thereby**; *provided*, that such Proposed Budget shall automatically become the Budget if not expressly rejected by an Agent (email being sufficient) within three business days. In addition, not later than **August 23rd, 2023, and not later than** the third business day of ~~the second full week following the Petition Date and~~ each week thereafter, the Debtors shall provide the Agents with a report, as of the preceding Saturday of each such week, comparing actual cash receipts and disbursements for such immediately preceding week (as well as cumulative to the Petition Date) to the estimated cash receipts and disbursements for such week or cumulative period reflected in the Budget (such reports, each a “Weekly Cash Report”). ~~For the avoidance of doubt, the first Weekly Cash Report will be due on August 23, 2023.~~

(ii) Further, the Debtors shall provide: (a) reports to the First Lien Agent as required under Sections 8.1, 8.2.1, and 8.3.1 of the Senior Credit Agreement,



(b) reports to the Second Lien Agent as required under the Prepetition Second Lien Documents to the extent the Debtors have been providing such reports on a regular basis prior to the Petition Date, (c) such other financial reports that are reasonably requested by any of the Agents or any of their representatives and agents, (d) the Debtors shall cause their representatives and agents to make themselves reasonably available to discuss the Debtors' affairs, financial condition, properties, business, operations, and accounts with the representatives and agents of the Agents, and (e) the Debtors shall permit, ~~on one occasion to be mutually agreed,~~ representatives of the Agents to visit and inspect the Prepetition Collateral ~~and tour the Debtors' business premises and other properties during business hours, on reasonable advance notice, and subject to customary security and escort requirements.~~ on a one time basis prior to the Termination Date (and more frequently after the Termination Date as permitted in accordance with Section 7.1(b) of the Note Purchase Agreement).

(iii) Each document delivered to the Agents pursuant to this Paragraph 4(f) shall also be delivered via email to counsel thereto, Holland & Knight LLP, Attn: Robert Jones (robert.jones@hklaw.com) and Brent McIlwain (brent.mcilwain@hklaw.com), and Sidley Austin LLP, Attn: Thomas R. Califano (tom.califano@sidley.com), Dennis M. Twomey (dtwomey@sidley.com), and Jackson T. Garvey (jgarvey@sidley.com), and Pachulski Stang Zhiel & Jones LLP, Attn: Laura Davis Jones (ljones@pszjlaw.com).

(g) Insurance. The Debtors shall maintain casualty and loss insurance coverage for the Prepetition Collateral no less favorable to the Prepetition Secured Parties than the coverage maintained prepetition.

(h) Postpetition Fees & Expenses.

(i) As further adequate protection, but subject in all respects to Paragraph 4(~~g~~h)(ii) below, solely until the Termination Date, the Debtors shall pay or reimburse (i) the First Lien Agent for all reasonable and documented fees and out-of-pocket expenses incurred by it (including the reasonable and documented fees and out-of-pocket expenses of counsel to the First Lien Agent) in connection with the Chapter 11 Cases, including the reasonable cost of any audits/field exams of the Prepetition Collateral, in an amount not to exceed \$60,000, whether incurred prior to or after the Petition Date, and (ii) the Second Lien Agent for all reasonable and documented fees and out-of-pocket expenses incurred by it (including the reasonable and documented fees and out-of-pocket expenses of counsel and a financial advisor (including any success fee earned by such financial advisor on terms reasonably acceptable to the Debtors)) (collectively, the “Second Lien Advisors”) to the Second Lien Agent in connection with these Chapter 11 Cases).

(ii) None of the fees and expenses payable pursuant to this Paragraph 4(h) shall be subject to separate approval by this Court, but the Agents shall provide copies of any such invoices to the U.S. Trustee, the Debtors, and the Committee (the “Notice Parties”). The invoices for such fees and expenses may be in summary form only (provided that they include sufficient detail to demonstrate reasonableness), and shall not be subject to application or allowance by the Court. The Notice Parties may object to the reasonableness of such fees and expenses within ten (10) ~~Business Days~~business days of the receipt of an invoice detailing such fees and expenses, and this Court shall resolve any dispute as to the reasonableness of any such fees and expenses that cannot be consensually resolved, and any professionals retained by the First Lien Agent and Second Lien Agent, as applicable, in

connection herewith shall not be required to file any interim or final fee application with respect thereto. Promptly following the completion of the ten (10) ~~Business Day~~business day objection period (the “Fee Objection Period”), if no objection is made or following the resolution of any dispute regarding the fees and expenses payable pursuant to this paragraph, the Debtor shall pay the professional fees and expenses provided for in this paragraph within two (2) ~~Business Days~~business days. To the extent any of the Notice Parties in good faith believe an invoice for fees and expenses is unreasonable (the disputed portion of any such invoice, a “Disputed Invoice”), the Debtors, the applicable Notice Party, and the applicable Agent shall meet and confer regarding the Disputed Invoice. If the parties are unable to resolve any dispute regarding a Disputed Invoice within five (5) ~~Business Days~~business days after meeting and conferring, any such party may request that this Court adjudicate the dispute. For the avoidance of doubt, the undisputed portion of any Disputed Invoice shall be paid within five (5) ~~Business Days~~business days after the completion of the Fee Objection Period regardless of any ongoing dispute resolution pertaining to such Disputed Invoice.

(i) Letters of Credit. ~~As soon as practicable, the~~The Debtors shall cash collateralize the Prepetition Letters of Credit by depositing funds in an amount equal to 103% of the face amount of the Prepetition Letters of Credit into a segregated account with the First Lien Agent on customary terms that are reasonably acceptable to the First Lien Agent (the “L/C Cash Collateral”). The First Lien Agent shall be authorized to draw upon such L/C Cash Collateral and apply the L/C Cash Collateral to the obligations under the First Lien Credit Facility if there is a corresponding draw upon the Prepetition Letters of Credit (and to pay letter of credit fees that come due in accordance with the Senior Credit Agreement), in either case, without the need for any further order of this Court (including to modify the automatic stay).

5. Events of Default. The occurrence of any of the following events during the Interim Period, unless waived by the First Lien Agent and the Second Lien Agent in writing, shall constitute an event of default hereunder (each, an “Event of Default”):

(a) The Debtors’ failure to perform, in any material respect, any of their obligations under ~~the~~this Second Interim Order;

(b) Upon the Debtors’ delivery of each Weekly Cash Report in accordance with ~~Section~~Paragraph 4(f)(i) of this Second Interim Order, the amount of the Debtors’ actual aggregate operating disbursements for the period commencing on the Petition Date and ending on the last date reflected in the ~~last~~most recent Weekly Cash Report (the “Testing Period”), as reflected in the Weekly Cash Reports, exceeds the amount of the projected aggregate operating disbursements on a cumulative basis as set forth in the Budget for ~~the~~such Testing Period by more than fifteen percent (15%) (any variance not exceeding such maximum permitted variance, a “Permitted Variance”);

(c) Dismissal of any of the Chapter 11 Cases or conversion of any of the Chapter 11 Cases to chapter 7 or the Debtors’ application for any such dismissal or conversion (and such application is not withdrawn within five (5) days of the filing thereof);

(d) The appointment of a chapter 11 trustee or examiner with expanded powers in any of the Chapter 11 Cases unless the Court orders otherwise;

(e) The failure of the Debtors to make any payment under this Second Interim Order to either Agent when due;

(f) The Court shall have entered an order reversing, amending, supplementing, staying, vacating, or otherwise modifying this Second Interim Order in a manner

materially adverse to the Prepetition Secured Parties without the prior written consent of each of the Agents;

(g) This Second Interim Order ceases, for any reason (other than by reason of the express written agreement by the Agents or the supersession of this Second Interim Order by the Final Order), to be in full force and effect in any material respect, or any Debtor so asserts in writing, or the Adequate Protection Liens or Adequate Protection Superpriority Claims created by this Second Interim Order cease in any material respect to be enforceable and of the same effect and priority purported to be created hereby or any Debtor so asserts in writing;

(h) The date of the Debtors' filing an application, motion, or other pleading for the approval of any superpriority claim or any lien in these Chapter 11 Cases that is pari passu with or senior to the Adequate Protection Superpriority Claims or the Adequate Protection Liens without the prior written consent of the Prepetition Secured Parties;

(i) The date any of the Debtors files any pleading or commences any action against the Prepetition Secured Parties challenging the validity or enforceability of the Prepetition Obligations or the Prepetition Liens or seeking to avoid, disallow, subordinate, or recharacterize any claim, lien, or interest held by any of the Prepetition Secured Parties arising under or related to the Prepetition Obligations (or if the Debtor supports any such motion, pleading, application or adversary proceeding commenced by any third party); *provided* that nothing herein shall prohibit the Debtors from filing any motion or pleading or commencing or continuing any action (a) seeking authorization to use cash collateral ~~and~~, including by making any argument that the principal amount owed under the Prepetition Second Lien Documents as of the Petition Date is limited to ~~\$177.2 million~~ the Agreed Second Lien Obligations in connection therewith, ~~and~~ or (b) with regard to good faith disputes over the payment of

expenses and fees, and in each case ((a) and (b)), no such filing shall constitute an Event of Default hereunder; *provided, further*, nothing herein shall be deemed to be an acknowledgment, representation, or agreement by the Debtors ~~of~~ with respect to the Prepetition Secured Parties' liens or claims; ~~provided, further, nothing herein shall be deemed to be an acknowledgment by the Debtors of the Prepetition Secured Parties' liens or claims,~~ other than, but subject in all respect to the entry terms of any further interim or final order, as expressly set forth in ~~Paragraph F of the Interim Order (Debtors' Representations)~~ Stipulations;

(j) The Court shall have entered an order terminating the Debtors' exclusivity under Bankruptcy Code section 1121, unless consented to in writing by the Agents; ~~and~~

(k) The Court shall have entered an order granting relief from the automatic stay to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any of the Prepetition Collateral or Adequate Protection Collateral which has an aggregate value in excess of \$500,000.;

(l) The filing of any pleading by any Debtor opposing, or in support of any other person's opposition to, any motion filed in the Court by any Agent or Prepetition Secured Party seeking confirmation of the amount of its claims or the validity or enforceability of the Prepetition Liens or the Adequate Protection Liens, except any pleading with regard to (a) good faith disputes over the payment of expenses and fees or (b) the Prepetition Second Lien Secured Parties' claims being limited to the Agreed Second Lien Obligations, and in each case ((a) and (b)), no such filing shall constitute an Event of Default hereunder; and

(m) Any lien, claim, interest or priority status, other than the Carve Out and any Senior Permitted Liens, having a lien or administrative priority superior to or pari

passu with that of the Adequate Protection Superpriority Claims, the Prepetition Liens, or the Adequate Protection Liens shall be granted while any portion of the Adequate Protection Superpriority Claims remain outstanding, without the prior written consent of the Agents; provided, that notwithstanding anything in this Second Interim Order to the contrary, an Event of Default shall not be deemed to occur if the Debtors seek approval of debtor in possession financing, including, without limitation, debtor in possession financing which primes existing liens, to the extent (i) such debtor in possession financing provides for payment in full of the Adequate Protection Obligations or (ii) the Agents otherwise provide their prior written consent.

Upon the occurrence and during the continuation of any Event of Default (other than an Event of Default under Paragraphs 5(c), (d), (f), (g), ~~or (i), or (l)~~), the First Lien Agent or the Second Lien Agent may deliver a written notice of an Event of Default (a “Default Notice”), which Default Notice shall be given by email to counsel to the Debtors, counsel to the First Lien Agent, counsel to the Second Lien Agent, the U.S. Trustee, and counsel to any Committee. The Debtors shall have ~~five~~two (52) business days from the date of delivery of such Default Notice to cure such noticed Event of Default (the “Cure Period”), ~~and the Debtors’ authorization to use Cash Collateral pursuant to this Interim Order shall cease if the Event of Default is not cured by the end of the Cure Period (other than with respect to the Carve-Out), unless otherwise ordered by the Court.~~ The Cure Period shall not apply to any Event of Default under Paragraphs 5(c), (d), (f), (g), ~~or (i), (i), or (l)~~. If an Event of Default is not cured by the end of the Cure Period (other than with respect to the Carve-Out), then the procedures set forth in Paragraph 6 shall apply with respect to the Debtors’ continued authorization to use Cash Collateral pursuant to this Second Interim Order.

6. Rights and Remedies upon Event of Default. Upon the occurrence and during the continuation of an Event of Default (after giving effect to any relevant Cure Period), notwithstanding the provisions of Bankruptcy Code section 362, either Agent may (a) provide notice to the Debtors (such notice, a “Termination Notice”) that (i) their consent to use Cash Collateral pursuant hereto will terminate at the end of the Termination Notice Period (as defined below) (other than with respect to the Carve-Out) and/or (ii) the application of the Carve Out has occurred as provided in Paragraph 9 below and/or (b) file an appropriate pleading with the Court and seek an emergency hearing on notice for relief from the automatic stay to exercise rights and remedies to the extent available in accordance with the applicable Prepetition Loan Documents, this Second Interim Order, and applicable law, and the Debtors shall not oppose the holding of such emergency hearing. Five (5) business days after a Termination Notice has been delivered (the “Termination Notice Period”), unless otherwise ordered or extended by the Court, the Debtors’ authorization to use the Agents’ cash collateral pursuant to this Second Interim Order shall terminate (other than with respect to the Carve-Out). During the Termination Notice Period, the Debtors, any Creditors’ Committee, and/or any party in interest shall be entitled to seek an emergency hearing with the Court and the Prepetition Secured Parties shall not oppose such emergency hearing for the purpose of contesting, among other things, whether an Event of Default has occurred or is continuing or seeking approval for the non-consensual use of Cash Collateral, and the Termination Notice Period shall be automatically extended (and the Debtors’ authorization to use Cash Collateral shall continue in accordance herewith) to the extent reasonably necessary to accommodate the Court’s schedule to hold such an emergency hearing and adjudicate the dispute. Unless



the Court orders otherwise, the automatic stay, as to the Prepetition Secured Parties (solely with respect to the use of Cash Collateral to the extent permitted hereunder) shall automatically be terminated at the end of the Termination Notice Period without further notice or order. Notwithstanding anything to the contrary herein, upon the declaration of an Event of Default, the delivery of a Termination Notice, the expiration of the Termination Notice Period or the occurrence of the Termination Date, all of the rights, remedies, benefits, and protections provided to the Prepetition Secured Parties under this Second Interim Order shall survive. Neither section 105 of the Bankruptcy Code nor any other provision of the Bankruptcy Code or applicable law shall be utilized to prohibit the exercise, enjoyment and enforcement of any rights, benefits, privileges and remedies set forth in this paragraph.

7. Binding Effect of Stipulations; Challenge Period. The Debtors' Stipulations are immediately binding on the Debtors. Each Stipulation is binding on all parties-in-interest, including any trustee appointed in the Chapter 11 Cases or any Successor Case) for all purposes unless the Committee, or any creditor or other party-in-interest (in either case which has obtained the requisite standing) timely commences an adversary proceeding, or files a motion requesting standing to file an adversary proceeding and attaching the adversary complaint such party-in-interest seeks standing to file, against the applicable Prepetition Secured Parties for the purpose of challenging the validity, extent, priority, perfection and enforceability of the prepetition secured debt under the applicable Prepetition Loan Documents, or the liens, claims and security interests in the Prepetition Collateral in favor of the applicable Prepetition Secured Parties, or otherwise asserting any claims or causes of action against the

applicable Prepetition Secured Parties on behalf of the Debtors' estates (a "Challenge") and to the extent such Challenge is successful. In the event of a successful Challenge, all of the Debtors' Stipulations shall be deemed to be binding on the Debtors and all parties-in-interest, including with respect to the validity, extent, priority, perfection and enforceability of the prepetition secured debt under the Prepetition Loan Documents or the liens, claims and security interests in the Prepetition Collateral in favor of the Prepetition Secured Parties, except to the extent explicitly set forth in any order of this Court sustaining such successful Challenge. Nothing contained in this Second Interim Order is deemed to confer standing on any Committee or any other party in interest to commence such an adversary proceeding. A Challenge is timely if it is commenced or filed, as applicable:

- i) in the case of the Creditors' Committee (or any other committee appointed in the Chapter 11 Case), no later than 75 days after entry of this Second Interim Order;
- ii) in the case that a chapter 7 or chapter 11 trustee is appointed or elected within 60 days after the Petition Date (including following a conversion of these Chapter 11 Cases to cases under chapter 7), then in the case of such chapter 7 or chapter 11 trustee, no later than the longer of 60 days from the Petition Date or 30 days from the appointment of such chapter 7 or chapter 11 trustee; or
- iii) in the case of any other party in interest, no later than 60 days after the Petition Date,

((i) through (iii), collectively, the "Challenge Period"). In the event that there is a timely successful Challenge brought pursuant to this Paragraph 7, the Court shall retain jurisdiction to fashion an appropriate remedy.

8. Modification of Automatic Stay. The automatic stay under section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to effectuate all of the terms and provisions of this Second Interim Order, including, without limitation, to: (a) permit the Debtors to grant the Adequate Protection Obligations; (b) permit the Debtors to perform such acts as the Prepetition Secured Parties may request to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the Prepetition Secured Parties under this Second Interim Order; and (d) authorize the Debtors to pay, and the Prepetition Secured Parties to retain and apply, any payments made in accordance with the terms of this Second Interim Order.

69. Carve-Out. (a) For purposes of this Order, the “Carve-Out” shall mean: (i) fees owing to the ~~United States~~ U.S. Trustee incurred in connection with the Chapter 11 Case, (ii) fees and expenses of a chapter 7 trustee in an amount not to exceed \$25,000, (iii) professional fees, expenses and disbursements incurred by professional persons employed by the Debtors or any Committee (including any fees and expenses of the members of any Committee) (“Professional Fees”) at any time prior to the Termination Date (the “Pre-Trigger Carve-Out”) and (iv) Professional Fees incurred after the Termination Date in an amount not to exceed \$4,000,000 (the “Post-Trigger Date Carve-Out”).

(b) The Debtors shall be authorized to transfer cash-on-hand from time to time in the amount equal to the total budgeted fees and expenses of the Estate Professionals for the subsequent two-week period in the Budget (plus any true-up necessary for prior periods) into a segregated account not subject to the control of the Prepetition Secured Parties (the “Professional Fee Escrow”). The Debtors shall be authorized to use funds held in the Professional Fee Escrow to pay Professional Fees as they become allowed and payable pursuant

to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any applicable interim or final orders of this Court; *provided*, that the Debtors' obligations to pay allowed Professional Fees shall not be limited or be deemed limited to funds held in the Professional Fee Escrow.

Upon the delivery of a ~~Default Notice (or upon the occurrence of any Event of Default under Paragraphs 5(c), (d), (f), (g) or (i))~~ Termination Notice, the Debtors shall utilize all cash on hand, to transfer into the Professional Fee Escrow cash in an amount equal to all accrued but unpaid Allowed Professional Fees as of the first business day following delivery of ~~the Default Notice (or such occurrence of an Event of Default under Paragraphs 5(c), (d), (f), (g) or (i), as applicable)~~ a Termination Notice plus an amount sufficient to ensure that the Professional Fee Escrow is equal to the Pre-Trigger Carve-Out and the Post-Trigger Date Carve-Out (collectively, the "Estate Professionals Carve Out Amount"). Funds in the Professional Fee Escrow shall be held in trust and available solely to pay Professional Fees.

(c) The Prepetition Secured Parties shall retain an automatically perfected and continuing security interest in any residual interest in the Professional Fee Escrow available following satisfaction in full of all obligations benefiting from the Carve-Out.

(d) For the avoidance of doubt and notwithstanding anything to the contrary, the Carve Out shall be senior to all liens and claims (other than any applicable Senior Permitted Liens), any liens and claims granted as adequate protection (including the Adequate Protection Liens and Adequate Protection Superpriority Claims), and all liens and claims under the First Lien Credit Facility and Note Purchase Agreement.

(e) Until the Prepetition Obligations (to the extent allowed) have been indefeasibly paid in full, without further order of the Court, the payment of Professional Fees and the Professional Fee Escrow Carve Out Amount shall not be paid out of the Prepetition

Collateral for any fees and expenses, if any, incurred in connection with the initiation, joinder, or prosecution of any action contesting the indebtedness owed to the Prepetition Secured Parties or the validity of any liens granted to any of such parties, other than to assert that the principal amount owed under the Prepetition Second Lien Documents ~~as of the Petition Date~~ is limited to \$177.2 million (plus accrued interest).

710. Subject to the entry of the Final Order, effective as of the time of commencement of the Debtors' bankruptcy case on the Petition Date, the Debtors waive irrevocably all claims and rights, if any, it or its estates might otherwise assert against the Prepetition Collateral of the Prepetition Secured Parties pursuant to Bankruptcy Code section 506(c).

11. Section 552(b). In light of the subordination of their liens and superpriority administrative claims of the Prepetition Secured Parties to the Carve-Out, subject to entry of a Final Order, each of the Prepetition Secured Parties is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception shall not apply to any of the Prepetition Secured Parties with respect to the proceeds, products, rents, issues or profits of any of the Prepetition Collateral, and no expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, may be charged against proceeds, product, offspring or profits from any of the Prepetition Collateral under section 552(b) of the Bankruptcy Code. Subject to entry of a Final Order, the Debtors irrevocably waive, and agree not to assert, any claim or right under section 552 of the Bankruptcy Code seeking to avoid the imposition of the liens pursuant to the Prepetition Loan Documents, or the Adequate Protection Liens on any property acquired by any of the Debtors or any of their estates or, subject to the

Carve-Out and entry of a Final Order, seeking to surcharge any costs or expenses incurred in connection with the preservation, protection, or enhancement of, or realization by, the Prepetition Secured Parties upon the Prepetition Collateral, as applicable.

12. Payments Free and Clear. Subject and subordinate to the Carve Out and Paragraph 7 of this Second Interim Order, any and all proceeds remitted to the Agents pursuant to the terms of this Second Interim Order (including any L/C Cash Collateral drawn by First Lien Agent pursuant to Paragraph 4(i) of this Second Interim Order) or any subsequent order of this Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including, without limitation, but subject to entry of the Final Order, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) of the Bankruptcy Code or the “equities of the case” exception of section 552(b) of the Bankruptcy Code.

13. No Marshaling. Subject only to and effective upon entry of the Final Order, the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral, and proceeds of the Prepetition Collateral shall be received and applied pursuant to this Second Interim Order and the Prepetition Loan Documents notwithstanding any other agreement or provision to the contrary. Subject only to and effective upon entry of the Final Order, and without limiting the generality of the immediately preceding sentence, no party shall be entitled to marshal (directly or indirectly) the disposition of the Prepetition Collateral after an Event of Default.

14. Continuation of Prepetition Liens. Subject to the rights set forth in Paragraph 7, until the Prepetition Secured Parties are Paid in Full, all liens and security

interests of the Prepetition Secured Parties (including, without limitation, the Adequate Protection Liens) shall remain valid and enforceable with the same continuing priority as provided in the Prepetition Loan Documents and described or otherwise provided for herein. The term “Paid in Full” or “Payment in Full” means (a) the indefeasible payment in full in cash of all of the Prepetition Obligations and Adequate Protection Obligations, as applicable, and in each case, solely to the extent allowed (including the cash collateralization of any letters of credit) and (b) unless the Challenge Period has terminated without a successful challenge being commenced, the applicable Prepetition Secured Parties shall have received a release from each Debtor and the Creditors’ Committee (if any) of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages, and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities with respect to the applicable Prepetition Obligations and the Adequate Protection Obligations in form and substance acceptable to the applicable Agents.

15. Proofs of Claim. The Prepetition First Lien Secured Parties are not required to file proofs of claim in any of these Chapter 11 Cases, and the Prepetition Second Lien Secured Parties are not required to file proofs of claim in any of these Chapter 11 Cases on account of Agreed Second Lien Obligations. However, to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors’ estates, each Agent is authorized, in accordance with any applicable bar order entered by this Court, to file in the Debtors’ lead Chapter 11 Case for Proterra, Inc., Case No. 23-11120 (BLS), a master proof of claim on behalf of the applicable Prepetition Secured Parties on account of any and all off its claims arising under the applicable

Prepetition Loan Documents and hereunder (a “Master Proof of Claim”) against each of the Debtors.

16. Granting of Additional Liens and Interests. Nothing in this Second Interim Order shall authorize, other than in the ordinary course of the Debtors’ business, the sale, transfer, lease, encumbrance, or other disposition of any assets of the Debtors or their estates, except as permitted in the Prepetition Loan Documents and this Second Interim Order, and approved by the Court to the extent required under applicable bankruptcy law.

17. Delivery of Pleadings. The Debtors will use reasonable efforts to deliver to counsel to the Agents copies of any pleadings or motions to be filed by or on behalf of any Debtor in these Chapter 11 Cases at least two (2) business days prior to such filing (or, if not practicable, as soon as reasonably practicable); provided that nothing in this Paragraph 17 shall require the Debtors to deliver to counsel to the Second Lien Agent copies of any of the following pleadings or motions prior to filing: (a) any pleadings or motions with regard to (1) good faith disputes over the payment of expenses, fees and default interest or (2) the Prepetition Second Lien Secured Parties’ claims being limited to the Agreed Second Lien Obligations; or (b) while any of the Prepetition Second Lien Secured Parties or their affiliates are bidders or potential bidders in any postpetition bidding process involving assets of the Debtors, any pleadings or motions regarding that postpetition bidding process (including the status or results thereof).

18. Survival. The provisions of this Second Interim Order and any actions taken pursuant hereto shall survive entry of any order (a) confirming any plan of reorganization in any of these Chapter 11 Cases, (b) converting any of these cases to a case under chapter



7 of the Bankruptcy Code, (c) dismissing any of these cases or any Successor Case, or (d) pursuant to which this Court abstains from hearing any of the cases or any Successor Case, and accordingly, notwithstanding the entry of any such order, the terms and provisions of this Second Interim Order, including the claims, liens, security interests and other protections granted to the Prepetition Secured Parties pursuant to this Second Interim Order as of the date of such order, shall continue in these Chapter 11 Cases, in any Successor Case, or following dismissal of these Chapter 11 Cases or any Successor Case, and shall maintain their priority as provided by this Second Interim Order and not be modified, altered or impaired in any way as a result thereof until all of the Prepetition Obligations and Adequate Protection Obligations have been Paid in Full.

19. No Waiver. Other than as provided in this Second Interim Order, nothing in this Second Interim Order shall be construed in any way as a waiver or relinquishment of any rights that the Debtors or the Prepetition Secured Parties may have to bring or be heard on any matter brought before this Court.

820. Reversal, Modification, Vacatur, or Stay. Any reversal, modification, vacatur, or stay of any or all of the provisions of this Second Interim Order (other than in accordance with an order entered at a hearing approving the Motion on a final basis, the “Final Order”) shall not affect the validity, priority, or enforceability of any Adequate Protection Liens or superpriority claims granted hereunder, in each case, which has incurred prior to the effective date of such reversal, modification, vacatur, or stay. Notwithstanding any reversal, modification, vacatur, or stay (other than in accordance with a Final Order), (a) this Second Interim Order shall govern, in all respects, any use of Cash Collateral or Adequate Protection Lien incurred by the Debtors prior to the effective date of such reversal, modification, vacatur, or stay and (b) the Agents shall

be entitled to all benefits and protections granted by this Second Interim Order with respect to any such use of Cash Collateral or such Adequate Protection Lien incurred by the Debtors prior to such reversal, vacatur or stay.

921. Reservation of Rights. Except as otherwise expressly set forth herein, this Second Interim Order and the transactions contemplated hereby shall be without prejudice to the Debtors' right to seek the continuing use of Cash Collateral, including following a Termination Event, and/or the approval of any debtor-in-possession financing. None of the Adequate Protection Liens shall prime or otherwise be senior in right or priority to any validly perfected and unavoidable lien or similar right (including with respect to letters of credit and any cash or other collateral of the sureties) of the Debtors' sureties as of the Petition Date, and nothing herein shall alter, limit, modify, or impair the rights of the Debtors' sureties including, without limitation, subrogation, trust or other rights, under any of their bonds, bonded contracts, in any proceeds of the bonded contracts, letters of credit, cash or other surety collateral, and/or under any of their respective indemnity agreements, or otherwise, and all such rights and interests are reserved and preserved.

1022. Findings of Fact and Conclusions of Law. This Second Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon the entry thereof. To the extent that any findings of fact are determined to be conclusions of law, such findings of fact shall be adopted as such; and to the extent that any conclusions of law are determined to be findings of fact, such conclusions of law shall be adopted as such.

1123. No ~~third-party rights~~ Third-Party Rights. Except as explicitly provided for herein, this Second Interim Order does not create any third party rights for the benefit of any

~~third party~~, creditor, equity holder or other third party entity or any direct, indirect, ~~third party~~ or incidental beneficiary thereof.

~~12. Second Interim~~24. Final Hearing. A ~~Second Interim~~Final Hearing on the relief requested in the Motion is scheduled for September 7, 2023, at ~~\_\_\_\_\_m~~11:00 a.m. (prevailing Eastern time) before this Court. In accordance with the Local Rules, the Debtors shall serve, or cause to be served, by first class mail or other appropriate method of service, a copy of the Motion (to the extent the Motion was not previously served on a party) and this Second Interim Order on (i) the Notice Parties, (ii) any party that has filed a request for notices with this Court, and (iii) counsel to any Creditors' Committee. Any responses or objections to ~~further interim~~final approval of the Motion shall be made in writing, conform to the applicable Bankruptcy Rules and Local Rules, be filed with this Court, set forth the name of the objecting party, the basis for the objection, and the specific grounds therefor and be served ~~so as to be actually received on or before 4:00 p.m., prevailing Eastern Time, on \_\_\_\_\_, 2023 by~~on the following parties: (a) ~~eo-counsel~~proposed counsel for the Debtors, (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn. Paul Basta (pbasta@paulweiss.com) and Robert Britton (rbritton@paulweiss.com); and (bii) ~~eo-counsel for the Debtors,~~ Young Conaway Stargatt & Taylor LLP, 1000 North Street, Wilmington, Delaware, 19801 Attn: Pauline K. Morgan (pmorgan@ycst.com) and Andrew L. Magaziner (amagaziner@ycst.com); (eb) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801-~~6~~, Attn: Linda J. Casey (linda.casey@usdoj.gov); (ec) counsel to the Second Lien Agent, (i) Sidley Austin LLP, 787 Seventh Ave, New York, NY 10019, Attn: Thomas R. Califano (tom.califano@sidley.com) ~~and,~~ Dennis M. Twomey (dtwomey@sidley.com), and ~~(e)~~Jackson T. Garvey (jgarvey@sidley.com)

and (ii) Pachulski Stang Zhiel & Jones LLP, Attn: Laura Davis Jones (ljones@pszlaw.com); and (d) counsel to the First Lien Agent, Holland & Knight LLP, One Arts Plaza, 1722 Routh Street, Suite 1500, Dallas, Texas 75201 Attn: Robert Jones (robert.jones@hklaw.com) and Brent McIlwain (brent.mcilwain@hklaw.com) by the objection deadline that may be established in a notice of Final Hearing.

1325. Order Effective Upon Entry. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Second Interim Order shall be immediately effective and enforceable upon its entry.

1426. Retention of Jurisdiction. This Court has and will retain jurisdiction to enforce this Second Interim Order in accordance with its terms.

**EXHIBIT A**

**Revised Initial Budget**

Proterra, Inc.

Consolidated Cash Flows

	<u>Week 1</u>	<u>Week 2</u>	<u>Week 3</u>	<u>Week 4</u>	<u>Week 5</u>	<u>Week 6</u>	<u>Week 7</u>	<u>Week 8</u>	<u>Week 9</u>	<u>Week 10</u>	<u>Week 11</u>	<u>Week 12</u>	<u>Week 13</u>
<u>Week ending:</u>	<u>8/13</u>	<u>8/20</u>	<u>8/27</u>	<u>9/3</u>	<u>9/10</u>	<u>9/17</u>	<u>9/24</u>	<u>10/1</u>	<u>10/8</u>	<u>10/15</u>	<u>10/22</u>	<u>10/29</u>	<u>11/5</u>
<u>\$ in 000s</u>	<u>Act</u>	<u>Act</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>
<u>Receipts:</u>													
<u>\$ in 000s</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>	<u>Fct</u>
Receipts	8,465,313	14,349,541	12,982	6,577	5,862	15,142	6,417	5,016	9,339	7,074	7,074	9,718	9,873
Other	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts	8,465,313	14,349,541	12,982	6,577	5,862	15,142	6,417	5,016	9,339	7,074	7,074	9,718	9,873
<b>Disbursements:</b>													
Vendor Payments	(1,919,651)	(2,208,109)	(5,585,108)	(5,879,141)	(18,221,483)	(11,313)	(8,742)	(6,460)	(1,551)	(4,432)	(1,550)	(2,117)	(1,504)
Payroll & Related	(517,816)	(5,639,652)	-	(5,957)	-	(5,957)	-	(5,957)	-	(4,960)	-	(4,901)	-
Rent & Lease Payments	-	-	-	(864)	-	-	-	(825)	-	-	-	-	(823)
Utilities	(1)	(22)	(8)	(84)	(39)	(53)	(16)	(53)	(16)	(53)	(16)	(53)	(16)
Freight & Shipping	-	(29)	(74)	(295)	(258)	(147)	(147)	(147)	(147)	(147)	(147)	(147)	(147)
Taxes	-	-	(5)	(1,044)	(17)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)
Insurance	-	-	-	-	-	-	-	-	-	-	-	-	-
CAPEX	(35)	(928)	(503)	(208)	(900)	(900)	(900)	(900)	(900)	(900)	(900)	(900)	(900)
TPI Payments	-	-	-	-	-	-	-	-	-	-	-	-	-
LG Payments	-	-	-	-	(6,380)	(6,380)	-	-	-	(6,380)	-	-	-
Total Disbursements	(2,463,146)	(8,774,722)	(6,174,697)	(14,332,594)	(25,811,483)	(18,338,618)	(9,815)	(14,352)	(2,624)	(16,883)	(2,623)	(8,128)	(3,400)
Net Operating Cash Flow	6,002,162	5,575,819	6,807,285	(7,755,016)	(19,951,483)	(3,238,618)	(3,398)	(9,336)	6,716	(9,809)	4,450	1,589	6,474

Financing & Restructuring Activities:

Interest & Fees	-	-	-	-7474	-	-	-	-	(2,205)	-	-	-	-	-1414
Professional Fees	(400)	-	-	-	(1,334)	-	-	-	(150)	(3,824)	(1,619)	-	-	(4,780)
Other Restructuring	-	-	-	(1,250)	-	-	-	-	-	(316)	-	-	-	-
Total Financing & Restruct.	(400)	-	-	(1,176)	(1,334)	-	-	-	(2,355)	(4,141)	(1,619)	-	-	(4,766)
Net Cash Flow	6,002,262	5,575,689	6,808,285	(8,931,019)	(21,286,168)	(3,238,618)	(3,398)	(11,691)	2,575	(11,428)	4,450	1,589	1,708	
<b>Cash Roll Forward</b>														
Bg. Cash Balance	137,882,138,292	143,884,139,677	149,459,140,480	156,267,144,765	147,337,134,573	126,051,118,405	122,813,108,788	119,414,105,389	107,723,93,698	110,299,96,273	98,870,84,845	103,320,89,295	104,910,90,884	104,910,90,884
Net Operating Cash Flow	6,002,1,662	5,575,689	6,808,285	(7,755,9016)	(19,952,14,834)	(3,238,9618)	(3,398)	(9,336)	6,716	(9,809)	4,450	1,589	6,474	
Financing & Restruct.	(400)	-	-	(1,176)	(1,334)	-	-	-	(2,355)	(4,141)	(1,619)	-	-	(4,766)
Actual to Frct Adj. (Estim. Float)	(123)	(114)	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash Held (Excludes Restricted Cash)	143,884,139,677	149,459,140,480	156,267,144,765	147,337,134,573	126,051,118,405	122,813,108,788	119,414,105,389	107,723,93,698	110,299,96,273	98,870,84,845	103,320,89,295	104,910,90,884	106,617,92,592	
ABL Availability (Estim.)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Cash & Liquidity	143,884,139,677	149,459,140,480	156,267,144,765	147,337,134,573	126,051,118,405	122,813,108,788	119,414,105,389	107,723,93,698	110,299,96,273	98,870,84,845	103,320,89,295	104,910,90,884	106,617,92,592	