

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

In re:

Supply Source Enterprises, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24- 11054 (___)

(Joint Administration Requested)

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND
FINAL ORDERS (I) AUTHORIZING DEBTORS TO (A)
OBTAIN POSTPETITION SENIOR SECURED FINANCING AND (B)
USE CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION
TO PREPETITION SECURED PARTIES, (III) GRANTING LIENS AND
SUPERPRIORITY CLAIMS, (IV) MODIFYING THE AUTOMATIC STAY, (V)
SCHEDULING A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors” or, the “Company”) hereby move for entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “Interim Order”), and a final order (the “Final Order,” and together with the Interim Order, the “DIP Orders”), pursuant to sections 105, 361, 362, 363, 364, 503, 507, and 552 of title 11 of the United States Code (as amended, the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “Bankruptcy Rules”), and rules 2002-1, 4001-2, and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure for the District of Delaware (the “Local Rules”): (i) authorizing the Debtors to (a) obtain postpetition senior secured financing and (b) use cash collateral; (ii) granting adequate protection to the Prepetition Secured Parties (as defined herein); (iii) granting liens and superpriority claims; (iv) modifying the automatic stay; (v) scheduling a final hearing; and

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor’s federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors’ headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.



(vi) granting related relief. In support of this motion (the “Motion”), the Debtors submit the *Declaration of Jason A. Cohen in Support of the Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Senior Secured Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Parties, (III) Granting Liens and Superpriority Claims, (IV) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the “DIP Declaration”), filed contemporaneously herewith, and respectfully state as follows:²

RELIEF REQUESTED

1. By this Motion, the Debtors seek, among other things:
 - (i) authorization for the Debtors to obtain senior secured debtor in possession financing on a superpriority basis (the “DIP Financing”) in an aggregate principal amount of up to \$60 million of commitments (the “DIP Commitments”), consisting of (1) a new money multi-draw term loan facility consisting of \$20 million (the “New Money Amount”), of which (a) \$10 million shall be made available in accordance with the DIP Credit Agreement (as defined below) upon entry of the Interim Order and satisfaction of the applicable conditions set forth in the DIP Credit Agreement and (b) \$10 million shall be made available in accordance with the DIP Credit Agreement upon entry of the Final Order and satisfaction of the applicable conditions set forth in the DIP Credit Agreement, and (2) upon entry of the Final Order, a roll-up of the Prepetition ABL Obligations (as defined below) in the amount of \$40 million plus all accrued interest through the date of entry of the Final Order (the “Roll-Up Amount”) on the terms and conditions set forth in the DIP Orders and the DIP Documents (as defined below) (the “DIP Facility”);
 - (ii) authorization for Debtor SSE Buyer, Inc. (the “Borrower”) (i) to enter into that certain *Debtor in Possession Secured Multi-Draw Term Promissory Note*, dated as of May 21, 2024 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof (the “DIP Credit Agreement,” a copy of which is attached to the Interim Order as **Exhibit A**, and, together with the schedules and exhibits attached thereto and all agreements, documents, certificates, consents, instruments and/or amendments executed

² Capitalized terms used herein but not defined shall have the meaning ascribed to them in the Interim Order, the DIP Credit Agreement (as defined herein), or the First Day Declaration (as defined herein), as applicable.

and delivered in connection therewith, including the DIP GCA (as defined below), the “DIP Documents”), among the Borrower and TZ SSE Buyer LLC (the “DIP Lender”), and (ii) to execute and enter into that certain *Debtor-in-Possession Guarantee and Collateral Agreement*, to be dated as of the Closing Date (as defined in the DIP Credit Agreement) (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP GCA”), among the remaining Debtors and the DIP Lender, and the other DIP Documents to which they are intended to be a party, and to perform all such other and further acts as may be required or appropriate in connection with the DIP Facility and the DIP Documents;

- (iii) the granting of adequate protection to the Prepetition Secured Parties (as defined below);
- (iv) subject to the restrictions set forth in the DIP Documents and the DIP Orders, authorization for the Debtors to use Cash Collateral and all other Prepetition Collateral (each as defined in the Interim Order) in which the Prepetition Secured Parties have an interest in and the granting of adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of Cash Collateral and the other Prepetition Collateral;
- (v) subject to certain challenge rights of parties in interest set forth herein, approval of certain stipulations by the Debtors with respect to the Prepetition Credit Documents (as defined below) and the liens and security interests arising therefrom;
- (vi) the granting of superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code to the DIP Lender, as well as liens, including priming liens, pursuant to section 364(d) of the Bankruptcy Code, on all prepetition and postpetition property of the Debtors’ estates and all proceeds thereof (including, subject to entry of the Final Order, any Avoidance Proceeds (as defined below));
- (vii) subject to entry of the Final Order, the waiver of the Debtors’ right to surcharge the Prepetition Collateral and the DIP Collateral (each as defined below) pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtors under the “equities of the case” exception in section 552(b) of the Bankruptcy Code;
- (viii) subject to entry of the Final Order, a finding that none of the DIP Lender or the Prepetition Secured Parties shall be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral;
- (ix) the modification of the automatic stay to accomplish the transactions and remedies set forth herein and in the DIP Documents;

- (x) a date for a final hearing (the “Final Hearing”) to consider the Motion on a final basis and the entry of the Final Order authorizing and approving the transactions described in the foregoing clauses;
- (xi) and granting related relief.

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over the above-captioned chapter 11 cases (these “Chapter 11 Cases”), the Debtors, property of the Debtors’ estates, and these matters under 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 February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

3. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. Venue of these Chapter 11 Cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

5. The statutory and legal predicates for the relief requested herein are sections 105, 361, 362, 363, 364, 503, 507, and 522 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004, and 9014, and Local Rules 2002-1 and 4001-2.

BACKGROUND

6. On the date hereof (the “Petition Date”), each of the Debtors filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code. The Debtors have also filed a motion requesting joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule

1015(b). The Debtors are operating their business and managing their properties, as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made, and no official committees have been appointed in these Chapter 11 Cases.

7. The Debtors are leading distributors of branded and private label personal protective equipment and janitorial, safety, hygiene, and sanitation products. The Debtors' key products fall into the categories of gloves, core cleaning, safety, and food service. Working directly with suppliers and vendors in in the United States and Asia, the Debtors source, supply, and ship their products to a diverse customer base, including janitorial and sanitation providers, supply distributors, safety products resellers and wholesalers, and food service and food processing distributors and retailers. Additionally, the Debtors offer advanced customization capabilities, hot stamping, pad printing, and silk-screening labeling services for unique design, logo, or packaging specification requested by customers.

8. Additional factual background regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the filing of these Chapter 11 Cases is set forth in the *Declaration of Thomas Studebaker in Support of Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"), which is incorporated herein by reference.

FACTS RELEVANT TO THIS MOTION

I. Prepetition Capital Structure

9. As of the Petition Date, the Debtors are obligors with respect to approximately \$140 million in funded debt obligation, exclusive of PIK interest, summarized as follows:

Funded Debt	Approximate Principal Amount Outstanding
Prepetition ABL Facility	\$60 million (plus PIK)
Prepetition Term Loan Facility	\$ 80 million (plus PIK)

A. The ABL Credit Agreement

10. On June 30, 2020, Debtors SSE Intermediate, SSE Buyer, Impact Products, and Safety Zone (collectively, the “ABL Loan Parties”) entered into a \$45 million asset based loan revolving credit facility (the “Prepetition ABL Facility”), pursuant to that certain *Credit Agreement*, among the ABL Loan Parties, ACF Finco I LP, as administrative agent and collateral agent (the “ABL Agent”), and the lenders party thereto from time to time and each solely in their capacity as such (the “ABL Lenders” and together with the ABL Agent, the “ABL Secured Parties”) (as may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “ABL Credit Agreement”).

11. In connection with the ABL Credit Agreement, the ABL Loan Parties and the ABL Secured Parties also entered into that certain *Guarantee and Collateral Agreement* dated as of June 30, 2020 (as may be amended and as may be further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the “ABL GCA”).

12. Pursuant to the ABL Credit Agreement and the ABL GCA (collectively, the “ABL Documents”) the Debtors granted to the ABL Agent, for the benefit of itself and the other ABL Secured Parties, valid, binding, perfected, enforceable, first-priority liens and security interests in substantially all of the Debtors’ property (as more fully detailed in the ABL Documents) wherever located, then owned or at any time thereafter acquired by or arising in favor of such ABL Loan Party or in which such ABL Loan Party now then had or acquired any right, title or interest (collectively, the “ABL Collateral”).

13. On December 5, 2022, the ABL Loan Documents were amended to include the remaining Debtors as ABL Loan Parties.

14. As of the Petition Date, the Debtors were indebted and liable to the ABL Secured Parties in respect of the obligations under the ABL Documents in the aggregate principal amount of not less than \$60 million plus all accrued but unpaid interest, penalties and fees thereon (including interest paid in kind and interest at the default rate, as applicable), fees, expenses, and all other obligations expressly provided for thereunder, or incurred in connection therewith, including any “Obligations” as defined in the ABL Documents (such obligations under the ABL Documents, the “Prepetition ABL Obligations”).

B. The Term Loan Credit Agreement

15. On June 30, 2020, Debtor SSE Intermediate and Debtor SSE Buyer, as the borrower, (collectively, the “Term Loan Parties”) entered into a \$110 million term loan credit facility (the “Prepetition Term Loan Facility”) consisting of \$85 million in initial term loans and \$25 million in delayed draw term loan commitments pursuant to that certain *Credit Agreement*, dated as of June 30, 2020, among SSE Intermediate, SSE Buyer, Ares Capital Corporation, as administrative agent and collateral agent (the “Term Loan Agent”), and the lenders party thereto from time to time and each solely in their capacity as such (the “Term Loan Lenders” and together with the Term Loan Agent, the “Term Loan Secured Parties”) (as may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “Term Loan Credit Agreement”).

16. In connection with the Term Loan Credit Agreement, the Term Loan Parties and the Term Loan Secured Parties also entered into that certain *Guarantee and Collateral Agreement*

dated as of June 30, 2020 (as may be amended and as may be further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the “Term Loan GCA”).

17. Pursuant to the Term Loan Credit Agreement and the Term Loan GCA (collectively, the “Term Loan Documents”) the Debtors granted to the Term Loan Agent, for the benefit of itself and the other Term Loan Secured Parties, valid, binding, perfected, enforceable, second-priority liens and security interests in substantially all of the Debtors’ property (as more fully detailed in the Term Loan Documents) wherever located, then owned or at any time thereafter acquired by or arising in favor of such Term Loan party or in which such Term Loan Party now then had or acquired any right, title, or interest (collectively, the “Term Loan Collateral” and together with the ABL Collateral, the “Prepetition Collateral”).

18. On December 5, 2022, the Term Loan Documents were amended to include the remaining Debtors as Term Loan Parties.

19. As of the Petition Date, the Debtors were indebted and liable to the Term Loan Secured Parties in respect of the obligations under the Term Loan Documents in the approximate aggregate principal amount of not less than \$80 million plus all accrued but unpaid interest, penalties and fees thereon (including interest paid in kind, prepayment premiums, and interest at the default rate, as applicable), fees, expenses, and all other obligations expressly provided for thereunder, or incurred in connection therewith, including any “Obligations” as defined in the Term Loan Documents (such obligations under the Term Loan Documents, the “Prepetition Term Loan Obligations” and together with the Prepetition ABL Obligations, the “Prepetition Secured Obligations”).

C. The Intercreditor Agreement

20. The priority of the security interests of the Term Loan Agent in the Term Loan Collateral and the ABL Agent in the ABL Collateral are governed by that certain *Amended and Restated Intercreditor Agreement* (the “Intercreditor Agreement”), dated as of December 5, 2022, by and among the Term Loan Agent, the ABL Agent, SSE Intermediate, and the SSE Buyer. Pursuant to the Intercreditor Agreement, under the circumstances, the priority of the security interests are as follows:

Priority	Facility
First	Prepetition ABL Facility
Second	Prepetition Term Loan Facility

D. Unsecured Claims

21. In addition to their funded debt, the Debtors also have significant unsecured debt including amounts owed to trade vendors. The Debtors routinely incur fixed, liquidated, and undisputed payment obligations in the ordinary course of business to various third- party providers of goods and services. The Debtors rely on a broad network of vendors to supply inventory. A majority of these vendors conduct business with the Debtors on a purchase-order-by-purchase-order basis and are paid on prearranged terms. As of the Petition Date, the Debtors’ unsecured claims are estimated to be approximately \$40 million.

II. Proposed Postpetition Financing

A. The Debtors’ Urgent Need for DIP Financing

22. As described in the First Day Declaration and the DIP Declaration, the Debtors believe that the best available option to maximize value of the estates is to pursue a sale process to achieve a value maximizing going-concern transaction that will benefit the Debtors and all of

their stakeholders. To get there, however, the Debtors require immediate access to the additional liquidity described in this Motion to fund these Chapter 11 Cases and preserve the Debtors' going-concern value during the sale process. It is critically important that the Debtors are sufficiently funded during these Chapter 11 Cases to address concerns raised by their parties in interest, including employees, customers, wholesale partners, and vendors. The relief requested herein allows the Debtors to secure postpetition financing and utilize cash collateral on a fully consensual basis, which avoids expensive and potentially value-destructive litigation. In short, immediate access to the DIP Facility and the continued use of cash collateral are necessary to avoid immediate and irreparable harm to the Debtors. *See* First Day Decl. ¶ 63-65.

23. The anticipated sale process, the DIP Facility, and the consensual use of cash collateral provide the Debtors with a smooth landing into these Chapter 11 Cases and a viable path forward that will maximize the value of the Debtors' assets for the benefit of all creditors. For these reasons, and for the reasons set forth herein, the Debtors respectfully request that the Court approve the relief requested herein.

24. The Debtors undertook an analysis of how much postpetition financing would be required to provide the Debtors with liquidity to fund operations, working capital needs, and to satisfy other administrative obligations of these Chapter 11 Cases. As part of this analysis and the overall evaluation of the Debtors' liquidity position, the Debtors developed, with the assistance of its advisors, a 13-week cashflow forecast (the "Initial DIP Budget") which takes into account anticipated cash receipts and disbursements during the projected period and considers a number of factors, including, but not limited to, the effect of a chapter 11 filing on the operations of the business, restructuring costs (including professional fees), required operational payments, and the potential acceleration of demands on available liquidity through working capital contraction. DIP

Decl. ¶ 17; First Day Decl. ¶ 65. Based on this analysis, the Debtors determined that they would require loans and advances comprised of a new money multi-draw term loan facility consisting of \$20 million, of which (a) \$10 million will be made available upon entry of the Interim Order, (b) \$10 million will be made available in accordance with the DIP Credit Agreement, and (c) upon entry of the Final Order, a roll-up of the Prepetition ABL Obligations in the amount of \$40 million plus all accrued interest through the date of entry of the Final Order, to operate smoothly postpetition and satisfy all administrative costs and expenses. *Id.*

25. Additionally, the Debtors believe that the heavily negotiated Milestones contained in the DIP Documents are necessary and important to adhere to because the Initial DIP Budget dictates the liquidity runway the Debtors have to operate in chapter 11 to pursue a sale. Failure to adhere to the dates set forth in the milestone covenants will cause the Debtors to be outside the Initial DIP Budget and jeopardize the administration of these Chapter 11 Cases and the Debtors' ability to emerge from chapter 11. *See* Dip Decl. ¶ 20.

B. The Prepetition Marketing Process

26. As more fully described in the First Day Declaration and the DIP Declaration, prior to the commencement of these Chapter 11 Cases, in January 2024, the Debtors retained Triple P RTS, LLC ("Portage Point") to assist and advise the Debtors with, among other things, the analysis, evaluation, pursuit, and effectuation of a going concern sale transaction. *See* DIP Decl. ¶ 10; First Day Decl. ¶ 49. The pursuit of a sale transaction was supported by the Prepetition ABL Lenders who held a first lien on substantially all of the Debtors' prepetition assets and were the only stakeholder willing to fund the Company. DIP Decl. ¶ 10; First Day Decl. ¶ 47.

27. Beginning in early February 2024, Portage Point began marketing substantially all of the Debtors' business and assets. As discussed in greater detail in the First Day Declaration,

Portage Point, on behalf of the Debtors, contacted over 70 potential investors, including strategic and financial investors, with the aim of attracting multiple proposals to acquire the Debtors' business or assets on a cash-free, debt-free basis. The Debtors ultimately received two (2) letters of intent ("LOIs") for the acquisition of substantially all of the Debtors' assets. *See* DIP Decl. ¶ 11; First Day Decl. ¶ 49.

28. The LOI submitted by an affiliate of The Tranzonic Companies ("Tranzonic"), Peak Rock Capital, LLC (the "Tranzonic Affiliate") contemplated a chapter 11 sale scenario (the "Original Tranzonic LOI") and stated that Tranzonic Affiliate would be willing to fund the cost of the Chapter 11 Cases. As discussed in greater detail in the First Day Declaration, the Company and its advisors prepared a preliminary estimate for a chapter 11 process and shared it with the Prepetition ABL Lenders and Peak Rock. *See* DIP Decl. ¶ 12.

29. During this process, the Debtors and their advisors engaged in discussions with the Prepetition ABL Lenders to gauge their willingness to fund the Company to the completion of a sale transaction to the Tranzonic Affiliate through chapter 11. The Prepetition ABL Lenders communicated their strong desire to have their existing indebtedness purchased by any stalking horse buyer prior to the commencement of a chapter 11 case. The Prepetition ABL Lenders also indicated they were unwilling to consent to a priming DIP facility by Tranzonic or any other third party in a chapter 11 case. Lastly, despite multiple requests, the Prepetition ABL Lenders did not provide the Debtors with a DIP financing proposal. As such, absent a proposal to purchase the ABL Facility, any DIP financing provider would need to provide DIP financing on a junior basis behind the approximately \$60 million of debt held by the Prepetition ABL Lenders. *Id.* ¶ 13.

30. The Debtors continued discussions with the Tranzonic Affiliate and communicated the Prepetition ABL Lenders' desire to have their debt purchased prior to any chapter 11 case. The

Tranzonic Affiliate submitted a revised LOI providing for (i) the purchase of the Prepetition ABL Facility and Prepetition Term Loan Facility to be consummated immediately prior to a chapter 11 filing and (ii) funding of the DIP Financing to fund a chapter 11 case and sale closing and wind-down expenses (the “Revised Tranzonic LOI”). The Revised Tranzonic LOI required the Prepetition ABL Lenders to fund the operations of the business and certain chapter 11 preparation expenses up until the Petition Date. The Prepetition ABL Lenders communicated their support for the Revised Tranzonic LOI and agreed to (and did) provide the Company with funding to support ongoing operations and chapter 11 preparation. *See* DIP Decl. ¶ 14.

31. In evaluating the Revised Tranzonic LOI, the Debtors also requested that Portage Point solicit third party interest in providing DIP financing to the Debtors. As the Prepetition ABL Lenders had communicated on several occasions that they were not willing to consent to a priming facility by a third party, Portage Point contacted seven institutions to solicit offers to provide the Debtors with a DIP financing either (i) on a junior basis, with the existing Prepetition ABL Facility remaining in place and the DIP financing funded junior to the Prepetition ABL Facility but senior to the Prepetition Term Loan Facility, or (ii) on a senior basis to the Prepetition ABL Facility, but only after purchasing the existing debt of the Prepetition ABL Lenders instead of Tranzonic Affiliate. As part of these discussions, Portage Point explained to each of the potential third party lenders the Debtors’ current and recent financial profile, the fulsome marketing process the Debtors had run to solicit the Revised Tranzonic LOI, the Debtors’ current capital structure, and the range of potential liquidation values. *Id.* ¶ 15.

32. The Debtors did not receive any proposals for postpetition financing from any third parties. The parties contacted by Portage Point indicated they were unwilling to extend financing to the Debtors on a junior basis to the Prepetition ABL Facility because the proposed stalking horse

purchase price was insufficient to provide a full recovery to any DIP facility, as the Prepetition ABL Facility was expected to have \$60 million outstanding immediately prior to the filing, an amount equal to the Revised Tranzonic LOI. Additionally, as it related to purchasing the Prepetition ABL Lenders' loan and funding the amount of the DIP Financing themselves, potential financing sources expressed concern as the amount of the Prepetition ABL Facility and DIP Financing was equal to the Revised Tranzonic LOI, thereby providing no cushion from a loan to value perspective and leaving no upside for economics relative to the risk being taken. Moreover, prospective third-party lenders also expressed concerns that proceeds in a liquidation would be insufficient to repay the DIP Financing. *See* DIP Decl. ¶ 16.

33. As the Debtors were not able to find another party willing to provide DIP financing, the proposal from the DIP Lender, an affiliate of Tranzonic, represents the only viable option for the Company to preserve its going concern operations and effectuate a sale transaction. *Id.*

C. The DIP Facility

34. The Debtors, their legal and financial advisors, and the DIP Lender engaged in arm's length negotiations regarding the terms offered by the DIP Lender. Over the course of multiple weeks, the Debtors and the DIP Lender, with the assistance of their respective legal and financial advisors, works to negotiate the most favorable terms and provisions of the DIP Facility available to the Debtors given the Debtors' lack of alternative third-party financing.

35. The negotiations resulted in concessions made by the DIP Lender, including increasing the size of the DIP Facility, reducing the amount of fees and the Roll-Up Amount, and other key provisions. *See* DIP Decl. ¶ 18.

36. At the conclusion of this process, the Debtors, in consultation with Portage Point, determined that the DIP Lender offered the most viable and beneficial DIP financing terms available, and the parties were able to come to an agreement on the terms of the DIP Facility.

i. Use of Cash Collateral

37. The proposed DIP Facility is accompanied by the Debtors' request for immediate access to and use of Cash Collateral, and all other Prepetition Collateral, of the Prepetition Secured Parties on a consensual basis, subject to the terms and conditions of the DIP Documents and the DIP Orders. Coupled with the liquidity provided under the DIP Facility, immediate access to the Cash Collateral and other Prepetition Collateral will ensure that the Debtors have sufficient working capital to, among other things, satisfy the administrative expenses of the Chapter 11 Cases, including payment of professional fees.

ii. Forms of Adequate Protection

38. After extensive arm's length, and good faith negotiations, the DIP Lender has agreed to provide the DIP Facility and the Prepetition Secured Parties have agreed to consent to the use of their Prepetition Collateral, including Cash Collateral, subject to the provision by the Debtors of the Adequate Protection Obligations, which consist of the Adequate Protection Liens, the Adequate Protection 507(b) Claim, and the Adequate Protection Payments (each as defined in the Interim Order). Among other things, the Adequate Protection Obligations contemplated by the DIP Facility are designed to protect the Prepetition Secured Parties from any diminution in value of such Prepetition Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any.

III. The Roll-Up Amount, Rates, Exit Fee, and Milestones Contemplated by the DIP Facility Are Reasonable

39. The terms and conditions of the DIP Facility, including the roll-up of \$40 million of the Prepetition ABL Obligations into the DIP Financing, are fair and reasonable under the circumstances, especially in light of the Debtors' need for postpetition financing and their capital structure, among other factors. *See* DIP Decl. ¶ 19.

40. Pursuant to the DIP Documents, the Debtors have agreed, subject to Court approval, to pay certain interest and fees to the DIP Lender. Specifically, the Debtors have agreed to pay interest in kind on the New Money Amount at a rate per annum equal to 5%. Upon the occurrence and during the continuation of an Event of Default (as defined in the DIP Credit Agreement), interest will accrue at an additional 2% per annum. In addition, the Debtors have agreed to pay to the DIP Lender a fee equal to 10% of the New Money Amount on the earlier of (i) the date that all DIP Obligations are paid in full in cash and (ii) the Maturity Date (as defined in the DIP Credit Agreement) (the "Exit Fee"). The Exit Fee will be waived if the DIP Lender is the successful bidder at the conclusion of the sale process.

41. The Debtors and the DIP Lender agree that the terms, covenants, interest rates, and fees were subject to negotiation and are an integral component of the overall terms of the DIP Facility, which, in turn, is integral to the broader success of the Chapter 11 Cases and the contemplated sale process. *See* DIP Decl. ¶ 19. The Roll-Up Amount, rates, and the Exit Fee provided for in the DIP Documents are reasonable under the circumstances and are, in the aggregate, generally within the range of rates for debtor in possession financings in comparable circumstances in today's market for similarly situated businesses. *Id.*

42. Additionally, the DIP Facility contemplates, as a product of negotiation with, and as required by, the DIP Lender as a condition to providing the DIP Facility, certain milestones that

the Debtors must meet throughout their Chapter 11 Cases, the failure of which would constitute an Event of Default under the DIP Credit Agreement. These milestones were heavily negotiated and required by the DIP Lenders as a condition to providing the DIP Facility. *See* DIP Decl. ¶ 20.

**CONCISE STATEMENT PURSUANT TO
BANKRUPTCY RULE 4001 AND LOCAL RULE 4001-2**

43. As detailed in the First Day Declaration and the DIP Declaration, the Debtors presently lack sufficient liquidity to support their ongoing operations and pursue a successful sale process in these Chapter 11 Cases. The Debtors have concluded that they require postpetition financing to meet their ongoing working capital and general business needs during these Chapter 11 Cases, as well as the costs of bankruptcy administration. Accordingly, in consultation with their legal and financial advisors, the Debtors and the DIP Lender have negotiated the terms of the DIP Facility. The Debtors' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents including, without limitation (a) all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents, including the Roll-Up Amount (collectively, the "DIP Loans"), and (b) any "Obligations" (as defined in the DIP Credit Agreement) (the "DIP Obligations") are secured by the DIP Collateral (as defined in the Interim Order).

44. Pursuant to Bankruptcy Rule 4001(b), (c), and (d) and Local Rule 4001-2, the Debtors submit the following concise statement of the material terms of the DIP Facility, together with references to the applicable section of the relevant source documents:³

³ The summaries contained in this Motion are qualified in their entirety by the provisions of the documents referenced. To the extent anything in this Motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in the following summary chart but not otherwise defined have the meanings ascribed to them in the DIP Documents or the Interim Order, as applicable.

Summary of the Material Terms		Reference
<u>Borrower:</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	SSE Buyer, Inc.	DIP Credit Agreement <i>preamble</i>
<u>Guarantors:</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	SSE Intermediate, Inc. Supply Source Enterprises, Inc. Impact Products, LLC The Safety Zone, LLC	DIP Credit Agreement, <i>preamble</i>
<u>DIP Lender:</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	TZ SSE Buyer LLC	DIP Credit Agreement <i>preamble</i>
<u>Parties with an Interest in Cash Collateral:</u> <i>Bankruptcy Rule 4001(b)(1)(B)(i)</i>	All cash of the Debtors and cash proceeds of the Prepetition Collateral, including all such cash and cash proceeds of such Prepetition Collateral held at any time and from time to time in any of the Debtors' securities accounts and banking, checking, or other deposit accounts with financial institutions, are and will be cash collateral within the meaning of Bankruptcy Code section 363(a) (the " <u>Cash Collateral</u> ") of the Prepetition Secured Parties.	Interim Order ¶ E(v)
<u>DIP Facility:</u> <i>Bankruptcy Rule 4001(c)(1)(B)</i> <i>Local Rule 4001-2(a)(i)(A), (O), (ii)</i>	<p>The DIP Facility will provide for senior secured debtor in possession financing on a superpriority basis in an aggregate principal amount of up to \$60 million of commitments (the "<u>DIP Commitments</u>") consisting of:</p> <ul style="list-style-type: none"> (i) a new money multi-draw term loan facility consisting of \$20 million (the "<u>New Money Amount</u>"), of which (a) \$10 million shall be made available in accordance with the DIP Credit Agreement upon entry of the Interim Order and satisfaction of the applicable conditions set forth in the DIP Credit Agreement, (ii) \$5 million of which will be made available during "Week 4" as set forth in the Initial Budget, (iii) \$2.5 million of which will be made available during "Week 6" as set forth in the Initial Budget, so long as the Borrower has delivered the updated Budget required pursuant to Section 14(h) which has been approved by DIP Lender in its sole discretion, (iv) \$2.5 million of which will be made available upon closing of the Stalking Horse Transaction, so long as the Specified Wind Down Budget has been delivered to and approved by DIP Lender in its sole discretion (<i>provided however</i> that with respect to expenses already contained in the Initial Budget related to such wind down period, the Specified Wind Down Budget will be no less favorable to the Borrower than the Initial Budget), 	DIP Credit Agreement, §§ 1(a), (c) Interim Order <i>preamble</i>

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	<p>and</p> <p>(v) upon entry of the Final Order, a roll-up of the Prepetition ABL Obligations in the amount of \$40 million plus all accrued interest through the date of entry of the Final Order (the “<u>Roll-Up Amount</u>”) on the terms and conditions set forth in the Interim Order and the DIP Documents</p>	
<p><u>Consent to Use of Cash Collateral:</u></p> <p><i>Bankruptcy Rule 4001(c)(1)(B)</i></p> <p><i>Local Rule 4001-2(a)(i)</i></p>	<p>The Prepetition Secured Parties have consented to the use of Cash Collateral and the other Prepetition Collateral, the priming of the Prepetition Liens pursuant to section 364(d)(1) of the Bankruptcy Code, and the Debtors’ entry into the DIP Documents in accordance with and subject to the terms of the DIP Orders and the DIP Documents.</p>	<p>Interim Order ¶ I(v)</p>
<p><u>Use of DIP Facility and Cash Collateral:</u></p> <p><i>Bankruptcy Rules 4001(b)(1)(B)(ii), (c)(1)(B)</i></p> <p><i>Local Rule 4001-2(a)(i)</i></p>	<p>The Borrower shall utilize the proceeds of Term Loans, subject to the DIP Orders, to (i) fund general corporate needs, including without limitation working capital and other needs, (ii) pay costs, premiums, fees, and expenses incurred to administer or related to of the Chapter 11 Cases, including fees and expenses of professionals, and (iii) to provide for adequate protection for certain Prepetition Secured Parties, in each case, solely in accordance with the Budget, subject to any Permitted Variance); <i>provided, that</i>, unless otherwise provided in the Budget, subject to any Permitted Variance, or approved by the DIP Lender, no portion of any Term Loans shall be used, directly or indirectly:</p> <p>(a) except as permitted by section 15(d) of the DIP Credit Agreement, to make any payment in respect of, or repurchase, redeem, retire or defease any, prepetition Indebtedness, except pursuant to the terms of the DIP Orders or to finance or make any Restricted Payment,</p> <p>(b) to pay any fees or similar amounts payable to any Person who has proposed or may propose to purchase interests in any of the Borrower or any of its respective Subsidiaries or affiliates or who otherwise has proposed or may propose to invest in the Borrower or any of its respective Subsidiaries or affiliates (including so-called “topping fees,” “exit fees,” and similar amounts), or</p> <p>(c) to make any distribution under a plan of reorganization in the Chapter 11 Cases or any similar proceeding of any of the Subsidiaries or affiliates of any of the Borrower.</p>	<p>DIP Credit Agreement § 1(e)</p> <p>Interim Order ¶¶ 6, 8</p>

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	<p>Additionally, the Debtors are hereby authorized, subject to the terms and conditions of the Interim Order, to use Cash Collateral strictly in accordance with the Approved DIP Budget; <i>provided, however</i>, (a) the Prepetition Secured Parties are granted the adequate protection as set forth in the Interim DIP Order and (b) except on the terms and conditions of the Interim Order, the Debtors shall be enjoined and prohibited from at any times using the Cash Collateral absent further order of the Court.</p>	
<p><u>Interest Rates:</u></p> <p><i>Bankruptcy Rule 4001(c)(1)(B)</i></p> <p><i>Local Rule 4001-2(a)(i)(B), (ii)</i></p>	<p><u>Interest Rate.</u> The Term Loans or any portion thereof shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loans until repaid, at a rate <i>per annum</i> equal to 5.00%.</p> <p><u>Default Rate.</u> So long as an Event of Default shall have occurred and be continuing, and at the election of the DIP Lender, the interest rate applicable to the Obligations shall be increased by two percentage points (2.00%) <i>per annum</i> above the rate of interest otherwise applicable under the DIP Credit Agreement, and all outstanding Obligations shall bear interest at the Default Rate applicable to such Obligations. Interest at the Default Rate shall accrue from the date of such Event of Default until such Event of Default is cured or waived (notwithstanding when the election by the DIP Lender was made) and shall be payable upon demand.</p>	<p>DIP Credit Agreement, §§ 4(a), (c)</p>
<p><u>DIP Fees:</u></p> <p><i>Bankruptcy Rule 4001(c)(1)(B)</i></p> <p><i>Local Rule 4001-2(a)(i)(B), (K)</i></p>	<p><u>Exit Fee.</u> On the earlier of (1) the date that all the Obligations under this Note are paid in full in cash and (2) the Maturity Date, the Borrower shall pay in cash to the DIP Lender an exit fee equal to 10.0% of the Term Loans (but excluding any Converted Term Loans) prepaid or paid, which exit fee shall be fully earned upon the entry of the Interim Order and non-refundable when paid; <i>provided, that</i> to the extent the DIP Lender elects to credit bid the Term Loans and/or converts to equity the Term Loans in connection with the consummation of the Stalking Horse Transaction, such fee shall be waived in full.</p> <p>Additionally, the Debtors are required to pay all fees that may be reasonably required or necessary for the Debtors' performance of their obligations under or related to the DIP Financing, including:</p> <p>(i) to the extent included in the DIP Budget, the non-refundable payment to each of and/or on behalf of the DIP Lender, as applicable, of the fees referred to in the DIP Documents, including (x) all fees and other amounts owed to the DIP Lender, and (y) all reasonable and documented costs and expenses as may be due from time to time, including, without limitation, the reasonable and documented fees and expenses of counsel and other professionals retained as provided for in the DIP Documents and the Interim Order (whether incurred before or after the Petition Date, including, for the avoidance of doubt, Weil, Gotshal & Manges LLP (as counsel), PwC US</p>	<p>DIP Credit Agreement § 1(e), 8(a)</p> <p>Interim Order ¶ 2(c)(iii)</p>

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	<p>Business Advisory LLP (as financial advisor), Richards, Layton & Finger, P.A. (as local bankruptcy counsel), and any other foreign counsel and other professionals necessary to represent the interests of the DIP Lender; and, to the extent necessary to exercise its rights and fulfill its obligations under the DIP Documents, one counsel to the DIP Lender in each local jurisdiction, which fees and expenses shall not be subject to the approval of the Court, nor shall any recipient of any such payment be required to file with respect thereto any interim or final fee application with the Court, provided that any fees and expenses of a professional shall be subject to the provisions of paragraph 15 of the Interim Order.</p>	
<p><u>Provisions Limiting the Court's Power or Discretion to Enter Future Orders:</u></p> <p><i>Local Rule 4001-2(a)(i)(C)</i></p>	<p>Except as expressly provided in the Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection Obligations and all other rights and remedies of the DIP Lender and the Prepetition Secured Parties granted by the provisions of the Interim Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting the Chapter 11 Cases to a case under chapter 7, dismissing the Chapter 11 Cases, or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral or Prepetition Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations.</p>	<p>Interim Order ¶ 23(d)</p>
<p><u>Funding of Non-Debtor Affiliates:</u></p> <p><i>Local Rule 4001-2(a)(i)(D)</i></p>	<p>Not applicable.</p>	
<p><u>Lending Conditions:</u></p> <p><i>Bankruptcy Rule 4001(c)(1)(B)</i></p> <p><i>Local Rule 4001-2(a)(i)(E)</i></p>	<p><u>Certain Conditions to Making Term Loans.</u></p> <p>(a) The DIP Credit Agreement shall be effective upon receipt by the parties hereto of an executed counterpart of the DIP Credit Agreement.</p> <p>(b) The obligation of DIP Lender to fund the Term Loans requested to be made by it shall be subject to the prior or concurrent satisfaction (or waiver) of each of the conditions precedent set forth in this clause (a):</p>	<p>DIP Credit Agreement § 2</p>

	Summary of the Material Terms	Reference
	<p>(1) the Borrower shall have paid any Obligations then payable hereunder (including the reasonable and documented out-of-pocket fees and expenses of counsel to the DIP Lender) or under any other DIP Document;</p> <p>(2) the Loan Parties shall have delivered corporate resolutions, incumbency certificates, and similar documents, in form and substance reasonably satisfactory to DIP Lender with respect to the Credit Agreement and the other DIP Documents and the transactions contemplated thereby;</p> <p>(3) the Loan Parties shall have delivered guarantees of each of the Guarantors, each in form and substance reasonably satisfactory to DIP Lender with respect to the Credit Agreement and the other DIP Documents and the transactions contemplated thereby;</p> <p>(4) the Loan Parties shall have delivered fully executed copies of all other DIP Documents, each in form and substance reasonably satisfactory to DIP Lender;</p> <p>(5) any representation or warranty by any Loan Party contained in the DIP Credit Agreement or in any other DIP Document shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date;</p> <p>(6) (i) with respect to the Term Loan made on or after the Closing Date prior to entry of the Final Order, (A) the Court shall have entered the Interim Order; and (B) the Interim Order shall not have been stayed, vacated, reversed, modified, or amended without DIP Lender's consent or (ii) with respect to the Final Order Term Loan, (A) the Court shall have entered the Final Order; and (B) the Final Order shall have not been stayed, vacated, reversed, modified, or amended without DIP Lender's consent;</p> <p>(7) no Default or Event of Default shall have occurred and be continuing or would result after giving effect to the Term Loans and the transactions contemplated in the DIP Credit Agreement;</p>	

Summary of the Material Terms	Reference
<p>(8) after giving effect to the making of the Term Loans, the outstanding principal amount of all Term Loans would not exceed the Maximum Amount;</p> <p>(9) the DIP Lender shall have received and approved the Initial Budget in accordance with the DIP Credit Agreement and the DIP Orders;</p> <p>(10) the Bankruptcy Court shall have entered an order, in form and substance acceptable to the DIP Lender, authorizing the Loan Parties to use Cash Collateral of the Prepetition Secured Parties in a manner consistent with the Budget; and</p> <p>(11) Borrower shall have delivered to DIP Lender the fully executed Stalking Horse APA and any related agreements, in form and substance and with purchasers satisfactory to the DIP Lender.</p> <p>(c) The Borrower shall not request a borrowing of a Term Loan after the Closing Date (and no borrowing will be permitted), if, in each case, as of the date thereof:</p> <p>(1) any representation or warranty by any Loan Party contained in the DIP Credit Agreement or in any other DIP Document shall be untrue or incorrect in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such date, except to the extent that such representation or warranty expressly relates to an earlier date;</p> <p>(2) the Interim Order shall have been stayed, vacated, reversed, modified, or amended without DIP Lender's consent;</p> <p>(3) after the entry of the Final Order, the Final Order shall have been stayed, vacated, reversed, modified, or amended without DIP Lender's consent; and</p> <p>(4) any Default or Event of Default shall have occurred and be continuing or would result after giving effect to the advance of the Final Order Term Loans or any release of proceeds of the Term Loans.</p> <p>Notwithstanding the foregoing, if the DIP Lender determines in its sole discretion that the Borrower has failed to satisfy the conditions precedent</p>	

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	set forth in section 2 of the DIP Credit Agreement for a Borrowing Notice, the DIP Lender may decline to fund such borrowing.	
<p><u>Carve-Out:</u></p> <p><i>Bankruptcy Rule 4001(b)(1)(B)(iii)</i></p> <p><i>Local Rule 4001-2(a)(i)(F)</i></p>	<p>The “<u>Carve-Out</u>” is an amount equal to the sum of (i) all fees required to be paid to the clerk of the Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (ii) all reasonable fees and expenses incurred by a chapter 7 trustee under section 726(b) of the Bankruptcy Code in an amount not to exceed \$25,000; (iii) all accrued and unpaid (x) hourly fees and expenses and (y) any monthly restructuring, sale, success, or other transaction fee (to the extent such fees were incurred pursuant to the terms of the applicable engagement letter with the Debtors) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, incurred at any time before or on the first business day following delivery of the Trigger Notice (as defined below) not to exceed the amounts set forth on a line item basis in the Approved DIP Budget (collectively, the “<u>Allowed Debtor Professional Fees</u>”) of persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the “<u>Debtor Professionals</u>”); (iv) all accrued and unpaid hourly fees and expenses to the extent allowed at any time, whether by interim order, procedural order, or otherwise, incurred before or on the day of delivery of the Trigger Notice (as defined below) not to exceed the amounts set forth on a line item basis in the Approved DIP Budget (collectively, the “<u>Allowed Committee Professional Fees</u>” and together with the Allowed Debtor Professional Fees, the “<u>Allowed Professional Fees</u>”) of persons or firms retained by any Committee in the Chapter 11 Cases pursuant to section 1103 of the Bankruptcy Code (the “<u>Committee Professionals</u>”, together with the Debtor Professionals, the “<u>Professional Persons</u>”), and (v) Allowed Professional Fees incurred after the first business day following delivery of the Trigger Notice in an amount not to exceed \$250,000 ((v) being the “<u>Carve Out Cap</u>”), in each case subject to the limits imposed by the Interim Order, the Final Order, the Approved DIP Budget on a line item basis, or otherwise, on Allowed Professional Fees permitted to be incurred, including in connection with any permitted investigation of the claims, liens, and defenses against the Prepetition Secured Parties; <i>provided, however</i>, nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement, or compensation described in clauses (i), (ii), (iii), (iv), or (v) above on any other grounds.</p> <p>“<u>Trigger Notice</u>” shall mean a written notice delivered by email (or other electronic means) by the DIP Lender to the Debtors, their restructuring counsel, the U.S. Trustee, and counsel to the Committee (if any), which notice shall be delivered following (i) the occurrence and during the continuation of an Event of Default (as defined in the DIP Credit</p>	Interim Order ¶ 15(a)

	Summary of the Material Terms	Reference
	Agreement) and (ii) acceleration of the DIP Obligations under the DIP Facility, stating that the Carve-Out Cap has been invoked.	
<p><u>Priority and Security:</u></p> <p><i>Bankruptcy Rules 4001(c)(1)(B)(i), (ii), (iii), (vii), (xi)</i></p> <p><i>Local Rule 4001-2(a)(i)(G)</i></p>	<p>As security for the DIP Obligations, the following security interests and liens shall be granted to the DIP Lender (all property identified in clauses (a), (b), and (c) below, and, subject to the entry of the Final Order, the Avoidance Proceeds, being collectively referred to as the “<u>DIP Collateral</u>”), subject only to the Carve-Out and the Permitted Prior Liens (all such liens and security interests granted to the DIP Lender pursuant to DIP Orders and the DIP Documents, the “<u>DIP Liens</u>”):</p> <p>(a) <u>First Lien on Unencumbered Property</u>. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on, after or as of the Petition Date, is not subject to a valid, perfected, and non-avoidable lien (collectively, the “<u>Unencumbered Property</u>”), including any and all unencumbered cash of the Debtors and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, claims, causes of action, commercial tort claims, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, intellectual property, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located and whenever arising, and the proceeds, products, rents, and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing, in each case other than the Avoidance Actions, but including, subject to the entry of the Final Order, the Avoidance Proceeds;</p> <p>(b) <u>Priming Lien on Prepetition Collateral</u>. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and postpetition property of the Debtors (including any and all cash and cash collateral and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including post-petition intercompany claims against any Debtor), claims or causes of action, commercial tort claims, contracts, properties, plants, fixtures, machinery,</p>	<p>DIP Credit Agreement § 11</p> <p>Interim Order ¶ 5</p>

	Summary of the Material Terms	Reference
	<p>equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, intellectual property, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located and whenever arising, and the proceeds, products, rents, and profits of the foregoing), whether now existing or hereafter acquired, that is subject to the Prepetition Liens, which lien shall be senior in all respects to such Prepetition Liens. Such security interests and liens shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current and future liens of the Prepetition Secured Parties (including the Adequate Protection Liens granted hereunder);</p> <p>(c) <u>DIP Liens Senior to Certain other Liens.</u> Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors that was, as of the Petition Date, subject to valid, properly perfected (before the Petition Date), binding, and unavoidable liens that were otherwise senior to the Prepetition Liens as of the Petition Date (the “<u>Permitted Prior Liens</u>”); and</p> <p>(d) <u>DIP Liens Senior to Certain other Liens.</u> The DIP Liens shall not be (i) subject or subordinate to (a) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (b) unless otherwise provided for in the DIP Documents or in the DIP Orders, any liens or security interests arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, (c) any intercompany or affiliate liens of the Debtors, or (d) any orders of attachment or judicial liens; or (ii) subordinated to or made <i>pari passu</i> with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.</p>	
<p><u>Milestones:</u></p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(v), (vi)</i></p> <p><i>Local Rule 4001-2(a)(i)(H)</i></p>	<ol style="list-style-type: none"> 1. On the Petition Date, (i) the Debtors shall file a motion with the Court seeking approval of the Interim Order, (ii) the Debtors shall file the Bidding Procedures Motion with the Court, and (iii) the Debtors shall have entered into the Stalking Horse APA. 2. On or before the date that is 3 days after the Petition Date, the Court shall have entered the Interim Order. 	<p>DIP Credit Agreement <i>Annex B</i></p> <p>Interim Order ¶ 9</p>

Summary of the Material Terms	Reference
<ol style="list-style-type: none"> 3. On or before the date that is 30 days after the Petition Date, the Court shall have entered the Bidding Procedures Order. 4. On or before the date that is 35 days after the Petition Date, the Court shall have entered the Final Order. 5. On or before the date that is 40 days after the Petition Date, the deadline to submit bids under the Bidding Procedures Order shall have occurred. 6. On or before the date that is 45 days after the Petition Date, the Debtors shall have commenced the auction pursuant to the Bidding Procedures Order, if necessary. 7. On or before the date that is 50 days after the Petition Date, a hearing shall have occurred in the Court to consider approval of the Stalking Horse APA and the Stalking Horse Transaction. 8. On or before the date that is 50 days after the Petition Date, the Court shall have entered the Sale Order. 9. On or before the date that is 70 days after the Petition Date, the Stalking Horse Transaction shall be consummated and closed. 	
<p><u>Repayment Features:</u></p> <p><i>Local Rule 4001-2(a)(i)(I)</i></p> <p><u>Optional Prepayments.</u> Subject to the terms and conditions of the DIP Orders, the Borrower shall have the right at any time and from time to time to prepay the Term Loans under the DIP Credit Agreement in whole or in part (without premium or penalty) upon 2 Business Days' written notice to the DIP Lender by 1:00 p.m. New York City time (or such shorter time as the DIP Lender may agree); <i>provided that</i> each such prepayment shall be in a minimum amount of \$100,000. Notice of prepayment having been given as aforesaid, the principal amount specified in such notice shall become due and payable on the prepayment date specified therein in the aggregate principal amount specified therein unless such repayment is conditioned on the receipt of any third-party funds or the consummation of certain transactions which are not received or consummated. Any prepayment or repayment under the DIP Credit Agreement shall be accompanied by interest on the principal amount of the Note being prepaid or repaid to the date of prepayment or repayment. Any prepayment made pursuant to section 6 of the DIP Credit Agreement shall be applied (i) first to the Term Loans until paid in full and (ii) second, to any remaining Obligations as the DIP Lender shall determine in its sole discretion.</p> <p><u>Mandatory Prepayments.</u> In each case, subject to the terms and conditions of the DIP Orders and the Budget, upon not less than 1</p>	<p>DIP Credit Agreement §§ 6, 7</p>

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<p>Business Day prior written notice by the Borrower to the DIP Lender by 1:00 p.m. New York City time:</p> <p>(a) No later than 2 Business Days upon receipt by any Loan Party of cash proceeds of any asset disposition, unless the DIP Lender agrees otherwise, the Borrower shall prepay the outstanding principal amount of the Term Loans in an amount equal to all such proceeds, net of (1) commissions and other reasonable and customary transaction costs, fees, and expenses properly attributable to such transaction and payable by the Borrower or any Loan Party in connection therewith (in each case, paid to non-affiliates), (2) taxes reasonably expected to be payable by the Borrower in connection with such sale, and (3) with respect to proceeds from the disposition of assets securing obligations owed to a third party, which Lien is senior to the Liens securing the Obligations under the DIP Credit Agreement, the amount of such proceeds required by an order of the Court to repay such third party obligations.</p> <p>(b) No later than 2 Business Days upon receipt by any Loan Party of cash proceeds of any debt securities or other indebtedness not permitted under the DIP Credit Agreement, the Borrower shall prepay the outstanding principal amount of the Term Loans in an amount equal to all such proceeds, net of underwriting discounts and commissions and other reasonable costs or fees paid to non-affiliates in connection therewith.</p> <p>(c) No later than 2 Business Days upon receipt by any Loan Party of any Extraordinary Receipts, the Borrower shall prepay the outstanding principal of the Term Loans in an amount equal to all such Extraordinary Receipts, net of (x) any expenses (including reasonable broker's fees or commissions and legal fees) incurred in connection with such Extraordinary Receipts, (y) any taxes paid or reasonably estimated to be payable by the Loan Parties in connection therewith, and (z) with respect to Extraordinary Receipts from assets securing obligations owed to a third party, which Lien is senior to the Liens securing the Obligations under the DIP Credit Agreement, the amount of such Extraordinary Receipts required by an order of the Court to repay such third party obligations.</p> <p>(d) None of the foregoing shall be construed to constitute the DIP Lender's consent to any transaction that is not permitted by other provisions of the DIP Credit Agreement or the other DIP Documents.</p>	

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	<p>(e) Any prepayment above shall be applied (i) first to the Term Loans until paid in full, (ii) second, to any remaining Obligations as the DIP Lender shall determine in its sole discretion and (iii) third, any excess remaining to the Borrower.</p> <p>(f) The DIP Lender may elect prior to any prepayment required under section 7 of the DIP Credit Agreement to decline all or any portion of the prepayment.</p>	
<p><u>Joint Liability:</u></p> <p><i>Local Rule 4001-2(a)(i)(J)</i></p>	<p>All Debtors are liable under the DIP Documents.</p>	<p>DIP Credit Agreement <i>preamble</i></p> <p>Interim Order <i>preamble</i></p>
<p><u>Use of Estate Funds for Investigation:</u></p> <p><i>Local Rule 4001-2(a)(i)(L)</i></p>	<p>Advisors to any Committee may investigate any potential challenges with respect to the Prepetition Credit Documents, the Prepetition Secured Obligations, or Prepetition Liens during the Challenge Period at an aggregate expense for such investigation, but not litigation, prosecution, objection or challenge thereto, not to exceed \$25,000 in the aggregate.</p>	<p>Interim Order ¶ 25</p>
<p><u>Maturity Date:</u></p> <p><i>Bankruptcy Rules 4001(b)(1)(B)(iii), (c)(1)(B)</i></p> <p><i>Local Rule 4001-2(a)(i)(M)</i></p>	<p>The earliest of (i) 6 month anniversary of the Effective Date, or if such date is not a Business Day the immediately following Business Day, (ii) the date that is 35 days after the Petition Date, if the Final Order has not been entered by the Court on or prior to such date, or if such date is not a Business Day the immediately following Business Day, (iii) the consummation of the Stalking Horse Transaction; (iv) the substantial consummation of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order of the Court, or (v) the date on which the Term Loans are accelerated pursuant to section 16 of the DIP Credit Agreement.</p>	<p>DIP Credit Agreement § 18</p>
<p><u>Events of Default:</u></p> <p><i>Bankruptcy Rule 4001(c)(1)(B)</i></p> <p><i>Local Rule 4001-2(a)(i)(M)</i></p>	<p>Notwithstanding the provisions of Section 362 of the Bankruptcy Code and without application or motion to the Court, the occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an “<u>Event of Default</u>” under the DIP Credit Agreement:</p> <p>(a) The Borrower (i) shall fail to make any payment of principal of, or interest on, or fees owing in respect of, the Term Loans or any of the other Obligations when due and payable, or (ii) shall fail to pay or reimburse the DIP Lender for any expense reimbursable hereunder or under any other DIP Document within one (1) Business Day following the DIP Lender’s demands for such reimbursement or payment.</p>	<p>DIP Credit Agreement § 16</p>

Summary of the Material Terms	Reference
<p>(b) Any Loan Party shall fail to comply with any of the provisions of sections 1(e), 14(f), 14(g), 14(h), 14(i) and 15 of the DIP Credit Agreement.</p> <p>(c) Any Loan Party shall fail to comply with any of other provision of the DIP Credit Agreement or any of the other DIP Documents (other than any provision embodied in or covered by any other clause of section 16 of the DIP Credit Agreement) and the same, if capable of being remedied, shall remain unremedied for 5 Business Days after the earlier of the date a senior officer or any Loan Party becomes aware of such failure and the date written notice of such default shall have been given by the DIP Lender to such Loan Party.</p> <p>(d) Except for defaults occasioned by the filing of the Chapter 11 Cases and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits any Loan Party from complying or permits any Loan Party not to comply, a default or breach shall occur under any agreement, document, or instrument to which any Loan Party is a party (other than agreements, documents, and instruments evidencing Prepetition Secured Obligations) that is not cured within any applicable grace period therefor, and such default or breach (i) involves the failure to make any payment when due in respect of any Indebtedness (other than the Obligations) of any Loan Party in excess of \$50,000 in the aggregate, or (ii) causes, or permits any holder of such Indebtedness or a trustee to cause, Indebtedness or a portion thereof in excess of \$50,000 in the aggregate to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, regardless of whether such default is waived, or such right is exercised, by such holder or trustee.</p> <p>(e) Any representation or warranty in the DIP Credit Agreement or in any other DIP Document or in any written statement, report, financial statement, or certificate made or delivered to DIP Lender by any Loan Party is untrue or incorrect in any material respect (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of the date when made or deemed made.</p> <p>(f) Any Loan Party shall bring or support a motion in any Chapter 11 Case: (i) to obtain financing from any Person other than DIP Lender under section 364(c) or 364(d) of the Bankruptcy Code, except to the extent the proceeds of such financing would be used</p>	

	Summary of the Material Terms	Reference
	<p>to repay in full all of the Obligations under the DIP Credit Agreement, (ii) to grant any Lien other than Permitted Encumbrances upon or affecting any Collateral, except to the extent the proceeds of any such financing secured by such Lien would be used to repay in full all of the Obligations under the DIP Credit Agreement, or (iii) to authorize any other action or actions materially adverse to the DIP Lender, or the DIP Lender’s rights and remedies hereunder or their interests in the Collateral .</p> <p>(g) The entry of an order in any of the Chapter 11 Cases confirming a plan or plans of reorganization or liquidation that (i) is not in a form acceptable to the DIP Lender or (ii) does not contain a provision for the termination of the DIP Lender’s commitment to make Term Loans and the repayment in full in cash of all the Obligations under the DIP Credit Agreement on or before the effective date of such plan or plans.</p> <p>(h) The filing of any motion by the Borrower or any Loan Party against the DIP Lender seeking, or the entry of any order in the Chapter 11 Cases in respect of, any claim or claims under section 506(c) of the Bankruptcy Code against or with respect to any Collateral.</p> <p>(i) The entry by the Court of an order authorizing the appointment of an interim or permanent trustee in the Chapter 11 Cases or the appointment of an examiner in the Chapter 11 Cases with expanded powers to operate or manage the financial affairs, business, or reorganization of any Loan Party.</p> <p>(j) The Chapter 11 Cases, or any of them, shall be dismissed or converted from cases under Chapter 11 to cases under Chapter 7 of the Bankruptcy Code.</p> <p>(k) The entry of an order in any Chapter 11 Case avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under the DIP Credit Agreement or the other DIP Documents.</p> <p>(l) The entry of an order in any Chapter 11 Case granting any other super-priority administrative claim or Lien equal to or superior to that granted to the DIP Lender (other than any such claim or Lien permitted by the DIP Orders), unless (i) consented to by the DIP Lender or (ii) the Obligations are paid in full in cash and the DIP Lender’s commitment to make Term Loans is terminated.</p>	

Summary of the Material Terms	Reference
<p>(m) The entry of an order by the Court granting relief from or modifying the automatic stay of section 362 of the Bankruptcy Code to allow any creditor (other than the DIP Lender) to execute upon or enforce a Lien on any Collateral except with respect to Permitted Encumbrances arising prior to the Petition Date in an aggregate amount not to exceed \$100,000.</p> <p>(n) The DIP Orders (or either of them) shall be stayed, amended, modified, reversed, or revoked in any respect without the DIP Lender's prior written consent.</p> <p>(o) There shall commence any suit or action against the DIP Lender by or on behalf of (i) any Loan Party or (ii) any official committee in the Chapter 11 Cases, in each case, that asserts a claim or seeks a legal or equitable remedy that would have the effect of subordinating the claim or Lien of DIP Lender arising under the DIP Facility and, if such suit or action is commenced by any Person other than Borrower or any Subsidiary, officer, or employee of Borrower, such suit or action shall not have been dismissed or stayed within 10 days after service thereof on the DIP Lender and, if stayed, such stay shall have been lifted.</p> <p>(p) Any provision of any DIP Document shall for any reason cease to be valid, binding, and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any DIP Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any DIP Document has ceased to be or otherwise is not valid, binding, and enforceable in accordance with its terms), or any Lien created under any DIP Document shall cease to be a valid and perfected first priority Lien (except as otherwise permitted herein or in the Financing Orders) in any of the Collateral purported to be covered thereby.</p> <p>(q) Termination of the use of Cash Collateral pursuant to the terms of the DIP Orders.</p> <p>(r) Assets of any Loan Party with a fair market value of \$50,000 or more are attached, seized, levied upon, or subjected to a writ or distress warrant, or come within the possession of any receiver, trustee, custodian, or assignee for the benefit of creditors of any Loan Party and such condition continues for 10 days or more.</p> <p>(s) A breach by any Loan Party of the terms of the DIP Orders.</p>	

Summary of the Material Terms	Reference
<p>(t) The failure of the Borrower to achieve any of the milestones set forth on Annex B to the DIP Credit Agreement, unless otherwise extended by the DIP Lender in its sole discretion.</p> <p>(u) The Stalking Horse APA or any provision thereof (i) shall fail to be in full force and effect or binding upon and enforceable against any Loan Party (subject to entry of a sale order applicable to the Stalking Horse APA) or any other party thereto in accordance with its terms; <i>provided, however</i>, that it shall not be an Event of Default if the Stalking Horse APA ceases to be in full force and effect or binding upon and enforceable against any Loan Party as a result of being out bid in the auction pursuant to the Bidding Procedures Order and all Obligations and Specified Prepetition ABL Obligations of Borrower under the DIP Credit Agreement are satisfied in full, (ii) has been amended or modified without the consent of the DIP Lender, or (iii) has been breached due to the action or inaction of any Loan Party or any other party thereto. Any party to the Stalking Horse APA shall have notified any other party to the Stalking Horse APA of its intent to terminate the Stalking Horse APA or any other event shall occur, or shall fail to occur, which, subject to a notice requirement or passage of time, would result in the termination of the Stalking Horse APA.</p> <p>(v) Entry of an order authorizing and/or directing the reclamation of goods pursuant to section 546(c) of the Bankruptcy Code in excess of \$50,000.</p>	
<p><u>Cross-Collateralization:</u></p> <p><i>Local Rule</i> 4001-2(a)(i)(N)</p>	<p>Not applicable.</p>
<p><u>Adequate Protection:</u></p> <p><i>Bankruptcy Rules</i> 4001(b)(1)(B)(iv), (c)(1)(B)(ii)</p> <p><i>Local Rule</i> 4001-2(a)(i)(P)</p>	<p><u>Adequate Protection of Prepetition Secured Parties.</u> The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including any such diminution resulting from the depreciation, sale, lease, or use by the Debtors (or other decline in value) of the Prepetition Collateral (including Cash Collateral), the priming of the Prepetition Secured Parties' security interests and liens on the Prepetition Collateral (including Cash Collateral) by the DIP Lender pursuant to the DIP Documents and the</p> <p>Interim Order ¶ 7</p>

Interim Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (the “Adequate Protection Claim”). In consideration of the foregoing, the Prepetition Secured Parties, as applicable, shall receive the following (collectively, the “Adequate Protection Obligations”):

- (a) Adequate Protection Liens. The Prepetition Secured Parties are granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements, or other agreements), in the amount of the Adequate Protection Claim, valid, perfected replacement security interests in and liens upon all of the DIP Collateral including all Unencumbered Property and, subject to the entry of the Final Order, the Avoidance Proceeds, in each case subject and subordinate only to (i) the DIP Liens and any liens to which the DIP Liens are junior, including the Permitted Prior Liens, if any, and (ii) the Carve-Out (the “Adequate Protection Liens”).
- (b) Adequate Protection Section 507(b) Claim. The Prepetition Secured Parties are granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Adequate Protection Claim with, except as set forth in the Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the “Adequate Protection 507(b) Claim”), which Adequate Protection 507(b) Claim shall have recourse to and be payable from all of the DIP Collateral in accordance with the priorities set forth in the Interim Order, including, subject to the entry of the Final Order, the Avoidance Proceeds. The Adequate Protection 507(b) Claim shall be subject and subordinate to the Carve-Out and the DIP Superpriority Claims. Except to the extent expressly set forth in the Interim Order or the DIP Credit Agreement, the Prepetition Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the Adequate Protection 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims, including claims that benefit from the Carve-Out, have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.
- (c) Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with

	Summary of the Material Terms	Reference
	<p>the terms of paragraph 7 of the Interim Order, all reasonable and documented out-of-pocket fees and expenses (the “<u>Adequate Protection Fees</u>”), whether incurred before or after the Petition Date, including all reasonable and documented out-of-pocket fees and expenses of the Prepetition Secured Parties and the DIP Lender and for the counsel and other professionals retained as provided for in the DIP Documents and the Interim Order.</p> <p>For the avoidance of doubt, the Debtors are not seeking non-consensual priming liens.</p>	
<p><u>Debtors’ Stipulations:</u></p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(iii)</i></p> <p><i>Local Rule 4001–2(a)(i)(Q)</i></p>	<p>Pursuant to the Interim Order, the Debtors for themselves, their estates, and all parties in interest, make the stipulations set forth in Paragraph E of the Interim Order.</p> <p><u>Challenge Period.</u> Any party that seeks to (i) object to or challenge the amount, validity, perfection, enforceability, priority or extent of any of the Prepetition Secured Obligations or the Prepetition Liens or (ii) otherwise assert or prosecute any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, or contests, against either the Prepetition Secured Parties or their respective Representatives in connection with matters related to the Prepetition Credit Documents, the Prepetition Secured Obligations, the Prepetition Liens, or the Prepetition Collateral (collectively, the “Challenges”) must timely file an adversary proceeding properly filed with the Court by any party in interest, including any Committee, with requisite standing by no later than the earlier of (i) with respect to parties in interest (including the Committee) with requisite standing, 75 calendar days of entry of the Interim Order; (ii) subject to entry of the Final Order, entry of the Sale Order (as defined in the Bidding Procedures Motion); and (iii) any such later date as has been agreed to, in writing, by the Term Loan Agent or ABL Agent, as applicable (the time period established by the foregoing clauses (i), (ii) and (iii), the “Challenge Period”).</p>	<p>Interim Order ¶ E, 13</p>
<p><u>Waiver or Modification of Automatic Stay/Provisions Seeking to Limit Parties in Interest during the Remedies Notice Period:</u></p>	<p>The automatic stay provisions of section 362 of the Bankruptcy Code are modified, without requiring prior notice to or authorization of the Court, to the extent necessary to permit, as applicable, the DIP Lender, the Term Loan Agent, and the ABL Agent to enforce all of their rights under the DIP Documents and Prepetition Credit Documents and (a) immediately upon the occurrence of an Event of Default, declare (i) the termination, reduction, or restriction of Cash Collateral and any further DIP Commitments to the extent any such DIP Commitment remains in effect, (ii) all DIP Obligations to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Debtors, (iii) termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP</p>	<p>Interim Order ¶ 11</p>

Summary of the Material Terms	Reference	
<p><i>Bankruptcy Rule 4001(c)(1)(B)(iv)</i></p> <p><i>Local Rule 4001-2(a)(i)(S, (T))</i></p>	<p>Lender, but without affecting any of the DIP Liens or the DIP Obligations, and (iv) that the Carve-Out shall be triggered, through the delivery of the Trigger Notice to the DIP Borrower, and (b) upon the occurrence of an Event of Default and the giving of 5 calendar days' prior written notice (the "<u>Remedies Notice Period</u>") (which shall run concurrently with any notice required to be provided under the DIP Documents or Prepetition Credit Documents) via email to counsel to the Debtors, counsel to the Committee (if any), and the U.S. Trustee, the Term Loan Agent, the DIP Lender, and the ABL Agent to (i) immediately terminate consent to the Debtors' continued use of Cash Collateral and/or the DIP Facility and (ii) exercise all other rights and remedies provided for in the DIP Documents, Prepetition Credit Documents, and under applicable law.</p> <p>During the Remedies Notice Period, the Debtors and any other party in interest shall be entitled to seek an emergency hearing with the Court. Unless the Court orders otherwise prior to the expiration of the Remedies Notice Period, the automatic stay, as to all of the DIP Lender and Prepetition Secured Parties shall automatically be terminated at the end of the Remedies Notice Period without further notice or order.</p> <p>Upon expiration of the Remedies Notice Period, the DIP Lender and the Prepetition Secured Parties shall be permitted to exercise all remedies set forth in the Interim Order, and in the DIP Documents, and as otherwise available at law without further order of or application or motion to the Court consistent with the Interim Order.</p>	
<p><u>Provisions Effective Upon Entry of the Interim Order:</u></p> <p><i>Local Rule 4001-2(a)(i)(R)</i></p>	<p>As noted above, the Debtors' stipulations shall be binding upon the Debtors and any successor thereto (including any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors) in all circumstances and for all purposes upon entry of the Interim Order.</p> <p><u>Credit Bidding.</u> Upon entry of the Interim Order, (a) the DIP Lender shall have the unqualified right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations in any sale of the Debtors' assets, and (b) subject to paragraph 13 of the Interim Order, the Prepetition Secured Parties shall have the right to credit bid up to the full amount of the Prepetition Secured Obligations in the sale of any of the Debtors' assets, including, but not limited to, pursuant to (with respect to both (a) and (b) above) (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for the Debtors under section 725 of the Bankruptcy Code.</p>	<p>Interim Order ¶¶ 13, 27</p>
<p><u>Liens on Avoidance Actions:</u></p>	<p>Pursuant to Bankruptcy Code § 364(c)(1), the DIP Lender is granted valid, perfected, enforceable, and non-avoidable liens on, and security interests in, all now owned or hereafter acquired assets and property of</p>	<p>Interim Order ¶ 4</p>

Summary of the Material Terms	Reference	
<p><i>Bankruptcy Rule 4001(c)(1)(B)(xi)</i></p> <p><i>Local Rule 4001-2(a)(i)(U)</i></p>	<p>the Debtors, including, without limitation, proceeds of Avoidance Actions upon entry of the Final Order.</p>	
<p><u>Sections 506(c) and 552(b) Waivers:</u></p> <p><i>Bankruptcy Rules 4001(c)(1)(B)(viii), (x)</i></p> <p><i>Local Rules 4001-2(a)(i)(C), (V), (W), (X)</i></p>	<p>In light of, among other things, the Prepetition Secured Parties' agreement to subordinate the Prepetition Liens and Prepetition Secured Obligations to the DIP Liens and the Adequate Protection Liens, and to permit the use of the DIP Facility and Cash Collateral for payments made in accordance with the terms of the Interim Order and the other DIP Documents, including the Approved DIP Budget, subject to the entry of the Final Order, the DIP Lender and the Prepetition Secured Parties are entitled to a waiver of (i) the provisions of Bankruptcy Code section 506(c), (ii) any "equities of the case" claims under Bankruptcy Code section 552(b), and (iii) the equitable doctrine of "marshaling" or any similar doctrine.</p>	<p>Interim Order ¶¶ J</p>
<p><u>Budget:</u></p> <p><i>Bankruptcy Rule 4001 (c)(1)(B)</i></p> <p><i>Local Rule 4001-2(a)(iii)</i></p> <p><i>Local Rule 4001-2(a)(i)(E)</i></p>	<p><u>Budget.</u> The Initial DIP Budget shall be deemed to constitute the "Approved DIP Budget" for purposes of the Interim Order with the most recently delivered budget constituting the "Approved DIP Budget" solely upon approval by the DIP Lender in its sole discretion. In the event the conditions for the most recently delivered Revised DIP Budget to constitute an "Approved DIP Budget" are not met as set forth herein, the prior Revised DIP Budget shall remain in full force and effect and the Debtors shall be required to work in good faith with the DIP Lender to modify such Revised DIP Budget until the DIP Lender approves such Revised DIP Budget as an "Approved DIP Budget."</p>	<p>DIP Credit Agreement §§ 14(e), (h)</p> <p>Interim Order ¶¶ 3(a), (b), (c)</p>
<p><u>Release, Waiver or Limitation on any Claim or Cause of Action:</u></p> <p><i>Bankruptcy Rule 4001(c)(1)(B)(viii)</i></p>	<p>Subject to paragraph 13 of the Interim Order, each of the Debtors and the Debtors' estates on their own behalf and on behalf of their past, present, and future predecessors, successors, heirs, subsidiaries and assigns hereby stipulate and agree that they unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge each of the (i) Prepetition Secured Parties, and each of their Representatives and (ii) DIP Lender and each of their Representatives, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the (i) Prepetition Secured Obligations, the</p>	<p>Interim Order ¶¶ F, G</p>

Summary of the Material Terms	Reference
<p>Prepetition Liens, or the Prepetition Credit Documents, and (ii) DIP Obligations, DIP Liens, or DIP Documents, including, without limitation, (i) any so-called “lender liability” or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the Prepetition Secured Parties and DIP Lender, as applicable.</p>	

45. Each of the foregoing terms is justified because the Debtors need immediate access to financing and the use of Cash Collateral to continue in these Chapter 11 Cases and facilitate a sale process. The terms of the DIP Facility are only viable proposal to provide critical liquidity and were negotiated at arms’ length.

BASIS FOR RELIEF

I. The Debtors Should Be Authorized to Obtain Postpetition Financing

A. Entry into the DIP Documents Is an Exercise of the Debtors’ Sound Business Judgment

46. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Documents, obtain access to the postpetition financing provided therein, and continue using Cash Collateral and other Prepetition Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant a debtor in possession considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment”); *In re L.A. Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) (“[C]ourts will almost always defer to the business

judgment of a debtor in the selection of the lender.”); *In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party in interest.”).

47. Specifically, to determine whether the business judgment standard is met, a court need only “examine whether a reasonable businessperson would make a similar decision under similar circumstances.” *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor’s business decision when that decision involves “a business judgment made in good faith, upon a reasonable basis, and within the scope of the debtor’s authority under the [Bankruptcy] Code”).

48. Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) (while many of the terms favored the DIP lenders, “taken in context, and considering the relative circumstances of the parties,” the court found them to be reasonable); *see also Unsecured Creditors’ Comm. Mobil Oil Corp. v. First Nat’l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into “hard bargains” to acquire funds for its reorganization). The Court may also appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks, Inc.*, the bankruptcy court for the Southern District of New York held that:

Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. ***Relevant features of the financing must be evaluated, including non economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization.*** This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (emphasis added).

49. The Debtors' determination to move forward with the DIP Documents is an exercise of their sound business judgment following an arm's length process and careful evaluation of available alternatives. Specifically, the Debtors and their advisors determined that the Debtors would require significant postpetition financing to support their operational and chapter 11 activities. The DIP Documents will allow the Debtors to: (a) fund capital expenditures that are essential to the Debtors' continuation as a going concern; (b) provide the liquidity necessary to continue favorable trade terms with vendors and to reassure other stakeholders; (c) fund payroll obligations; (d) fund the administrative cost of these Chapter 11 Cases; and (e) provide a path to emergence by allowing the Debtors to effectuate a sale of their assets during these Chapter 11 Cases. The Debtors negotiated the DIP Documents with the DIP Lender and Prepetition Secured Parties in good faith, at arm's length, and with the assistance of their respective advisors, and the Debtors believe that they have obtained the best financing available under the circumstances. Accordingly, the Court should authorize the Debtors' entry into the DIP Documents, as it is a reasonable exercise of the Debtors' business judgment.

B. The Debtors Satisfy the Requirement for Entering into the DIP Documents Under Section 364(c) of the Bankruptcy Code

50. The Debtors propose to obtain postpetition financing under the terms and conditions of the DIP Documents by providing security interests and other liens, as described herein and provided for in the DIP Documents, pursuant to sections 364(c) and 364(d) of the Bankruptcy Code. More specifically, the Debtors propose to provide to the DIP Lender, subject to the Carve-Out and Permitted Prior Liens, valid, binding, continuing, enforceable, fully-perfected (i) first priority senior security interest in and lien upon Unencumbered Property, (ii) first priority senior priming security interest in and lien upon all pre- and postpetition property of the Debtors that is subject to the Prepetition Liens, and (iii) a junior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors that was, as of the Petition Date, subject to Permitted Prior Liens.

51. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and hearing, that the debtors are “unable to obtain unsecured credit allowable under section 503(b)(1) of the [the Bankruptcy Code].” 11 U.S.C. § 364(c). Furthermore, section 364(c) financing is appropriate when the debtor-in-possession is unable to obtain unsecured credit allowable as an ordinary administrative claim. *See In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (debtor seeking unsecured credit under section 364(c) of the Bankruptcy Code must prove that it was unable to obtain unsecured credit pursuant to section 364(b) of the Bankruptcy Code); *Ames Dep’t Stores*, 115 B.R. at 37-39 (holding that debtor must show it made reasonable effort to seek other sources of financing under section 364(a) and (b) of the Bankruptcy Code).

52. Bankruptcy courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- (a) [The debtor is] unable to obtain unsecured credit under section 364(b), *i.e.*, by allowing a lender only an administrative claim per 11 U.S.C. § 503(b)(1)(A);
- (b) The credit transaction is necessary to preserve the assets of the estate; and
- (c) The terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

L.A. Dodgers, 457 B.R. at 312 (citing *In re St. Mary Hosp.*, 86 B.R. 393, 401 (Bankr. E.D. Pa. 1988)); *see also Crouse Grp.*, 71 B.R. at 549; *Ames Dep't Stores*, 115 B.R. at 37-39. The elements of this test are satisfied here.

53. First, as described in the DIP Declaration, the Debtors recognized that it would be particularly difficult to secure financing because (i) the Prepetition ABL Lenders had a strong desire to have their existing indebtedness purchased by a stalking horse buyer prior to the commencement of a chapter 11 case and (ii) they were unwilling to consent to a priming DIP facility by any other third party in a chapter 11 case. Furthermore, the Prepetition ABL Lenders were unwilling to provide DIP financing themselves. In light of this, the Debtors understood that any third-party DIP financing would need to either (i) provide DIP financing on a junior basis behind the approximately \$60 million of debt already held by the Prepetition ABL Lenders or (ii) provide DIP financing on a senior basis to the Prepetition ABL Facility, but only after purchasing the existing debt of the Prepetition ABL Lenders, neither of which are particularly attractive to a potential lender. *See* DIP Decl. ¶¶ 13, 15. Despite soliciting various institutions, the Debtors, expectedly, did not receive any proposals from third parties. The Debtors and their advisors, thus,

determined that the proposed DIP Facility provides the only opportunity available to the Debtors, under the circumstances, to fund these Chapter 11 Cases. *See* DIP Decl. ¶ 16.

54. Concerning the second prong of the three-part test, without adequate postpetition financing, the Debtors would be unable to maintain ordinary course business operations. This would significantly impair their ability to preserve value during the Chapter 11 Cases, while attempting to effectuate a going-concern sale transaction. *See* First Day Decl. ¶¶ 61-64. The DIP Facility ensures that the Debtors have the liquidity to not only fund these Chapter 11 Cases, but complete a sale transaction and, eventually, emerge from chapter 11 successfully.

55. Finally, as set forth below, the terms of the DIP Documents are fair, reasonable, and adequate given the facts and circumstances.

C. The Debtors Should Be Authorized to Obtain Postpetition Financing on a Secured and Superpriority Basis

56. The Debtors propose to obtain financing under the DIP Facility by providing security interests and liens as set forth in the DIP Documents pursuant to section 364(c) of the Bankruptcy Code. Specifically, section 364(c) of the Bankruptcy Code provides that:

If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt—

- (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title;
- (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or
- (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

57. To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by section 364(c) of the Bankruptcy Code. *Bray v. Shenandoah Fed. Sav. & Loan Ass’n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (“The statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.”); *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (superpriority administrative expenses authorized where debtor could not obtain credit as an administrative expense). When few lenders are likely to be able and willing to extend the necessary credit to a debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n. 4 (N.D. Ga. 1989); *see also Ames Dep’t Stores*, 115 B.R. at 40 (approving financing facility and holding that the debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected the most favorable of the two offers it received).

58. As described above, the Debtors are unable to obtain unsecured credit or on terms more favorable than that of the DIP Documents. Therefore, approving superpriority claims in favor of the DIP Lender is reasonable and appropriate.

59. Further, section 364(d) of the Bankruptcy Code provides that a debtor may obtain credit secured by a senior or equal lien on property of the estate already subject to a lien, after notice and a hearing, where the debtor is “unable to obtain such credit otherwise” and “there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.” 11 U.S.C. § 364(d)(1). The Debtors may

incur “priming” liens under the DIP Facility to the extent such DIP Collateral is subject to the Prepetition Liens that secure the Prepetition Secured Obligations. *See Anchor Savs. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”). Accordingly, the Debtors may incur “priming” liens under the DIP Facility if either (a) their Prepetition Secured Parties have consented or (b) the Prepetition Secured Lenders’ interests in the Prepetition Collateral are adequately protected.

60. Here, the Prepetition Secured Parties have affirmatively consented to the DIP Facility and actively participated in facilitating the proposed DIP Facility. Moreover, as set forth more fully in the Interim Order, the Debtors propose to provide an adequate protection package to protect the interests of the Prepetition Secured Parties. Therefore, the relief requested pursuant to section 364(d)(1) of the Bankruptcy Code is appropriate.

D. No Adequate Alternative to the DIP Facility is Currently Available

61. To obtain a postpetition financing facility, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by sections 364(c) and (d) of the Bankruptcy Code. *See YL West 87th Holdings I LLC*, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) (“Courts have generally deferred to a debtor’s business judgment in granting section 364 financing.”); *In re Gen. Growth Props., Inc.*, 412 B.R. 122, 125 (Bankr. S.D.N.Y. 2009) (stating that debtor has an obligation only to make “reasonable efforts, under the circumstances . . . to obtain [unsecured financing], in the ordinary course of business or otherwise”); *In re Harborwalk, LP*, No. 10-80043-G3-11 (LZP) (Bankr. S.D. Tex. Jan. 29, 2010) [Docket No. 28] (“Section 364(d)(1) does not require that a debtor seek credit from every possible source, but a debtor must show that it made a reasonable effort to obtain postpetition financing

from other potential lenders on less onerous terms and that such financing was unavailable.”) (internal citations omitted).

62. As noted above, the Debtors do not believe that a more favorable alternative DIP financing is reasonably available given the realities imposed by the Debtors’ existing capital structure, the Prepetition ABL Lenders’ unwillingness to consent to a priming DIP facility or provide DIP financing themselves, and the indication of interest for the sale of the Debtors’ assets. Accordingly, the Debtors have determined that, under the circumstances, the DIP Facility is the best postpetition financing option available to them and their estates.

63. As a result, the Debtors have shown, in satisfaction of the requirements of sections 364(c) and (d) of the Bankruptcy Code, that alternative credit on more favorable terms was unavailable to them.

E. The Roll-Up Amount is Appropriate

64. Section 363(b) of the Bankruptcy Code permits a debtor to use, sell, or lease property, other than in the ordinary course of business, with court approval. It is well settled in the Third Circuit that such transactions should be approved when they are supported by a sound business purpose. *See In re Abbots Dairies, Inc.*, 788 F.2d 143 (3d Cir. 1986) (holding that in the Third Circuit, a debtor’s use of assets outside the ordinary course of business under section 363(b) of the Bankruptcy Code should be approved if the debtor can demonstrate a sound business justification for the proposed transaction). The business judgment rule shields a debtor’s management from judicial second-guessing. *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“[T]he [Bankruptcy] Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”).

65. Repaying prepetition debt (often referred to as a “roll-up”) is a common feature in debtor-in-possession financing arrangements. The importance of “roll-up” features in DIP facilities has been repeatedly recognized by courts in this district and others, and such courts have granted relief similar to the relief requested herein. *See, e.g., In re Restoration Forest Products Group, LLC*, Case No. 24-10120 (KBO) (Bankr. D. Del. Feb. 1, 2024) (authorizing an approximately \$93 million DIP facility, including a \$64 million roll-up of the prepetition bridge facility on an interim basis); *In re DeCurtis Holdings LLC*, Case No. 23-10548 (JKS) (Bankr. D. Del. June 23, 2023) (authorizing an approximate \$27 million DIP facility, including a \$20.5 million roll-up of prepetition loans); *In re SiO2 Medical Prods., Inc.*, Case No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) [Docket No. 216] (authorizing an approximately \$120 million DIP facility, including a \$60 million roll-up of the prepetition term loan); *In re Phoenix Servs. Topco LLC*, Case No. 22-10906 (MFW) (Bankr. D. Del. Sept. 29, 2022) [Docket No. 73] (approving a \$100 million interim DIP facility with a 3:1 roll-up ratio consisting of \$75 million of prepetition debt and \$25 million of new money); *In re TPC Group Inc.*, Case No. 22-10493 (CTG) (Bankr. D. Del. June 3, 2022) [Docket No. 147] (authorizing an approximately \$323 million DIP facility, including a \$238 million roll-up of prepetition secured notes, of which approximately \$59 million rolled up on an interim basis); *In re Nine Point Energy Holdings, Inc.*, Case No. 21-10570 (MFW) (Bankr. D. Del. Mar. 17, 2021) [Docket No. 100] (approving a \$13 million interim DIP facility with a 3:1 ratio consisting of \$39 million of prepetition debt and \$13 million of new money); *In re Blackhawk Mining LLC*, Case No. 19-11595 (LSS) (Bankr. D. Del. July 23, 2019) [Docket No. 81] (authorizing DIP facilities in the aggregate amount of \$240 million, including a \$100 million roll-up of the prepetition term loan and an additional \$140 million in incremental liquidity, pursuant to interim order); *In re Charlotte Russe Holding, Inc.*, Case No. 19-10210 (LSS) (Bankr.

D. Del. Feb. 5, 2019) [Docket No. 92] (approving a \$50 million interim DIP facility with a 2.57:1 roll-up ratio consisting of \$36 million of prepetition debt and \$14 million of new money).

66. As set forth above, the DIP Credit Agreement provides that the DIP Facility will be used to roll up, subject to entry of the Final Order, \$40 million, plus all accrued interest through the date of entry of the Final Order, of the Prepetition ABL Obligations. This repayment is a sound exercise of the Debtors' business judgment and is a material component of the structure of the DIP Facility. Without continued access to the additional liquidity provided under the DIP Facility, the Debtors will be unable to fund the administration of these Chapter 11 Cases and effectuate a successful sale process.

67. As discussed in the DIP Declaration, the Roll-Up Amount was the subject of arm's-length and good-faith negotiations between the Debtors and the DIP Lender, is an integral component of the overall terms of the DIP Facility, and was required by the DIP Lender as considerations for the extension of postpetition financing. *See* DIP Decl. ¶ 19.

68. Additionally, the Roll-Up Amount was a necessary condition for the DIP Lender to agree to the DIP Financing. *See* DIP Decl. ¶ 19. Further, upon information and belief, the Debtors believe the ABL Obligations are secured by perfected, first priority liens, and the portion being rolled-up are secured such that the roll-up of the obligations merely accelerates the satisfaction of the obligations without affecting the recovery of other creditors. For these reasons and because no other party has put forward an actionable financing proposal, the Roll-Up Amount is reasonable, appropriate, a sound exercise of the Debtors' business judgment, and ultimately in the best interests of all stakeholders given the alternatives.

II. The Debtors Should Be Authorized to Use the Cash Collateral.

69. Section 363 of the Bankruptcy Code governs the Debtors' use of property of their estates, including Cash Collateral. Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral as long as "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). Here, the DIP Lenders and the Prepetition Secured Parties consent or are deemed to consent to the Debtors' use of the Cash Collateral, subject to the terms and limitations set forth in the Interim Order.

70. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses cash collateral. Further, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996) (en banc). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *See, e.g., In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (explaining that the "determination of whether there is adequate protection is made on a case by case basis"); *In re Satcon Tech. Corp.*, No. 12-12869 (KG), 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012) (same); *In re N.J. Affordable Homes Corp.*, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006) (holding that "the circumstances of the case will dictate the necessary relief to be given"); *In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992) (holding that "what interest is entitled to adequate protection and what constitutes adequate protection must be decided on a case-by-case basis"); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01[1] at

361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”).

71. As set forth above, the Prepetition Secured Parties have or are deemed to have consented to the use of Cash Collateral and other Prepetition Collateral. The Debtors propose providing the Prepetition Secured Parties with adequate protection that (i) is fair and reasonable and (ii) adequately protects against the diminution in value of their interest in the Prepetition Collateral (including Cash Collateral). Specifically, as detailed in the Interim Order, the Debtors are proposing the following adequate protection (collectively, the “Adequate Protection Obligations”):

- (a) Adequate Protection Liens. The Prepetition Secured Parties are hereby granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements, or other agreements), in the amount of the Adequate Protection Claim, valid, perfected replacement security interests in and liens upon all of the DIP Collateral including all Unencumbered Property and, subject to the entry of the Final Order, the Avoidance Proceeds, in each case subject and subordinate only to (i) the DIP Liens and any liens to which the DIP Liens are junior, including the Permitted Prior Liens, if any, and (ii) the Carve-Out (the “Adequate Protection Liens”).
- (b) Adequate Protection Section 507(b) Claim. The Prepetition Secured Parties are hereby granted, subject to the Carve-Out, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Adequate Protection Claim with, except as set forth in the Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the “Adequate Protection 507(b) Claim”), which Adequate Protection 507(b) Claim shall have recourse to and be payable from all of the DIP Collateral in accordance with the priorities set forth herein, including, subject to the entry of the Final Order, the Avoidance Proceeds. The Adequate Protection 507(b) Claim shall be subject and subordinate to the Carve-Out and the DIP Superpriority Claims. Except to the extent expressly set forth in this Interim Order or the DIP Credit Agreement, the Prepetition Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the Adequate Protection 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which

no claim has been asserted) and any claims having a priority superior to or pari passu with the DIP Superpriority Claims, including claims that benefit from the Carve-Out, have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

- (c) Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of Paragraph 7 of this Interim Order, all reasonable and documented out-of-pocket fees and expenses (the “Adequate Protection Fees”), whether incurred before or after the Petition Date, including all reasonable and documented out-of-pocket fees and expenses of the Prepetition Secured Parties and the DIP Lender and for the counsel and other professionals retained as provided for in the DIP Documents and this Interim Order. None of the Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto or otherwise seek the Court’s approval of any such payments.

72. The Debtors submit that the proposed Adequate Protection Obligations are sufficient to protect the Prepetition Secured Parties from any potential diminution in value to the Prepetition Collateral. In light of the foregoing, the Debtors further submit, and the Prepetition Secured Parties agree or are deemed to agree, that the proposed Adequate Protection Obligations to be provided for the benefit of the Prepetition Secured Parties are appropriate. Thus, the Debtors’ provision of the Adequate Protection Obligations is not only necessary to protect against any diminution in value but is fair and appropriate under the circumstances of these Chapter 11 Cases to ensure the Debtors are able to continue using the Cash Collateral and other Prepetition Collateral, subject to the terms and limitations set forth in the Interim Order, for the benefit of all parties in interest and their estates.

III. The Debtors Should Be Authorized to Pay the Fees Required Under the DIP Documents

73. The Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Lender. Specifically, pursuant to the DIP Credit Agreement, the Debtors have agreed to pay to the DIP Lender an exit fee, earned upon entry of the Interim Order, equal to 10% of the Term

Loans (as defined in the DIP Credit Agreement) payable on the earlier of (1) the date that all the DIP Obligations are paid in full in cash and (2) the Maturity Date (as defined in the DIP Credit Agreement). Notably, the exit fee excludes the Roll-Up Amount and, to the extent the DIP Lender elects to credit bid the Term Loans and/or converts to equity the Term Loans in connection with the consummation of the Stalking Horse Transaction (as defined in the DIP Credit Agreement), such fee is waived.

74. As noted in the DIP Declarations, the fees are an integral component of the overall terms of the DIP Financing and were required by the DIP Lender as consideration for the extension of postpetition financing. Additionally, the contemplated fees of the DIP Financing were the subject of arm's length and good faith negotiations and are, in the aggregate, generally within the range of rates for debtor in possession financings in comparable circumstances in today's market for similarly situated businesses. *See* DIP Decl. ¶ 19.

IV. The DIP Lender Should Be Deemed a Good-Faith Lender Under Section 364(e).

75. Section 364(e) of the Bankruptcy Code protects a good faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. 11 U.S.C. § 364(e). Section 364(e) provides that:

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

Id.

76. Here, the Debtors believe the DIP Documents embody the most favorable terms on which the Debtors could obtain DIP financing. As discussed in the DIP Declaration, all negotiations regarding the provisions of the DIP Facility were conducted in good faith and on an arm's length basis. The terms and conditions of the DIP Facility are fair and reasonable, and the proceeds of the DIP Facility will be used only for purposes that are permissible under the Bankruptcy Code. Further, no consideration is being provided to any party to the DIP Facility other than as disclosed herein. Accordingly, the Bankruptcy Court should find that the DIP Lender is a "good faith" lender within the meaning of section 364(e) of the Bankruptcy Code and is entitled to all of the protections afforded by that section.

V. The Automatic Stay Should Be Modified on a Limited Basis.

77. The relief requested herein contemplates a modification of the automatic stay to permit the Debtors to grant the DIP Liens. Specifically, the DIP Facility contemplates modifying the automatic stay so as to (i) permit the creation and perfection of the DIP Liens, and (ii) provide for the automatic vacation of such stay to permit the DIP Lender, the Term Loan Agent, and the ABL Agent to enforce their rights under the DIP Documents and the Prepetition Credit Documents in the event of an Event of Default, subject to 5 business days' written notice to counsel to the Debtors, the Committee (if any), the Term Loan Agent, the DIP Lender, the ABL Agent, and the U.S. Trustee.

78. Stay modifications of this kind are ordinary and standard features for postpetition financings, and in the Debtors' business judgment, are reasonable and fair under the present circumstances. *See, e.g., In re PGX Holdings, Inc.*, Case No. 23-10718 (CTG) (Bankr. D. Del. Aug. 4, 2023) (modifying automatic stay as necessary to effectuate the terms of the order and following occurrence of an Event of Default); *In re SiO2 Medical Prods., Inc.*, Case No. 23-10366

(JTD) (Bankr. D. Del. Apr. 26, 2023) (same); *In re Carestream Health, Inc.*, Case No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) (same); *In re Town Sports Int'l, LLC*, Case No. 12-12168 (CTG) (Bankr. D. Del. Oct. 2, 2020) (same); *In re Extraction Oil & Gas, Inc.*, Case No. 20-11548 (CSS) (Bankr. D. Del. Jun. 15, 2020) (same); *In re Akorn, Inc.*, Case No. 20-11177 (KBO) (Bankr. D. Del. May 22, 2020) (same).⁴

SATISFACTION OF BANKRUPTCY RULE 6003

79. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within 21 days of the Petition Date requires the Debtors to demonstrate that such relief “is necessary to avoid immediate and irreparable harm.” As described herein, and in the First Day Declaration and DIP Declaration, the Debtors will suffer immediate and irreparable harm without the Court’s authorization to withdraw and borrow funds under the DIP Facility. If the relief is not granted, the Debtors’ ability to continue to operate and pay their administrative expenses will be significantly disrupted, which will have a disastrous effect on the Debtors’ operations and the contemplated sale process. The ability to obtain sufficient working capital and liquidity through the DIP Facility is therefore vital to the preservation and maximization of the value of the Debtors’ estates. *See* First Day Decl. ¶¶ 61, 62. Accordingly, obtaining postpetition financing, as provided under the DIP Credit Agreement, will minimize disruption of the businesses and operations of the Debtors and permit the Debtors to meet payroll and other operating expenses, while they move forward expeditiously in their efforts to continue to a sale process. *Id.*

⁴ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request of the Debtors’ proposed counsel.

80. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and that the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

INTERIM APPROVAL IS APPROPRIATE

81. Bankruptcy Rules 4001(b) and 4001(c)(2) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code may not be commenced earlier than 14 days after the service of such motion. Upon request, however, a bankruptcy court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to the Debtors' estates. *See Fed. R. Bankr. P. 4001(c)(2).*

82. The Debtors request that the Court authorize them, on an interim basis pending the Final Hearing, to borrow under the DIP Facility in an amount up to \$60 million. As discussed above, this relief will enable the Debtors to operate their businesses in a manner that will permit them to preserve and maximize value and thereby avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing. Absent interim approval of this interim borrowing under the DIP Facility, the Debtors' business would suffer immediate and irreparable harm.

REQUEST FOR FINAL HEARING

83. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable, and in no event after 30 days after the Petition Date and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

REQUESTS FOR IMMEDIATE RELIEF AND WAIVER OF STAY

84. Pursuant to Bankruptcy Rules 6003(b) and 6004(h), the Debtors seek (a) immediate entry of an order granting the relief sought herein and (b) a waiver of any stay of the effectiveness of such an order. Bankruptcy Rule 6003(b) provides, in relevant part, that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following . . . a motion to pay all or part of a claim that arose before the filing of the petition.” Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” From this, courts have ruled that, where the failure to grant any such requested relief would result in immediate and irreparable harm to a debtor’s estate, a court may allow a debtor to pay all or part of a claim that arose prepetition immediately.

85. As set forth above, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, the Debtors submit that ample cause exists to justify (a) the immediate entry of an order granting the relief sought herein and (b) a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

RESERVATION OF RIGHTS

86. Nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or shall be construed as: (a) an admission as to the validity of any claim against a Debtor entity or the existence of any lien against the Debtors’ property; (b) a waiver of the Debtors’ rights to dispute any claim or lien on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim would constitute an allowed claim; (e) a request or authorization to assume any agreement,

contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of any or all such liens.

NOTICE

87. Notice of this Motion will be provided to the following parties or their respective counsel: (a) the Office of the United States Trustee; (b) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (c) the DIP Lender; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the District of Delaware; (f) the state attorneys general for all states in which the Debtors conduct business; and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002 (the "Notice Parties"). As this Motion is seeking "first day" relief, within forty-eight (48) hours of the entry of an order with respect to this Motion, the Debtors will serve copies of this Motion and any order entered with respect to this Motion as required by Local Rule 9013-1(m). The Debtors respectfully submit that, in light of the nature of the relief requested, no further notice is necessary.

[Remainder of Page Intentionally Left Blank]

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter the Interim Order, substantially in the form attached hereto as **Exhibit A**, (i) authorizing the Debtors to obtain the postpetition financing described herein on an interim basis and setting the Motion for a final hearing; and (iii) granting such other and further relief as the Court may deem just and proper.

Dated: May 21, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Katelin A. Morales

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*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Interim Order

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

In re:

Supply Source Enterprises, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11054 (___)

(Joint Administration Requested)

**INTERIM ORDER (I) AUTHORIZING DEBTORS
TO (A) OBTAIN POSTPETITION SENIOR SECURED
FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING
ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES,
(III) GRANTING LIENS AND SUPERPRIORITY CLAIMS,
(IV) MODIFYING THE AUTOMATIC STAY, (V) SCHEDULING
A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of Supply Source Enterprises, Inc. (the “Borrower”) and its affiliated debtors and debtors in possession (the “Debtors”) in the above-captioned cases (the “Chapter 11 Cases”), pursuant to sections 105, 361, 362, 363, 364, 503, 507, and 552 of title 11 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014 and Local Rules 2002-1, 4001-2 and 9013-1 seeking, among other things:

- A. authorization, upon entry of this Interim Order, for the Debtors to obtain senior secured debtor-in-possession financing on a superpriority basis (the “DIP Financing”) in an aggregate principal amount of up to \$60 million of commitments (the “DIP Commitments”), consisting of (1) a new money multi-draw term loan facility consisting of \$20 million (the “New Money Amount”), of which (a) \$10 million shall be made available in accordance with the DIP Credit Agreement (as defined below) upon entry of this Interim Order and satisfaction of the applicable conditions set forth in the DIP Credit Agreement and (b) \$10 million shall be made available in accordance with the DIP Credit Agreement upon entry of the Final Order and satisfaction of the applicable conditions set forth in the DIP Credit

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor’s federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Parent GP, LLC (9632); SSE Parent, LP (2770); SSE Acquisition Holdings, Inc. (2234); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors’ headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

Agreement, and (2) upon entry of the Final Order, a roll-up of the ABL Obligations (as defined below) in the amount of \$40 million plus all accrued interest through the date of entry of the Final Order (the “Roll-Up Amount”) on the terms and conditions set forth in this Interim Order and the DIP Documents (as defined below) (the “DIP Facility”);

- B. authorization for (i) the Borrower to execute and enter into that certain *Debtor in Possession Secured Multi-Draw Term Promissory Note*, dated as of May 21, 2024 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof (the “DIP Credit Agreement”, a copy of which is attached to this Interim Order as **Exhibit A**, and, together with the schedules and exhibits attached thereto and all agreements, documents, certificates, consents, instruments and/or amendments executed and delivered in connection therewith, including the DIP GCA (as defined below), collectively, the “DIP Documents”), among the Borrower and TZ SSE Buyer LLC, a Delaware limited liability company (the “DIP Lender”), and (ii) the Debtors to execute and enter into that certain *Debtor-in-Possession Guarantee and Collateral Agreement*, to be dated as of the Closing Date (as defined in the DIP Credit Agreement) (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms hereof and thereof, the “DIP GCA”), among the Debtors and the DIP Lender, and the other DIP Documents to which they are intended to be a party, and to perform all such other and further acts as may be required or appropriate in connection with the DIP Facility and the DIP Documents;
- C. the granting of adequate protection to the Prepetition Secured Parties (as defined below);
- D. subject to the restrictions set forth in the DIP Documents and this Interim Order, authorization for the Debtors to use Cash Collateral (as defined below) and all other Prepetition Collateral (as defined below) in which the Prepetition Secured Parties have an interest and the granting of adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of Cash Collateral and the other Prepetition Collateral;
- E. subject to certain challenge rights of parties in interest set forth herein, approval of certain stipulations by the Debtors with respect to the Prepetition Credit Documents (as defined below) and the liens and security interests arising therefrom;
- F. the granting of superpriority claims pursuant to section 364(c)(1) of the Bankruptcy Code to the DIP Lender, as well as liens, including priming liens, pursuant to section 364(d) of the Bankruptcy Code, as further described herein, on all prepetition and postpetition property of the Debtors’ estates and all proceeds thereof (including, subject to entry of the Final Order, any Avoidance Proceeds (each as defined below));

- G. subject to entry of the Final Order, the waiver of the Debtors' right to surcharge the Prepetition Collateral and the DIP Collateral (each as defined below) pursuant to section 506(c) of the Bankruptcy Code and any right of the Debtors under the "equities of the case" exception in section 552(b) of the Bankruptcy Code;
- H. subject to entry of the Final Order, a finding that none of the DIP Lender or the Prepetition Secured Parties shall be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the Prepetition Collateral;
- I. the modification of the automatic stay to accomplish the transactions and remedies set forth herein and in the DIP Documents; and
- J. a date for the hearing (the "Final Hearing") to consider the Motion on a final basis and the entry of a final order (the "Final Order") authorizing and approving the transactions described in the foregoing clauses.

This Court having reviewed the Motion, the exhibits attached thereto, the First Day Declaration, the Cohen Declaration, and the evidence submitted at the interim hearing held on [●], 2024 (the "Interim Hearing"); and notice of the Motion and the Interim Hearing having been provided in accordance with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein and that such relief is in the best interests of the Debtors, their estates and creditors, and all parties in interest and is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing; and any objections to the Motion having been withdrawn or overruled on the merits; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor;

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

A. **Debtor-in-Possession Operation.** On May 21, 2024 (the “Petition Date”), the Debtors commenced these Chapter 11 Cases. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. **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(a)-(b) and 1334. Venue for the Chapter 11 Cases and proceeding on the Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Committee Formation.** As of the date hereof, the United States Trustee for the District of Delaware (the “U.S. Trustee”) has not appointed an official committee of unsecured creditors in the Chapter 11 Cases (a “Committee”) pursuant to section 1102 of the Bankruptcy Code.

D. **Notice.** Notice of the Motion and the Interim Hearing has been provided in accordance with the Bankruptcy Code, Bankruptcy Rules, and the Local Rules, and no other or further notice of the Motion with respect to the relief requested at the Interim Hearing or the entry of this Interim Order shall be required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, for purposes of Bankruptcy Rule 4001.

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

E. **Debtors' Stipulations.** Without prejudice to the rights of any other party in interest and subject to the limitations thereon contained in paragraphs 13 and 25 below, the Debtors admit, acknowledge, agree, and stipulate to the following, which stipulations shall be binding on the Debtors, their estates, and all parties in interest (collectively, the "Debtors' Stipulations"):

- (i) *Prepetition Term Loan Facility.* Pursuant to that certain *Credit Agreement*, dated as of June 30, 2020 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Term Loan Credit Agreement"), and together with any ancillary documents, security agreements, guarantees, pledge agreements, other instruments and notes issued in connection therewith, including, without limitation, that certain *Guarantee and Collateral Agreement*, dated as of June 30, 2020, by and among SSE Intermediate, Inc., SSE Buyer, Inc. and certain subsidiaries party thereto and the Term Loan Agent (as amended and as may be further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the "Term Loan GCA"), and as each may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, collectively, the "Term Loan Documents"), by and among (a) the Borrower, (b) SSE Intermediate, Inc., (c) Ares Capital Corporation, as administrative agent and collateral agent for the Term Loan Lenders (in such capacities, the "Term Loan Agent"), and (d) the lenders party thereto from time to time and each solely in their capacity as such (the "Term Loan Lenders" and, together with the Term Loan Agent, the "Term Loan Secured Parties"), the Term Loan Lenders provided the Borrower with certain loans and other financial accommodations (the "Prepetition Term Loan Facility").
- (ii) *Prepetition Term Loan Obligations.* As of the Petition Date, the Debtors were lawfully indebted and liable to the Term Loan Secured Parties in respect of the obligations under the Term Loan Documents in the aggregate principal amount of not less than \$80 million plus all accrued but unpaid interest, penalties and fees thereon (including interest paid in kind, prepayment premiums, and interest at the default rate, as applicable), fees, expenses, and all other obligations expressly provided for thereunder, or incurred in connection therewith, including any "Obligations" as defined in the Term Loan Documents (such obligations under the Term Loan Documents, the "Prepetition Term Loan Obligations"), and the Debtors are unconditionally liable, without defense, counterclaim, offset or setoff of any kind, with respect to the Prepetition Term Loan Obligations. The Prepetition Term Loan Obligations constitute legal, valid, and binding obligations of the Debtors. No offsets, defenses, or counterclaims to, or claims or causes of action that could reduce the amount or ranking of the Prepetition Term Loan Obligations exist. No portion of the Prepetition

Term Loan Obligations (including any interest owed thereunder) is subject to set-off, avoidance, impairment, disallowance, recharacterization, reduction, subordination (whether equitable, contractual, or otherwise), counterclaims, recoupment, cross-claims, defenses, or any other challenges under or pursuant to the Bankruptcy Code or any other applicable domestic or foreign law or regulation by any person or entity. The Term Loan Documents are valid and enforceable by the Term Loan Secured Parties against each of the Debtors.

- (iii) *Prepetition ABL Credit Facility.* Pursuant to that certain *ABL Credit Agreement*, dated as of June 30, 2020 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the “ABL Credit Agreement”, and together with any ancillary documents, security agreements, guarantees, pledge agreements, other instruments and notes issued in connection therewith, including, without limitation, that certain *ABL Guarantee and Collateral Agreement*, dated as of June 30, 2020, by and among SSE Intermediate, Inc., SSE Buyer, Inc. and certain subsidiaries party thereto, and the ABL Agent (as amended and as may be further amended, restated, amended and restated, supplemented and/or otherwise modified from time to time, the “ABL GCA”), and as each may be amended, restated, amended and restated, supplemented, or otherwise modified from time to time prior to the date hereof, collectively, the “ABL Documents” and, together with the Term Loan Documents, the “Prepetition Credit Documents”), by and among (a) SSE Intermediate, Inc., SSE Buyer, Inc. and certain subsidiaries party thereto, (b) ACF FinCo I LP, as administrative agent and collateral agent for the ABL Lenders (in such capacities, the “ABL Agent”), and (c) the lenders party thereto from time to time and each solely in their capacity as such (the “ABL Lenders” and, together with the Term Loan Agent, the “ABL Secured Parties” and, together with the Term Loan Secured Parties, the “Prepetition Secured Parties”), the ABL Lenders provided the Borrower with certain loans and other financial accommodations (the “Prepetition ABL Facility”).
- (iv) *Prepetition ABL Obligations.* As of the Petition Date, the Debtors were lawfully indebted and liable to the ABL Secured Parties in respect of the obligations under the ABL Documents in the aggregate principal amount of not less than \$60 million plus all accrued but unpaid interest, penalties and fees thereon (including interest paid in kind and interest at the default rate, as applicable), fees, expenses, and all other obligations expressly provided for thereunder, or incurred in connection therewith, including any “Obligations” as defined in the ABL Documents (such obligations under the ABL Documents, the “Prepetition ABL Obligations” and together with the Prepetition Term Loan Obligations, the “Prepetition Secured Obligations”), and the Debtors are unconditionally liable, without defense, counterclaim, offset or setoff of any kind, with respect to the Prepetition ABL Obligations. The Prepetition ABL Obligations constitute legal, valid,

and binding obligations of the Debtors. No offsets, defenses, or counterclaims to, or claims or causes of action that could reduce the amount or ranking of the Prepetition ABL Obligations exist. No portion of the Prepetition ABL Obligations (including any interest owed thereunder) is subject to set-off, avoidance, impairment, disallowance, recharacterization, reduction, subordination (whether equitable, contractual, or otherwise), counterclaims, recoupment, cross-claims, defenses, or any other challenges under or pursuant to the Bankruptcy Code or any other applicable domestic or foreign law or regulation by any person or entity. The ABL Documents are valid and enforceable by the ABL Secured Parties against each of the Debtors.

- (v) *Liens and Collateral.* Pursuant to the Prepetition Credit Documents and prior to the Petition Date, the Debtors granted: (a) to the ABL Agent, for the benefit of itself and the other ABL Secured Parties, valid, binding, perfected, enforceable, first-priority liens and security interests in the Prepetition Collateral (as defined below) (the “Prepetition ABL Liens”) to secure the Prepetition ABL Obligations, and (b) to the Term Loan Agent, for the benefit of itself and the other Term Loan Secured Parties, valid, binding, perfected, enforceable, second -priority liens and security interests in the Prepetition Collateral (as defined below) (the “Prepetition Term Loan Liens” and, together with the Prepetition ABL Liens, the “Prepetition Liens”) to secure the Prepetition Term Loan Obligations. The Prepetition Liens provide the Prepetition Secured Parties with valid, binding, perfected, enforceable, first- and second-priority liens (as applicable), and security interests in all property of the Debtors, including, without limitation, cash collateral as defined in section 363(a) of the Bankruptcy Code (the “Cash Collateral”) and the “Collateral” (as defined in the Prepetition Credit Documents) (collectively, the “Prepetition Collateral”). All cash of the Debtors and cash proceeds of the Prepetition Collateral, including all such cash and cash proceeds of such Prepetition Collateral held at any time and from time to time in any of the Debtors’ securities accounts and banking, checking, or other deposit accounts with financial institutions, are and will be Cash Collateral of the Prepetition Secured Parties.
- (vi) *Validity, Perfection, and Priority of Prepetition Liens and Prepetition Secured Obligations.* The Prepetition Liens (a) are valid, binding, perfected, and enforceable liens on and security interests in the Prepetition Collateral; (b) are not subject to, pursuant to the Bankruptcy Code or other applicable law (foreign or domestic), avoidance, disallowance, reduction, recharacterization, recovery, subordination (whether equitable, contractual, or otherwise), attachment, offset, counterclaim, defense, “claim” (as defined in the Bankruptcy Code), impairment, or any other challenge of any kind by any person or entity; (c) entitle the Prepetition Secured Parties to credit bid the entirety of the Prepetition Secured Obligations pursuant to section 363(k) of the Bankruptcy Code without further challenges from the

Debtors or any other party and implemented by the Prepetition Secured Parties in their sole discretion; and (d) are subject and subordinate only to (1) the Carve-Out (as defined below) and (2) valid and enforceable liens and encumbrances in the Prepetition Collateral (if any) that were expressly permitted to be senior to the Prepetition Liens under the applicable Prepetition Credit Documents, that are valid, perfected, enforceable, and non-avoidable as of the Petition Date and that are not subject to avoidance, reduction, disallowance, disgorgement, counterclaim, surcharge, or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law, and the Debtors irrevocably waive, for themselves and their estate, any right to challenge or contest in any way the scope, extent, perfection, priority, validity, non-avoidability, and enforceability of the Prepetition Liens or the validity, enforceability, or priority of payment of the Prepetition Secured Obligations and the Prepetition Credit Documents. The Prepetition Liens were granted to the Prepetition Secured Parties for fair consideration and reasonably equivalent value, and were granted contemporaneously with the making of loans, commitments, and/or other financial accommodations under the Prepetition Credit Documents. Pursuant to and as more particularly described in the Prepetition Credit Documents: (a) the Prepetition ABL Liens are valid, binding, properly perfected, enforceable, non-avoidable, first-priority liens and security interests in and against the Prepetition Collateral (including, without limitation, Cash Collateral), and are senior in right, priority, operation, and effect to all other interests in the Prepetition Collateral, subject only to Permitted Prior Liens (as defined herein), in all respects, and (b) the Prepetition Term Loan Liens are valid, binding, properly perfected, enforceable, non-avoidable, second-priority liens and security interests in and against the Prepetition Collateral (including, without limitation, Cash Collateral), and are senior in right, priority, operation, and effect to all other interests in the Prepetition Collateral, subject only to the Prepetition ABL Liens and Permitted Prior Liens (as defined herein), in all respects, notwithstanding any provisions of the Uniform Commercial Code or any other Federal, State, or foreign law.

- (vii) *Not Control Persons or Insiders.* By virtue of any of the actions taken with respect to, in connection with, related to, or arising from the Prepetition Credit Documents, the Prepetition Secured Parties do not control the Debtors or their properties or operations or have authority to determine the manner in which the Debtors' operations are conducted, and are not control persons or insiders of the Debtors.
- (viii) *Events of Default.* Events of Default (as defined in the Prepetition Credit Documents), and other defaults have occurred and are continuing under the terms of the Prepetition Credit Documents. The Prepetition Secured Parties expressly reserve all of their respective rights, powers, privileges, and remedies under the Prepetition Credit Documents.

F. **Release of Prepetition Secured Parties.** Subject to paragraph 13 hereof, each of the Debtors and the Debtors' estates on their own behalf and on behalf of their past, present, and future predecessors, successors, heirs, subsidiaries and assigns hereby stipulate and agree that they unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge each of the Prepetition Secured Parties, and each of their respective affiliates, former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial advisors, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates, assigns, and predecessors in interest, each in their capacity as such (collectively, the "Representatives"), of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the Prepetition Secured Obligations, the Prepetition Liens, or the Prepetition Credit Documents, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the Prepetition Secured Parties.

G. **Release of DIP Lender.** Each of the Debtors and the Debtors' estates on their own behalf and on behalf of their past, present, and future predecessors, successors, heirs, subsidiaries

and assigns hereby stipulate and agree that they unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge the DIP Lender and each of its respective Representatives, of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened, including, without limitation, all legal and equitable theories of recovery, arising under common law, statute, or regulation or by contract, of every nature and description that exist on the date hereof with respect to or relating to the DIP Obligations (as defined below), the DIP Liens (as defined below), or the DIP Documents, including, without limitation, (i) any so-called "lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the DIP Lender.

H. **Stipulation Binding on Debtors.** The Debtors' Stipulations and releases shall be binding on the Debtors and their respective representatives, successors, and assigns, and on each of the Debtors' estates and, subject to paragraph 13 hereof, all other entities and persons, including any creditors of the Debtors, and each of their respective representatives, successors, and assigns, including, without limitation, any trustee or other representative appointed in these Chapter 11 Cases, or upon conversion to chapter 7, whether such trustee or representative is appointed under chapter 11 or chapter 7 of the Bankruptcy Code.

I. **Findings Regarding the DIP Financing and Cash Collateral.**

i. Good and sufficient cause has been shown for the entry of this Interim Order.

ii. The Debtors have an immediate need to obtain the DIP Financing and continue to use the Prepetition Collateral (including Cash Collateral). The Borrower's borrowings from the DIP Lender under the DIP Facility will be used in a manner consistent with the terms and conditions of the applicable DIP Documents and this Interim Order for and, in each case, solely in accordance with the Approved DIP Budget (as defined below): (a) working capital and other general corporate purposes of the Debtors; (b) payment of amounts due under the DIP Facility, including interest and fees payable thereunder and any adequate protection payments payable pursuant to this Interim Order; (c) payment of the professional fees and expenses of administering the Chapter 11 Cases; (d) cash collateralization of that certain Irrevocable Standby Letter of Credit Number IS000414317U, issued on December 13, 2023 (the "Existing L/C") pursuant to the ABL Credit Agreement; and (e) other purposes as expressly set forth in this Interim Order, the Approved DIP Budget, or as expressly approved by the DIP Lender in writing (in its sole discretion). Except with the prior written consent of the DIP Lender in its sole discretion, the Debtors shall not be permitted to use the proceeds of the DIP Facility and the proceeds of the Prepetition Collateral (including the Cash Collateral) in contravention of the provisions of the orders entered in the Chapter 11 Cases (including this Interim Order), including any restrictions or limitations on the use of proceeds contained therein. The Debtors' access to sufficient working capital through the use of Cash Collateral and other Prepetition Collateral and the incurrence of indebtedness under the DIP Facility are necessary and vital to the preservation and maintenance of the going-concern value of the Debtors. The Debtors' use of Cash Collateral alone would be insufficient to meet the

Debtors' cash disbursement needs during the period of effectiveness of this Interim Order. The access by the Debtors to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, incurrence of new indebtedness under the DIP Facility, and other financial accommodations provided under the DIP Documents are necessary and vital to avoid an immediate liquidation and for the preservation and maintenance of the going concern value of the Debtors and to a successful restructuring of the Debtors.

iii. The Debtors are unable to obtain financing on terms more favorable than that offered by the DIP Lender under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtors are also unable to obtain secured credit allowable solely under sections 364(c)(1), 364(c)(2), and 364(c)(3) of the Bankruptcy Code without the Debtors granting to the DIP Lender, the DIP Liens and the DIP Superpriority Claims (as defined below) on the terms and conditions set forth herein and granting the Adequate Protection Obligations (as defined below), in each case, under the terms and conditions set forth in this Interim Order and in the DIP Documents.

iv. The terms of the DIP Financing, the terms of the Adequate Protection Obligations, and the terms on which the Debtors may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Interim Order and the DIP Documents are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and constitute reasonably equivalent value and fair consideration.

v. The Prepetition Secured Parties have consented to the use of Cash Collateral and the other Prepetition Collateral, the priming of the Prepetition Liens pursuant to section

364(d)(1) of the Bankruptcy Code, and the Debtors' entry into the DIP Documents in accordance with and subject to the terms of this Interim Order and the DIP Documents.

vi. The DIP Financing, as well as the terms of the Adequate Protection Obligations, and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's length amongst the Debtors, the DIP Lender, and the Prepetition Secured Parties, and their respective advisors, and all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including: (a) all loans made to and guarantees issued by the Debtors pursuant to the DIP Documents, including the Roll-Up Amount (collectively, the "DIP Loans"), and (b) any "Obligations" (as defined in the DIP Credit Agreement) of the Debtors owing to the DIP Lender or any of its Representatives, in accordance with the terms of the DIP Documents, including any obligations, to the extent provided for in the DIP Documents, to indemnify the DIP Lender, each of its Representatives and each of the other Indemnified Persons (as defined in the DIP Credit Agreement) and to pay any interest, fees, expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the DIP Documents), amounts, charges, costs, indemnities, and other obligations that are chargeable or reimbursable under this Interim Order, the Final Order, or the DIP Documents (the foregoing in clauses (a) and (b) collectively, the "DIP Obligations"), shall be deemed to have been extended by the DIP Lender and its Representatives in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Lender shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise. In providing the DIP Loans and consenting to the

use of Cash Collateral, as applicable, each of the DIP Lender and the Prepetition Secured Parties and each of their Representatives have acted in the best interests of the Debtors' estates, for the benefit of all stakeholders, to preserve and enhance the value of the Prepetition Collateral and maximize recoveries for stakeholders. Each of the Prepetition Secured Parties and the DIP Lender have acted in good faith regarding the DIP Financing and the Debtors' continued use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses (including the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens), in accordance with the terms hereof, and the Prepetition Secured Parties (and each of their Representatives) and the DIP Lender (and each of its Representatives) shall be entitled to the full protection of section 363(m) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

vii. The Prepetition Secured Parties are entitled to the adequate protection provided in this Interim Order as and to the extent set forth herein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. The terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including Cash Collateral) are fair and reasonable, reflect the Debtors' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the use of Cash Collateral; *provided, however*, nothing in this Interim Order or the other DIP Documents shall (a) be construed as the affirmative consent by the Prepetition Secured Parties for the use of Cash Collateral, other than on the terms set forth in this Interim Order and in the context of the DIP Financing authorized by this Interim Order, (b) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior), or (c) prejudice, limit, or

otherwise impair the rights of the Prepetition Secured Parties to seek new, different, or additional adequate protection or assert the interests of any of the Prepetition Secured Parties.

viii. The Debtors have prepared and delivered to the DIP Lender a budget (such initial budget, the “Initial DIP Budget”), a copy of which is attached hereto as **Exhibit B**. The Initial DIP Budget reflects the Debtors’ anticipated receipts and anticipated disbursements for each month during the period from the Petition Date through and including September 13, 2024. The Debtors may modify, amend, and update the Initial DIP Budget or the Approved DIP Budget (as defined below), as applicable, from time to time, but in no event later than June 20, 2024 and every third Thursday thereafter, by delivering to the DIP Lender a revised budget, in substantially the form of the Initial Budget or otherwise in form and substance acceptable to the DIP Lender (the “Revised DIP Budget”). On or before 1:00 PM (EST) on July 8, 2024, the Debtors shall deliver the Specified Wind Down Budget (as defined in the DIP Credit Agreement) to the DIP Lender. If approved by the DIP Lender in the DIP Lender’s sole discretion (*provided, however*, with respect to expenses already contained in the Initial DIP Budget related to such wind down period, the Specified Wind Down Budget will be no less favorable to the Borrower than the Initial DIP Budget), the Revised DIP Budget or the Specified Wind Down Budget, as applicable, shall supplement and replace the Initial DIP Budget (the Initial DIP Budget, each Revised DIP Budget approved by the DIP Lender, and the Specified Wind Down Budget approved by the DIP Lender shall constitute, without duplication, an “Approved DIP Budget”). The Debtors believe that the Initial DIP Budget is reasonable under the facts and circumstances. The DIP Lender is relying, in part, upon the Debtors’ agreement to comply with the Approved DIP Budget, the other DIP Documents, and this Interim Order in determining to enter into the postpetition financing arrangements provided for in this Interim Order.

ix. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and Local Rule 4001-2. Absent granting the relief set forth in this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Financing and the use of Prepetition Collateral, including Cash Collateral, in accordance with this Interim Order and the DIP Documents are therefore in the best interests of the Debtors' estates and consistent with the Debtors' exercise of their fiduciary duties.

J. **Sections 506(c) and 552(b).** In light of, among other things, the Prepetition Secured Parties' agreement to subordinate the Prepetition Liens and Prepetition Secured Obligations to the DIP Liens and the Adequate Protection Liens, and to permit the use of the DIP Facility and Cash Collateral for payments made in accordance with the terms of this Interim Order and the other DIP Documents, including the Approved DIP Budget, subject to the entry of the Final Order, the DIP Lender and the Prepetition Secured Parties are entitled to a waiver of (i) the provisions of Bankruptcy Code section 506(c), (ii) any "equities of the case" claims under Bankruptcy Code section 552(b), and (iii) the equitable doctrine of "marshaling" or any similar doctrine.

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

IT IS HEREBY ORDERED THAT:

1. **Motion Granted.** The Motion is GRANTED to the extent provided herein on an interim basis. Any objections, reservations of rights, or other statements with respect to entry of the Interim Order, to the extent not withdrawn or resolved, are overruled on the merits.

2. **Authorization of the DIP Financing and the DIP Documents.**

(a) The Debtors are hereby authorized to execute, enter into and perform all obligations under the DIP Documents. The Debtors are hereby authorized to borrow money pursuant to the DIP Credit Agreement in an aggregate principal amount not to exceed \$60 million under the DIP Facility (inclusive of the Roll-Up Amount), which shall be used for all purposes permitted under the DIP Documents (and subject to the terms and conditions set forth herein and therein), including to cash collateralize the Existing L/C; *provided, however*, no more than \$10 million of new DIP Loans shall be available to the Debtors pending the entry of the Final Order.

(b) Upon entry of the Final Order and subject to paragraph 13, Prepetition ABL Obligations in an aggregate amount equal to the Roll-Up Amount shall be converted into DIP Obligations, without any further action by the Debtors or any other party.

(c) In furtherance of the foregoing and without further approval of this Court, the Debtors are authorized and directed, and the automatic stay imposed by section 362 of the Bankruptcy Code is hereby modified to the extent necessary to perform all acts, to make, execute, and deliver all instruments and documents (including the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees that may be reasonably required or necessary for the Debtors' performance of their obligations under or related to the DIP Financing, including:

- (i) The execution and delivery of, and performance under, each of the DIP Documents;
- (ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents, or other modifications to and under the DIP Documents, in each case, in such form as the Debtors and the DIP Lender may agree, it being understood that no further approval of the Court or any

other party shall be required for (A) any immaterial amendment, waiver, consent, or other modification (including any extensions of the Milestones (as defined below)) or (B) any waivers of covenants under the DIP Documents and Defaults or Events of Default (each as defined in the DIP Documents); *provided, however*, that the Committee (if any) shall receive notice of any such amendment, waiver, consent, or other modification. Any other material amendment, waiver, consent, or other modification shall require further Court order;

- (iii) to the extent included in the DIP Budget, the non-refundable payment to each of and/or on behalf of the DIP Lender, as applicable, of the fees referred to in the DIP Documents, including (x) all fees and other amounts owed to the DIP Lender, and (y) all reasonable and documented costs and expenses as may be due from time to time, including, without limitation, the reasonable and documented fees and expenses of counsel and other professionals retained as provided for in the DIP Documents and this Interim Order (whether incurred before or after the Petition Date, including, for the avoidance of doubt, Weil, Gotshal & Manges LLP (as counsel), PwC US Business Advisory LLP (as financial advisor), Richards, Layton & Finger, P.A. (as local bankruptcy counsel), and any other foreign counsel and other professionals necessary to represent the interests of the DIP Lender; and, to the extent necessary to exercise its rights and fulfill its obligations under the DIP Documents, one counsel to the DIP Lender in each local jurisdiction, which fees and expenses shall not be subject to the

approval of the Court, nor shall any recipient of any such payment be required to file with respect thereto any interim or final fee application with the Court, provided that any fees and expenses of a professional shall be subject to the provisions of paragraph 15 of this Interim Order; and

- (iv) the performance of all other acts required or advisable under or in connection with the DIP Documents, including the granting of the DIP Liens and DIP Superpriority Claims and perfection of the DIP Liens as permitted herein and therein.

(d) Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute valid, binding, and unavoidable obligations of the Debtors, enforceable against the Debtors in accordance with the terms of the DIP Documents and this Interim Order. No obligation, payment, transfer, or grant of security under the DIP Documents or this Interim Order to the DIP Lender shall be stayed, restrained, voidable or recoverable under the Bankruptcy Code or under any applicable law (including under sections 502(d), 548 or 549 of the Bankruptcy Code, any applicable Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or other similar state statute or common law), or subject to any defense, reduction, setoff, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim, claim, or counterclaim.

3. **Budget and Variance Reporting.**

(a) The Initial DIP Budget shall be deemed to constitute the “Approved DIP Budget” for purposes of this Interim Order with the most recently delivered budget constituting the “Approved DIP Budget” solely upon approval by the DIP Lender in its sole discretion. In the event the conditions for the most recently delivered Revised DIP Budget to constitute an “Approved DIP Budget” are not met as set forth herein, the prior Revised DIP Budget shall remain

in full force and effect and the Debtors shall be required to work in good faith with the DIP Lender to modify such Revised DIP Budget until the DIP Lender approves such Revised DIP Budget as an “Approved DIP Budget.”

(b) On or before 5:00 p.m. (prevailing Eastern time) on the last day of the (i) the one week period ending on May 31, 2024, (ii) the two week period ending on June 7, 2024, (iii) the three week period ending on June 14, 2024 and thereafter the rolling three week period ending on each Friday thereafter (the “Variance Testing Period”), the Debtors shall deliver to the DIP Lender and their advisors, a report (the “Approved Budget Variance Report”) showing, in each case, on a cumulative basis, the actual amount that corresponds to the line item “Total Receipts” (the “Actual Cash Receipts”), as determined by reference to the Approved DIP Budget and the actual amount that corresponds to the line items “Total Cash Disbursements” (the “Actual Operating Disbursement Amounts”) as determined by reference to the Approved DIP Budget, in each case as of the last day of the Variance Testing Period then most recently ended, noting therein (i) all variances, on a cumulative basis, from the amount that corresponds to the line item “Total Receipts” in the Approved DIP Budget (the “Budgeted Cash Receipts”) and the amount that corresponds to the line items “Total Cash Disbursements” in the Approved DIP Budget (the “Budgeted Disbursements Amount”), for such period as set forth in the Approved DIP Budget as in effect for such period and (ii) containing an indication as to whether each variance is temporary or permanent and analysis and explanations for all material variances, (iii) certifying compliance or non-compliance in such Variance Testing Period with the Permitted Variances and (iv) including explanations for all material variances and violations, if any, of such covenant and if any such violation exists, setting forth the actions which the Borrower has taken or intends to take with

respect thereto. The Approved Budget Variance Report shall contain supporting information, satisfactory to the DIP Lender in its sole discretion.

(c) For each most recently ended Variance Testing Period, the Debtors shall not permit: (i) the Actual Cash Receipts to be less than 85% of the Budgeted Cash Receipts (calculated on a cumulative basis as opposed to on a line by line basis), and (ii) the aggregate amount of Actual Operating Disbursement Amounts to exceed 110% of the aggregate amount of Budgeted Disbursement Amounts (calculated on a cumulative basis as opposed to on a line by line basis) (the “Permitted Variance”).

4. **DIP Superpriority Claims.** Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against each of the Debtors (without the need to file any proof of claim) with priority over any and all claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 365, 503(b), 506(c) (subject to the entry of the Final Order), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations (as defined below)), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the “DIP Superpriority Claims”) shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all pre- and postpetition property of the Debtors and all proceeds thereof (excluding the Debtors’ claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the

Bankruptcy Code (collectively, the “Avoidance Actions”), but including, subject to entry of the Final Order, any proceeds or property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement, or otherwise (the “Avoidance Proceeds”). The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed, or modified, on appeal or otherwise.

5. **DIP Liens**. As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation of filings by the DIP Lender or the Debtors of mortgages, security agreements, intellectual property security agreements, control agreements, pledge agreements, financing statements, or other similar documents, any notation of certificates of title for a titled good, or the possession or control by the DIP Lender of, or over, any DIP Collateral (as defined below), the following security interests and liens are hereby granted to the DIP Lender (all property identified in clauses (a), (b), and (c) below, and, subject to the entry of the Final Order, the Avoidance Proceeds, being collectively referred to as the “DIP Collateral”), subject only to the Carve-Out and the Permitted Prior Liens (as defined herein) (all such liens and security interests granted to the DIP Lender pursuant to this Interim Order and the DIP Documents, the “DIP Liens”):

(a) **First Lien on Unencumbered Property**. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on, after or as of the Petition Date, is not subject to a valid, perfected, and non-avoidable lien (collectively, the “Unencumbered Property”), including any and all unencumbered cash of the Debtors and any

investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, claims, causes of action, commercial tort claims, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, intellectual property, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located and whenever arising, and the proceeds, products, rents, and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing, in each case other than the Avoidance Actions, but including, subject to the entry of the Final Order, the Avoidance Proceeds;

(b) Priming Liens on Prepetition Collateral. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all pre- and postpetition property of the Debtors (including any and all cash and cash collateral and any investment of such cash and cash collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date (including post-petition intercompany claims against any Debtor), claims or causes of action, commercial tort claims, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, chattel paper, interests in leaseholds, real properties, deposit accounts, patents, intellectual property, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located and whenever arising, and the proceeds, products, rents, and profits of the foregoing), whether now existing or hereafter acquired, that is subject to the Prepetition Liens, which lien shall be senior in all respects to such Prepetition Liens. Such security interests and liens shall be senior in all respects to the interests in such property of the Prepetition Secured

Parties arising from current and future liens of the Prepetition Secured Parties (including the Adequate Protection Liens granted hereunder);

(c) DIP Liens Junior to Certain Other Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior security interest in and lien upon all tangible and intangible pre- and postpetition property of the Debtors that was, as of the Petition Date, subject to valid, properly perfected (before the Petition Date), binding, and unavoidable liens that were otherwise senior to the Prepetition Liens as of the Petition Date (the “Permitted Prior Liens”); and

(d) DIP Liens Senior to Certain Other Liens. The DIP Liens shall not be (i) subject or subordinate to (a) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under section 551 of the Bankruptcy Code, (b) unless otherwise provided for in the DIP Documents or in this Interim Order, any liens or security interests arising after the Petition Date, including any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board or court for any liability of the Debtors, (c) any intercompany or affiliate liens of the Debtors, or (d) any orders of attachment or judicial liens; or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code.

6. Use of Cash Collateral. The Debtors are hereby authorized, subject to the terms and conditions of this Interim Order, to use Cash Collateral strictly in accordance with the Approved DIP Budget; *provided, however,* (a) the Prepetition Secured Parties are granted the adequate protection as hereinafter set forth and (b) except on the terms and conditions of this Interim Order, the Debtors shall be enjoined and prohibited from at any times using the Cash Collateral absent further order of the Court.

7. **Adequate Protection of Prepetition Secured Parties.** The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1), and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral, including the Cash Collateral, in an amount equal to the aggregate diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including any such diminution resulting from the depreciation, sale, lease, or use by the Debtors (or other decline in value) of the Prepetition Collateral (including Cash Collateral), the priming of the Prepetition Secured Parties' security interests and liens on the Prepetition Collateral (including Cash Collateral) by the DIP Lender pursuant to the DIP Documents and this Interim Order, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (the "Adequate Protection Claim"). In consideration of the foregoing, the Prepetition Secured Parties, as applicable, shall receive the following (collectively, the "Adequate Protection Obligations"):

(a) **Adequate Protection Liens.** The Prepetition Secured Parties are hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements, or other agreements), in the amount of the Adequate Protection Claim, valid, perfected replacement security interests in and liens upon all of the DIP Collateral including all Unencumbered Property and, subject to the entry of the Final Order, the Avoidance Proceeds, in each case subject and subordinate only to (i) the DIP Liens and any liens to which the DIP Liens are junior, including the Permitted Prior Liens, if any, and (ii) the Carve-Out (the "Adequate Protection Liens").

(b) **Adequate Protection Section 507(b) Claim.** The Prepetition Secured Parties are hereby granted, subject to the Carve-Out, an allowed superpriority administrative expense claim

as provided for in section 507(b) of the Bankruptcy Code in the amount of the Adequate Protection Claim with, except as set forth in this Interim Order, priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the “Adequate Protection 507(b) Claim”), which Adequate Protection 507(b) Claim shall have recourse to and be payable from all of the DIP Collateral in accordance with the priorities set forth herein, including, subject to the entry of the Final Order, the Avoidance Proceeds. The Adequate Protection 507(b) Claim shall be subject and subordinate to the Carve-Out and the DIP Superpriority Claims. Except to the extent expressly set forth in this Interim Order or the DIP Credit Agreement, the Prepetition Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the Adequate Protection 507(b) Claim unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and any claims having a priority superior to or *pari passu* with the DIP Superpriority Claims, including claims that benefit from the Carve-Out, have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(c) Adequate Protection Payments. As further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of Paragraph 7 of this Interim Order, all reasonable and documented out-of-pocket fees and expenses (the “Adequate Protection Fees”), whether incurred before or after the Petition Date, including all reasonable and documented out-of-pocket fees and expenses of the Prepetition Secured Parties and the DIP Lender and for the counsel and other professionals retained as provided for in the DIP Documents and this Interim Order. None of the Adequate Protection Fees shall be subject to separate approval by this Court or the U.S. Trustee Guidelines, and no recipient of any such payment shall be required to file any

interim or final fee application with respect thereto or otherwise seek the Court's approval of any such payments.

8. **Application of Proceeds of Collateral.** As a condition to entry into the DIP Credit Agreement, the extension of funds under the DIP Facility and authorization to use Cash Collateral, the Debtors, the DIP Lender, and the Prepetition Secured Parties, in their respective capacities, have agreed that as of and commencing on the date of entry of this Interim Order (and the date of entry of Final Order, if entered), and to the extent set forth therein, the Debtors shall apply the proceeds of DIP Collateral and Prepetition Collateral solely in accordance with this Interim Order (and the Final Order), the DIP Documents, the Prepetition Credit Documents, and the Approved DIP Budget.

9. **Milestones.** The DIP Lender and Prepetition Secured Parties are hereby entitled to performance of the following milestones by the dates set forth below (the "Milestones") or such later date as may be consented to by the DIP Lender, and for the avoidance of doubt, the failure of the Debtors to comply with any of the Milestones shall constitute an immediate Event of Default under the DIP Credit Agreement and this Interim Order and permit the DIP Lender to exercise the rights and remedies provided for in paragraph 11 of this Interim Order and the DIP Documents:

a. On the Petition Date, (i) the Debtors shall file a motion with the Bankruptcy Court seeking approval of the Interim Order, (ii) the Debtors shall file the Bidding Procedures Motion (as defined in the DIP Credit Agreement) with the Bankruptcy Court, and (iii) the Debtors shall have entered into the Stalking Horse APA (as defined in the DIP Credit Agreement).

b. On or before the date that is three (3) days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order.

c. On or before the date that is thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Bidding Procedures Order (as defined in the DIP Credit Agreement).

d. On or before the date that is thirty-five (35) days after the Petition Date, the Bankruptcy Court shall have entered the Final Order.

e. On or before the date that is forty (40) days after the Petition Date, the deadline to submit bids under the Bidding Procedures Order shall have occurred.

f. On or before the date that is forty-five (45) days after the Petition Date, the Debtors shall have commenced an auction, if necessary, pursuant to the Bidding Procedures Order, if necessary.

g. On or before the date that is fifty (50) days after the Petition Date, a hearing shall have occurred in the Bankruptcy Court to consider approval of the Stalking Horse APA and the Stalking Horse Transaction (as defined in the DIP Credit Agreement).

h. On or before the date that is fifty (50) days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order.

i. On or before the date that is seventy (70) days after the Petition Date, the Stalking Horse Transaction shall be consummated and closed.

10. **Event of Default.** With respect to the (a) the DIP Lender and the DIP Facility or (b) the Prepetition Secured Parties and the Debtors' use of Cash Collateral, for purposes of this Interim Order an "Event of Default" means an Event of Default as defined in the DIP Credit Agreement.

11. **Remedies Upon Event of Default.** The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified, without requiring prior notice to or authorization of this Court, to the extent necessary to permit, as applicable, the DIP Lender, the Term Loan Agent, and the ABL Agent to enforce all of their rights under the DIP Documents and Prepetition Credit Documents and (a) immediately upon the occurrence of an Event of Default, declare (i) the termination, reduction, or restriction of Cash Collateral and any further DIP Commitments to the extent any such DIP Commitment remains in effect, (ii) all DIP Obligations to be immediately due and payable, without presentment, demand, protest, or other notice of any kind, all of which are expressly waived by the Debtors, (iii) termination of the DIP Facility and the DIP Documents as to any future liability or obligation of the DIP Lender, but without affecting any of the DIP Liens

or the DIP Obligations, and (iv) that the Carve-Out shall be triggered, through the delivery of the Trigger Notice to the DIP Borrower, and (b) upon the occurrence of an Event of Default and the giving of five (5) calendar days' prior written notice (the "Remedies Notice Period") (which shall run concurrently with any notice required to be provided under the DIP Documents or Prepetition Credit Documents) via email to counsel to the Debtors, counsel to the Committee (if any), and the U.S. Trustee, the Term Loan Agent, the DIP Lender, and the ABL Agent to (i) immediately terminate consent to the Debtors' continued use of Cash Collateral and/or the DIP Facility and (ii) exercise all other rights and remedies provided for in the DIP Documents, Prepetition Credit Documents, and under applicable law. Notwithstanding anything in this Interim Order, during the Remedies Notice Period, the Debtors may only use Cash Collateral with the express written consent of the DIP Lender, and as applicable, the ABL Agent and the Term Loan Agent. During the Remedies Notice Period, the Debtors and any other party in interest shall be entitled to seek an emergency hearing with the Court. Unless the Court orders otherwise prior to the expiration of the Remedies Notice Period, the automatic stay, as to all of the DIP Lender and Prepetition Secured Parties shall automatically be terminated at the end of the Remedies Notice Period without further notice or order. Upon expiration of the Remedies Notice Period, the DIP Lender and the Prepetition Secured Parties shall be permitted to exercise all remedies set forth herein, and in the DIP Documents, and as otherwise available at law without further order of or application or motion to this Court consistent with this Interim Order. No rights, protections or remedies of the DIP Lender and the Prepetition Secured Parties granted by the provisions of this Interim Order, the DIP Documents, or Prepetition Credit Documents shall be limited, modified, or impaired in any way by: (a) any actual or purported withdrawal of the consent of any party to the Debtors' authority to continue to use Cash Collateral; (b) any actual or purported termination of the Debtors' authority

to continue to use Cash Collateral; or (c) except as provided herein or in the Final Order, the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral or the provision of adequate protection to any party.

12. **No Marshaling**. Subject to entry of the Final Order, none of the DIP Lender or the Prepetition Secured Parties shall be subject to (a) the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or Prepetition Collateral or (b) the "equities of the case" exception in section 552(b) of the Bankruptcy Code.

13. **Effect of Stipulations on Third Parties**. The Debtors' stipulations, admissions, releases, and agreements contained in this Interim Order, including in paragraph E of this Interim Order, shall be binding upon the Debtors and any successor thereto (including any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors) in all circumstances and for all purposes upon entry of this Interim Order. The Debtors' stipulations, admissions, releases, and agreements contained in this Interim Order, including in paragraph E of this Interim Order, shall be binding upon all other parties in interest, including any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors, in all circumstances and for all purposes unless: (a) such committee, or any other party in interest, with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so), has timely filed an adversary proceeding (subject to the limitations contained herein, including, among others, in this paragraph 13) (i) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of any of the Prepetition Secured Obligations or the Prepetition Liens or (ii) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or

conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, or contests, against either the Prepetition Secured Parties or their respective Representatives in connection with matters related to the Prepetition Credit Documents, the Prepetition Secured Obligations, the Prepetition Liens, or the Prepetition Collateral (collectively, the “Challenges”) by no later than the earlier of (i) with respect to parties in interest (including the Committee) with requisite standing, seventy-five (75) calendar days after entry of this Interim Order; (ii) subject to entry of the Final Order, entry of the Sale Order (as defined in the Bidding Procedures Motion); and (iii) any such later date as has been agreed to, in writing, by the Term Loan Agent or ABL Agent, as applicable (the time period established by the foregoing clauses (i), (ii) and (iii), the “Challenge Period”); and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding; *provided, however,* that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified before the expiration of the Challenge Period shall be deemed forever, waived, released and barred. If (a) no such Challenge is timely and properly filed during the Challenge Period by a party with requisite standing in strict compliance with the terms of this Interim Order, or (b) the Court does not rule in favor of the plaintiff in any such proceeding then: (i) the Debtors’ stipulations, admissions, releases, and agreements contained in this Interim Order, including those contained in paragraphs E of this Interim Order, shall be binding on all parties in interest, including the Committee (if any) and any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors; (ii) the obligations of the Debtors under the Prepetition Credit Documents, including the Prepetition Secured Obligations, shall constitute allowed claims (without the need to file a proof of claim) not subject to defense, claim, counterclaim, recharacterization, subordination, offset, or avoidance, for

all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s); (iii) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens on the Prepetition Collateral, not subject to recharacterization, subordination, avoidance, or other defense; and (iv) the Prepetition Secured Obligations and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by the Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases, or any other party in interest acting or seeking to act on behalf of the Debtors' estates, including any successor(s) thereto (including any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for the Debtors) and any defenses, claims, causes of action, counterclaims and offsets by such party, whether arising under the Bankruptcy Code or otherwise, against the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Prepetition Credit Documents shall be deemed forever waived, released, and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, releases, and agreements contained in this Interim Order, including those contained in paragraph E of this Interim Order, shall nonetheless remain binding and preclusive (as provided in the second sentence of this paragraph) on any statutory or nonstatutory committee appointed or formed in the Chapter 11 Cases, including the Committee (if any) and any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors, and on any other person or entity and their Representatives, except to the extent that such stipulations, admissions, releases, and agreements were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in this Interim Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee (if any) or any non-statutory committees appointed or formed in the Chapter 11 Cases, standing or authority

to pursue any claim or cause of action belonging to the Debtors or their estates, including Challenges with respect to the Prepetition Credit Documents, the Prepetition Secured Obligations, or the Prepetition Liens.

14. **Fees & Expenses.**

(a) The Debtors are authorized and directed to pay any and all reasonable and documented fees and expenses of the DIP Lender and the Prepetition Secured Parties in connection with the Chapter 11 Cases, DIP Documents, the Prepetition Credit Documents, and the Adequate Protection Obligations, including the fees and expenses of attorneys, advisors, accountants, and other consultants, whether incurred before, on or after the Petition Date and whether or not the transactions contemplated hereby are consummated, including, but not limited to fees and expenses incurred in connection with (a) the preparation, negotiation, and execution of the DIP Orders, the DIP Documents, and the Adequate Protection Obligations; (b) the creation, perfection, or protection of the DIP Liens and the Adequate Protection (including all search, filing, and recording fees); (c) the on-going administration of the DIP Documents (including the preparation, negotiation and execution of any amendments, consents, waivers, assignments, restatements, or supplements thereto) and the Chapter 11 Cases (including the filing of any proofs of claim); (d) the enforcement of the DIP Documents, the DIP Orders, or the Prepetition Credit Documents; and (e) any legal proceeding relating to or arising out of the DIP Facilities or the other transactions contemplated by the DIP Documents, the DIP Orders, and the Prepetition Credit Documents including the Chapter 11 Cases and the credit bid of the DIP Obligations and/or the Prepetition Secured Obligations. The Debtors shall be jointly and severally obligated to pay all fees and expenses described above, which obligations shall constitute DIP Obligations.

(b) Each professional employed by the DIP Lender and/or the Prepetition Secured Parties seeking payment of fees and expenses from the Debtors shall provide copies of its invoices to the U.S. Trustee and counsel for the Committee (if appointed) contemporaneously with the delivery of such invoices to the Debtors. Such invoices shall not be required to contain time entries, but shall include a general description of the nature of the matters for which services were performed, a list of professionals who worked on the matter, their hourly rate (if such professionals bill at an hourly rate), and the number of hours each professional billed. Any objections raised by the Debtors, the U.S. Trustee, or a Committee (if appointed) with respect to the Debtors' payment of the amounts in such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional and the Debtors within ten (10) calendar days of receipt of such invoice; if after ten (10) calendar days such objection remains unresolved, it will be subject to resolution by the Court. Pending such resolution, the undisputed portion of any such invoice shall be paid promptly by the Debtors. Payment of such reasonable and documented fees and expenses shall not be subject to any offset, defense, claim, counterclaim, or diminution of any type, kind, or nature whatsoever. The Debtors shall be jointly and severally obligated to pay all fees and expenses described above, which obligations shall constitute DIP Obligations.

(c) In addition, without limiting the indemnity provided in the DIP Documents, the Debtors will indemnify each of the DIP Lender, the ABL Agent, the Term Loan Agent, and each of their respective affiliates, successors, and assigns and the officers, directors, employees, agents, attorneys, advisors, controlling persons, and members of each of the foregoing (each an "Indemnified Person") and hold them harmless from and against all costs, expenses (including but not limited to reasonable and documented legal fees and expenses), and liabilities arising out of or relating to the transactions contemplated hereby and any actual or proposed use of the proceeds of

any loans made under the DIP Facility as and to the extent provided in the DIP Credit Agreement; *provided that* no Indemnified Person will be indemnified for costs, expenses, or liabilities to the extent determined by a final, non-appealable judgment of a court of competent jurisdiction to have been incurred solely by reason of the actual fraud, gross negligence, or willful misconduct of such Indemnified Person. No Indemnified Person shall have any liability (whether direct or indirect, in contract, tort or otherwise) to the Debtors or any shareholders or creditors of the Debtors for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Person's actual fraud, gross negligence or willful misconduct, and in no event shall any Indemnified Person be liable on any theory of liability for any special, indirect, consequential, or punitive damages.

15. **Carve-out.**

(a) For purposes hereof, the "Carve-Out" is an amount equal to the sum of (i) all fees required to be paid to the clerk of the Court and to the Office of the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate; (ii) all reasonable fees and expenses incurred by a chapter 7 trustee under section 726(b) of the Bankruptcy Code in an amount not to exceed \$25,000; (iii) all accrued and unpaid (x) hourly fees and expenses and (y) any monthly restructuring, sale, success, or other transaction fee (to the extent such fees were incurred pursuant to the terms of the applicable engagement letter with the Debtors) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, incurred at any time before or on the first business day following delivery of the Trigger Notice (as defined below) not to exceed the amounts set forth on a line item basis in the Approved DIP Budget (collectively, the "Allowed Debtor Professional Fees") of persons or firms retained by the Debtors pursuant to

sections 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”); (iv) all accrued and unpaid hourly fees and expenses to the extent allowed at any time, whether by interim order, procedural order, or otherwise, incurred before or on the day of delivery of the Trigger Notice (as defined below) not to exceed the amounts set forth on a line item basis in the Approved DIP Budget (collectively, the “Allowed Committee Professional Fees” and together with the Allowed Debtor Professional Fees, the “Allowed Professional Fees”) of persons or firms retained by any Committee in the Chapter 11 Cases pursuant to section 1103 of the Bankruptcy Code (the “Committee Professionals”, together with the Debtor Professionals, the “Professional Persons”), and (v) Allowed Professional Fees incurred after the first business day following delivery of the Trigger Notice in an amount not to exceed \$250,000 ((v) being the “Carve-Out Cap”), in each case subject to the limits imposed by this Interim Order, the Final Order (if and when entered), the Approved DIP Budget on a line item basis, or otherwise, on Allowed Professional Fees permitted to be incurred, including in connection with any permitted investigation of the claims, liens, and defenses against the Prepetition Secured Parties; *provided, however*, nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement, or compensation described in clauses (i), (ii), (iii), (iv), or (v) above on any other grounds. “Trigger Notice” shall mean a written notice delivered by email (or other electronic means) by the DIP Lender to the Debtors, their restructuring counsel, the U.S. Trustee, and counsel to the Committee (if any), which notice shall be delivered following (i) the occurrence and during the continuation of an Event of Default (as defined in the DIP Credit Agreement) and (ii) acceleration of the DIP Obligations under the DIP Facility, stating that the Carve-Out Cap has been invoked.

(b) Beginning upon entry of this Order and continuing on a weekly basis thereafter, the Debtors shall fund from cash on hand into a segregated account acceptable to the DIP Lender and such funded amounts shall be held in trust for and exclusively available for the payment of fees and expenses of Professional Persons (the “Funded Reserve Account”), an amount (the “Funded Reserve Amount”) equal to the budgeted sum of the total weekly fees of Professional Persons for the applicable week, subject to the Approved DIP Budget up to the amount in the line item for each Professional Persons. For the avoidance of doubt, the DIP Lender shall have no obligation to fund aggregate fees and expenses in excess of (i) the amounts set forth in the Approved DIP Budget up to the amount in the line item for each Professional Person or (ii) the DIP Commitments. The Debtors shall use funds held in the Funded Reserve Account exclusively to pay Allowed Professional Fees as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and any interim or final order of the Bankruptcy Court; provided, however, that no Allowed Professional Fees shall be transferred to or paid from the Funded Reserve Account in excess of the applicable line items in the Approved DIP Budget on a line item basis for each Professional Person. Funds transferred to the Funded Reserve Account shall not be subject to any liens or claims granted to the Prepetition Secured Parties or the DIP Lender herein or any liens or claims granted as adequate protection, shall not constitute DIP Collateral, and shall not constitute Cash Collateral; provided, that, notwithstanding anything to the contrary herein or in the DIP Documents, the DIP Collateral shall include the Debtors’ reversionary interest in funds held in the Funded Reserve Account and such reversionary interest shall be treated as DIP Collateral and Prepetition Collateral and subject to the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and the Adequate Protection Claims.

(c) On the day on which a Trigger Notice is given by the DIP Lender to the Debtors (the “Termination Declaration Date”), the Trigger Notice shall (i) first, constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by the Debtors to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees as of the Termination Declaration Date (subject to the Approved DIP Budget), and (ii) only after utilizing all available cash on hand as of the Termination Declaration Date to fund said reserve as set forth in (i) of this sentence, be deemed a draw request and notice of borrowing by the Debtors under the DIP Facility, in an amount equal to the then unpaid amounts of the Allowed Professional Fees (subject to the Approved DIP Budget) (any such amounts actually advanced shall constitute DIP Loans). The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then unpaid Allowed Professional Fees prior to any and all other claims (the “Pre-Carve-Out Trigger Notice Reserve”). On the Termination Declaration Date, the Trigger Notice shall also (i) first, constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by the Debtors, after funding the Pre-Carve-Out Trigger Notice Reserve, to fund a reserve in an amount equal to the Carve-Out Cap, and (ii) only after utilizing all available cash on hand as of the Termination Declaration Date to fund the Carve-Out Cap as set forth in (i) of this sentence, be deemed a draw request and notice of borrowing by the Debtors under the DIP Facility, in an amount equal to the Carve-Out Cap (any such amounts actually advanced shall constitute DIP Loans). The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then unpaid Allowed Professional Fees benefiting from the Carve-Out Cap (the “Post Carve-Out Trigger Notice Reserve” and, together with the Pre Carve-Out Trigger Notice Reserve, the “Carve-Out Reserves”) prior to any and all other claims. Notwithstanding any restriction on the Debtors’ use of Cash Collateral, all funds in

the Pre-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clauses (i) through (iv) of the definition of Carve-Out set forth above (the “Pre-Carve-Out Amounts”), but not, for the avoidance of doubt, the Post-Carve-Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Lender, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments have been terminated, in which case any such excess shall be paid, first, to the ABL Agent for the benefit of the ABL Secured Parties and, second, to the Term Loan Agent for the benefit of the Term Loan Secured Parties. Notwithstanding any restriction on the Debtors’ use of Cash Collateral, all funds in the Post-Carve-Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (v) of the definition of Carve-Out set forth above (the “Post-Carve-Out Amounts”), and then, to the extent the Post Carve-Out Trigger Notice Reserve has not been reduced to zero, to pay the DIP Lender, unless the DIP Obligations have been indefeasibly paid in full, in cash, and all DIP Commitments have been terminated, in which case any such excess shall be paid to the Prepetition Secured Parties. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, if either of the Carve-Out Reserves is not funded in full in the amounts set forth in this Paragraph 15, then, any excess funds in one of the Carve-Out Reserves following the payment of the Pre-Carve-Out Amounts and Post-Carve-Out Amounts, respectively, shall be used to fund the other Carve-Out Reserve, up to the applicable amount set forth in this Paragraph 15, prior to making any payments to the DIP Lender, or the Prepetition Secured Parties, as applicable. Notwithstanding anything to the contrary in the DIP Documents or this Interim Order, the DIP Lender and the Prepetition Secured Parties shall have a security interest in any residual interest in the Carve-Out Reserves, with any excess paid to the DIP Lender, the ABL Agent, or the Term Loan Agent for application in accordance with the DIP

Documents or Prepetition Credit Documents, as applicable. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve-Out Reserves shall not constitute DIP Loans or increase or reduce the DIP Obligations, (ii) under no circumstances shall the DIP Lender have any obligation to extend DIP Loans in excess of the amounts authorized under this Interim Order, and (iii) under no circumstances shall the DIP Lender have any obligation to extend credit to the Debtors. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order, the DIP Facility, or in any facility pursuant to Prepetition Credit Facility, the Carve-Out Reserves shall be reduced on a dollar for dollar basis on account of amounts in the Funded Reserve Account such that such accounts shall be funded without duplication.

(d) Notwithstanding the foregoing, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (i) the investigation (other than, before the receipt of a Trigger Notice, as permitted under paragraph 15 of this Interim Order), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation against the DIP Lender and the Prepetition Secured Parties, each in such capacity, and their respective agents, attorneys, advisors or representatives, including challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the obligations and the liens and security interests granted under the DIP Documents or the Prepetition Credit Documents, including the Prepetition Secured Obligations, (whether in such capacity or otherwise), including, in each case, for lender liability or pursuant to section 105, 506(c), 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise, (ii) attempts to modify any of the rights granted to the DIP Lender or the Prepetition Secured Parties hereunder or under the applicable DIP Documents or Prepetition Credit

Documents, (iii) attempts to prevent, hinder, or otherwise delay the DIP Lender's assertion, enforcement or realization upon any DIP Collateral or Prepetition Collateral in accordance with the DIP Documents, this Interim Order or the Final Order, or (iv) paying any amount on account of any claims arising before the Petition Date unless such payments are approved by an order of the Court and permitted under the DIP Documents, including the Approved DIP Budget.

16. **Protection of DIP Lender's Rights.**

(a) To the extent the Prepetition Secured Parties have possession of any Prepetition Collateral or DIP Collateral or have control with respect to any Prepetition Collateral or DIP Collateral, or have been noted as a secured party on any certificate of title for a titled good constituting Prepetition Collateral or DIP Collateral, then the Prepetition Secured Parties shall be deemed to maintain such possession or notation or exercise such control as a gratuitous bailee or gratuitous agent for perfection for the benefit of the DIP Lender and shall comply with the instructions of the DIP Lender with respect to the exercise of such control.

(b) Other than as expressly consented to in writing by the DIP Lender, any proceeds of Prepetition Collateral received by the Prepetition Secured Parties in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by the Prepetition Secured Parties, in its respective capacity (other than on account of the Adequate Protection Obligations), shall be segregated and held in trust for the benefit of and forthwith paid over to the DIP Lender in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct.

17. **Limitation on Charging Expenses Against Collateral.** Subject to entry of the Final Order, no costs or 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, shall be charged against or recovered from the DIP Collateral (including Cash Collateral) or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law. Nothing contained in this Interim Order shall be deemed to be a consent by the DIP Lender or the Prepetition Secured Parties to any charge, lien, assessment or claim against the DIP Collateral or the Prepetition Collateral under section 506(c) of the Bankruptcy Code or otherwise.

18. **Payments Free and Clear.** Any and all payments or proceeds remitted to the DIP Lender or the Prepetition Secured Parties pursuant to the provisions of this Interim Order or Final Order (if and when entered) or the DIP Documents shall be received free and clear of any claim, charge, assessment or other liability, whether asserted or assessed by, through or on behalf of the Debtors.

19. **Consent to Adequate Protection; Right to Seek Additional Adequate Protection; No Admission.** The Prepetition Secured Parties are deemed to have consented to the Adequate Protection Obligations, the priming of the Prepetition Liens by the DIP Liens, and the use of Cash Collateral provided for herein; provided, however, that such consent is expressly conditioned upon the entry of this Interim Order, and such consent shall not be deemed to extend to any other Cash Collateral usage or other replacement financing or debtor-in-possession financing other than the DIP Facility provided under the DIP Documents; *provided further*, however, that such consent shall be of no force and effect in the event this Interim Order is reversed, modified, stayed, or amended (unless such reversal, modification, stay, or amendment is acceptable to the Prepetition Secured Parties in their sole discretion). The Adequate Protection Claims provided to the Prepetition Secured Parties hereunder adequately protect the Prepetition Secured Parties as of the date hereof; provided, however, this Interim Order: (a) is without

prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of the Prepetition Secured Parties to request additional or alternative forms of adequate protection from the Debtors; and (b) shall not be deemed an admission, acknowledgement, or stipulation by the Prepetition Secured Parties that the Prepetition Secured Parties are in fact adequately protected by the terms and conditions of this Interim Order or otherwise following the date of this Interim Order.

20. **Perfection of DIP Liens and Adequate Protection Liens.**

(a) The DIP Lender and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the Debtors, as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over cash or securities, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Lender or the Prepetition Secured Parties shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over any cash or securities, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination, at the time and on the date of entry of this Interim Order. Upon the request of the DIP Lender, the Debtors, without any further consent of any party, are authorized to take, execute, deliver and file such instruments (in each case, without representation or warranty of any kind) to enable the DIP Lender to further validate, perfect, preserve and enforce the DIP Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of this Interim Order may, in the sole discretion of the DIP Lender and the Prepetition Secured Parties, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and/or recording, as applicable. The automatic stay of section 362(a) of the Bankruptcy Code is hereby modified to the extent necessary to permit the DIP Lender and the Prepetition Secured Parties to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

(c) Notwithstanding anything to the contrary in the Motion, the DIP Documents, or this Interim Order, for purposes of this Interim Order, in no event shall the DIP Collateral include, or the DIP Liens or Adequate Protection Liens attach to, any lease, license, contract or agreement, or other property right to which the Debtors are a party, or any such relevant Debtors' rights or interests thereunder, if and for so long as the grant of such security interest would constitute or result in: (i) the abandonment, invalidation, unenforceability, or other impairment of any right, title or interest of the Debtors therein or (ii) a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract or agreement or other property right pursuant to any provision thereof, unless, in the case of each of clauses (i) and (ii), the applicable provision is rendered ineffective by applicable non-bankruptcy law or the Bankruptcy Code (such leases, licenses, contracts or agreements, or other property rights are collectively referred to as the "Specified Contracts"); *provided, however*, the DIP Liens, Adequate Protection Liens, DIP Superpriority Claims, and Adequate Protection 507(b) Claims shall in all events attach to and have recourse from all proceeds, products, offspring, or profits from any and all Specified Contracts (including from the sale, transfer, disposition or monetization thereof).

21. **Proceeds of Subsequent Financing.** If the Debtors, any trustee, any examiner, any responsible officer or any other estate representative subsequently appointed in these Chapter 11 Cases or any successor case, shall obtain credit or incur debt pursuant to Bankruptcy Code sections 364(b), 364(c), or 364(d) in violation of the DIP Documents at any time before the repayment in full in cash of (a) all DIP Obligations and the termination of the DIP Lender's obligation to extend credit under the DIP Facility, and (b) all Prepetition Secured Obligations, and such financing is secured by any DIP Collateral or Prepetition Collateral, then all of the cash proceeds derived from such credit or debt shall immediately be turned over first to the DIP Lender, to be applied as set forth the DIP Documents, and second to the Prepetition Secured Parties to be applied as set forth in the Prepetition Credit Documents.

22. **Disposition of DIP Collateral; Rights of DIP Lender.** The Debtors shall not sell, transfer, lease, encumber, or otherwise dispose of any DIP Collateral without the prior written consent of the DIP Lender (and no such consent shall be implied, from any other action, inaction, or acquiescence), except as expressly permitted in the DIP Documents.

23. **Preservation of Rights Granted Under This Interim Order.**

(a) Other than the Carve-Out and other claims and liens expressly granted or permitted by this Interim Order and the DIP Documents, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Lender or the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations or Prepetition Secured Obligations remain outstanding. No lien or security interest shall be granted to any other party in any of the Specified Contracts without first granting such lien or security interest to the DIP Lender or the Prepetition Secured Parties, as applicable.

(b) Notwithstanding the dismissal of the Chapter 11 Cases under section 1112 of the Bankruptcy Code or otherwise: (i) the DIP Superpriority Claims, the Adequate Protection 507(b) Claims, the DIP Liens, and the Adequate Protection Liens shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate Protection Obligations shall have been indefeasibly paid in full in cash (and that such DIP Superpriority Claims, Adequate Protection 507(b) Claims, DIP Liens, and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (ii) the other rights granted by this Interim Order shall not be affected; and (iii) this Court shall, to the extent permitted by applicable law, retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Interim Order.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect: (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations incurred before the actual receipt of written notice by the DIP Lender or the Prepetition Secured Parties, as applicable, of the effective date of such reversal, modification, vacation, or stay; or (ii) the validity, priority, or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, modification, vacation, or stay of any use of Cash Collateral, any DIP Obligations, DIP Liens, Adequate Protection Obligations, or Adequate Protection Liens incurred or granted by the Debtors to or for the benefit of the DIP Lender or the Prepetition Secured Parties, as the case may be, before the actual receipt of written notice by the DIP Lender, the ABL Agent, or the Term Loan Agent, as applicable, of the effective date of such reversal, modification, vacation or stay shall be governed in all respects by the original provisions of this Interim Order,

and the DIP Lender and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order, and the DIP Documents with respect to all uses of Cash Collateral, DIP Obligations, and Adequate Protection Obligations.

(d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection Obligations and all other rights and remedies of the DIP Lender and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting the Chapter 11 Cases to a case under chapter 7, dismissing the Chapter 11 Cases, or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral or Prepetition Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents); or (iii) the entry of an order confirming a chapter 11 plan in the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtors have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in the Chapter 11 Cases, in any successor cases and in any superseding chapter 7 case under the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, and the Adequate Protection Obligations and all other rights and remedies of the DIP Lender and the Prepetition Secured Parties granted by the provisions of this Interim Order (including the Carve-Out) and the DIP Documents shall continue in full force and effect until the entry of the Final Order or the DIP Obligations are indefeasibly paid in full in cash, as set forth herein and in the DIP Documents, and the DIP Commitments have been terminated.

24. **Cash Management.** Unless otherwise agreed by the DIP Lender, the ABL Agent, and the Term Loan Agent, in their respective capacities, the Debtors shall maintain their cash management arrangements in all material respects in a manner consistent with that described in the applicable “first-day” order and the related motion seeking authorization to continue the Debtors’ cash management arrangements.

25. **Limitation on Use of DIP Loans and DIP Collateral.** Notwithstanding any other provision of this Interim Order or any other order entered by the Court, no DIP Loans, DIP Collateral, Prepetition Collateral, or any portion of the Carve-Out, may be used directly or indirectly by the Debtors, the Committee (if any), or any trustee appointed in the Chapter 11 Cases or any successor case, including any chapter 7 case, or any other person, party or entity (a) in connection with the investigation, initiation, or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against the DIP Lender or the Prepetition Secured Parties or any of their respective Representatives, or any action purporting to do the foregoing in respect of the Prepetition Secured Obligations, the Prepetition Liens on the Prepetition Collateral, DIP Obligations, DIP Liens on the DIP Collateral, DIP Superpriority Claims, or the adequate protection obligations, adequate protection liens and superpriority claims granted to the Prepetition Secured Parties, as applicable, under the Interim Order or the Final Order, as applicable, or (ii) challenging the amount, validity, perfection, priority, or enforceability of or asserting any defense, counterclaim or offset with respect to, the Prepetition Secured Obligations, the DIP Obligations, or the liens, claims, rights, or security interests granted under this Interim Order, the Final Order, the DIP Documents, or the Prepetition Credit Documents including, in each case for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; *provided, however*, advisors to any Committee

may investigate any potential challenges with respect to the Prepetition Credit Documents, the Prepetition Secured Obligations, or Prepetition Liens during the Challenge Period at an aggregate expense for such investigation, but not litigation, prosecution, objection or challenge thereto, not to exceed \$25,000 in the aggregate; (b) to prevent, hinder, or otherwise delay the Prepetition Secured Parties' or DIP Lender's, as applicable, enforcement or realization on the Prepetition Secured Obligations, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims, and rights granted to such parties under the Interim Order or the Final Order, each in accordance with the DIP Documents, the Prepetition Credit Documents, or this Interim Order, or the Final Order, other than, and subject to the notice period set forth in paragraph 13 hereof, to seek a determination that an Event of Default has not occurred or is not continuing; (c) to seek to modify any of the rights and remedies granted to the Prepetition Secured Parties or the DIP Lender under this Interim Order, the Prepetition Credit Documents or the DIP Documents, as applicable; (d) to apply to the Court for authority to approve superpriority claims or grant liens or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the Carve-Out or the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens, and Superpriority Claims granted to the Prepetition Secured Parties and the DIP Lender unless all DIP Obligations, Prepetition Secured Obligations, Adequate Protection Obligations, and claims granted to the DIP Lender or Prepetition Secured Parties under this Interim Order, have been refinanced or paid in full in cash or otherwise agreed to in writing by the DIP Lender, the ABL Agent, and the Term Loan Agent; or (e) to seek to pay any amount on account of any claims arising before the Petition Date unless such payments are included in the Approved DIP Budget.

26. **Loss or Damage to Collateral.** Nothing in this Interim Order, the DIP Documents, or any other documents related to these transactions shall in any way be construed or interpreted

to impose or allow the imposition upon the DIP Lender or the Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their business, or in connection with its restructuring efforts. The DIP Lender and the Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (a) the safekeeping of the DIP Collateral or the Prepetition Collateral, (b) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (c) any diminution in the value thereof, or (d) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person, and all risk of loss, damage or destruction of the DIP Collateral and the Prepetition Collateral shall be borne by the Debtors.

27. **Credit Bidding**. Upon entry of this Interim Order, (a) the DIP Lender shall have the unqualified right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations in any sale of the Debtors' assets, and (b) subject to paragraph 13 hereof, the Prepetition Secured Parties shall have the right to credit bid up to the full amount of the Prepetition Secured Obligations in the sale of any of the Debtors' assets, including, but not limited to, pursuant to (with respect to both (a) and (b) above) (i) section 363 of the Bankruptcy Code, (ii) a plan of reorganization or a plan of liquidation under section 1129 of the Bankruptcy Code, or (iii) a sale or disposition by a chapter 7 trustee for the Debtors under section 725 of the Bankruptcy Code. The Debtors agree that each of the DIP Lender and the Prepetition Secured Parties, in their respective capacities, shall be deemed a qualified bidder (or such analogous term) in connection with any such sale. Each of the DIP Lender and the Prepetition Secured Parties shall have the absolute right to assign, sell, or otherwise dispose of their claims and the corresponding right to credit bid on account of such claims to any acquisition entity or joint venture formed in connection with such bid.

28. **Application of Sale Proceeds.** Notwithstanding anything herein: (a) the right of the DIP Lender to consent to the sale of any portion of its collateral, including, without limitation, any Assets, on terms and conditions acceptable to the DIP Lender, are hereby expressly reserved and not modified, waived or impaired and (b) unless otherwise ordered by the Court, including without limitation pursuant to the Sale Order (as defined in the DIP Documents), all cash proceeds generated from the sale of any assets secured by Prepetition Liens or DIP Liens shall be paid to the DIP Lender and Prepetition Secured Parties upon the closing of such sale for permanent application against the obligations owing by the Debtors under the DIP Documents and the Prepetition Credit Documents in accordance with the terms and conditions of the DIP Order, the Prepetition Credit Documents and the DIP Documents in accordance with the terms of this Order until such time as all DIP Obligations and Prepetition Secured Obligations have been paid in full in cash.

29. **Interim Order Governs.** In the event of any inconsistency between the provisions of this Interim Order, on the one hand, and the DIP Documents or any other order entered by this Court, on the other hand, the provisions of this Interim Order shall govern. Notwithstanding anything to the contrary in any other order entered by this Court, any payment made pursuant to and any authorization contained in any other order entered by this Court shall be consistent with and subject to the requirements set forth in this Interim Order and the DIP Documents, including the Approved DIP Budget.

30. **Binding Effect; Successors and Assigns.** The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in the Chapter 11 Cases, including the DIP Lender, the Prepetition Secured Parties, the Committee (if any), any non-statutory committees appointed or formed in the Chapter 11 Cases, the Debtors,

and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estates of the Debtors, an examiner appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) and shall inure to the benefit of the DIP Lender, the Prepetition Secured Parties, and the Debtors and their respective successors and assigns; provided, however, DIP Lender and the Prepetition Secured Parties shall have no obligation to permit the use of the Prepetition Collateral (including Cash Collateral) by, or to extend any financing to, any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the estates of the Debtors.

31. **No Liability to Third Parties.** The DIP Lender and the Prepetition Secured Parties shall not, as a result of their consent to the use of Cash Collateral hereunder or their extension of credit under the DIP Documents or the Prepetition Credit Documents, (a) be deemed to have liability to any third party or be deemed to be in control of the operation of any of the Debtors or to be acting as a “controlling person,” “responsible person,” “owner or operator,” or “participant” with respect to the operation or management of any of the Debtors (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act, as amended, or any other federal, state, or applicable international statute or regulation) or (b) owe any fiduciary duty to any of the Debtors, their creditors or estates, or shall constitute or be deemed to constitute a joint venture or partnership with any of the Debtors.

32. **No Standing Granted.** Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including any committee appointed in the Chapter 11 Cases (including the Committee), if any, standing or authority to pursue any challenge or other

cause of action belonging to the Debtors or their estates with respect to the Prepetition Credit Documents or the Prepetition Secured Obligations.

33. **No Waiver.** No delay or failure by the Prepetition Secured Parties or the DIP Lender in the exercise of their rights and remedies under the DIP Documents or this Interim Order, as applicable, shall constitute a waiver, in whole or in part, of any of such party's rights hereunder or otherwise.

34. **Proofs of Claim.** Each of the Prepetition Secured Parties and the DIP Lender shall not be required to file proofs of claim in the Chapter 11 Cases or any successor case to assert claims on behalf of itself for payment of the Prepetition Secured Obligations or the DIP Obligations, including any principal, unpaid interest (including default interest therein), fees, expenses, and other amounts under the Prepetition Credit Documents. The statements of claim in respect of the Prepetition Secured Obligations and the DIP Obligations set forth in this Interim Order, together with any evidence accompanying the Motion and presented at the Interim Hearing, are deemed sufficient to and do constitute proofs of claim in respect of such debt and such secured status. The stipulations of the Debtors set forth in paragraph E hereof shall be deemed to constitute a timely filed proof of claim against each of the Debtors for the Prepetition Secured Parties in respect of all of the Prepetition Secured Obligations. In addition, the Prepetition Secured Parties and the DIP Lender shall not be required to file any request for allowance or payment of any administrative expenses, and this Interim Order shall be deemed to constitute a timely filed request against each of the Debtors for allowance or payment of any Prepetition Secured Obligations or DIP Obligations constituting administrative expenses, as applicable.

35. **Insurance.** To the extent that the Prepetition Secured Parties are listed as loss payees or additional insured under the Debtors' insurance policies, the DIP Lender is also deemed

to be the loss payee and additional insured under such insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of any such insurance policies in the order of priorities set forth herein.

36. **Effectiveness.** This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable, effective as of the Petition Date, immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules or any Local Rule, or rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

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

38. **Payments Held in Trust.** Except as expressly permitted in this Interim Order or the DIP Documents, in the event that any person or entity receives any payment on account of a security interest in DIP Collateral, receives any DIP Collateral or any proceeds of DIP Collateral or receives any other payment with respect thereto from any other source before indefeasible payment in full in cash of all DIP Obligations under the DIP Documents, and termination of the DIP Commitments in accordance with the DIP Documents, such person or entity shall be deemed to have received, and shall hold, any such payment or proceeds of DIP Collateral in trust for the benefit of the DIP Lender, and shall immediately turn over such proceeds to the DIP Lender, or as otherwise instructed by this Court, for application in accordance with the DIP Documents and this Interim Order.

39. **Bankruptcy Rules.** The requirements of Local Rule 4001-2 and Bankruptcy Rules 4001, 6003 and 6004, in each case to the extent applicable, are satisfied by the contents of the Motion.

40. **Necessary Action.** The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Interim Order.

41. **Assignment of DIP Obligations.** The DIP Lender may assign any or all of its rights or obligations under the DIP Credit Agreement (a) at any time, to any affiliate of the DIP Lender, (b) prior to the occurrence of an Event of Default (under and as defined in the DIP Credit Agreement), to any person with the prior written consent of the Borrower, and (c) during an Event of Default (under and as defined in the DIP Credit Agreement), to any other person without the consent of any Loan Party (under and as defined in the DIP Credit Agreement).

42. **Retention of Jurisdiction.** The Court shall retain jurisdiction to enforce the provisions of this Interim Order.

43. **Final Hearing.** The Final Hearing is scheduled for [●], 2024 at [●] (Prevailing Eastern Time) before this Court.

44. **Objections.** Any party in interest objecting to the relief sought at the Final Hearing shall file and serve written objections, which objections shall be served upon: (a) counsel for the Debtors, (i) McDermott Will & Emory LLP, 444 West Lake Street, Chicago, IL 60606 (Attn: Felicia Gerber Perlman Esq. (fperlman@mwe.com) and Bradley Giordano, Esq. (bgiordano@mwe.com) and (ii) Potter Anderson & Corroon LLP, 1313 North Market Street, 6th Floor, Wilmington, Delaware 19801 (Attn: M. Blake Cleary, Esq. (bcleary@potteranderson.com), R. Stephen McNeill, Esq. (rsmcneill@potteranderson.com), and Katelin A. Morales, Esq. (kmorales@potteranderson.com)); (b) counsel for the DIP Lender and

the Prepetition Secured Parties, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Ray C. Schrock, Esq. (ray.schrock@weil.com) and Kevin Bostel, Esq. (kevin.bostel@weil.com)) and (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: Zachary I. Shapiro, Esq. (shapiro@rlf.com)); (d) Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox35, Wilmington, DE 19801 (Attn: Benjamin A. Hackman (benjamin.a.hackman@usdoj.gov) and Malcolm M. Bates (malcolm.m.bates@usdoj.gov)); and (e) if any statutory committee has been appointed in the Chapter 11 Cases, counsel to such committee, by no later than [●], 2024 at 4:00 p.m. (Prevailing Eastern Time).

Exhibit A

DIP Credit Agreement

EXECUTION VERSION

**DEBTOR IN POSSESSION SECURED
MULTI-DRAW TERM PROMISSORY NOTE**

\$60,000,000

New York, New York
May 20, 2024 (the "Effective Date")

SSE Buyer, Inc., a Delaware corporation (the "Borrower"), SSE Intermediate, Inc., a Delaware corporation ("Holdings") and the Borrower's Subsidiaries intend to commence Chapter 11 Cases (the date of such commencement, the "Petition Date" and each Chapter 11 Case, a "Chapter 11 Case" and collectively, the "Chapter 11 Cases") by filing separate voluntary petitions for reorganization relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Loan Parties (as defined herein) shall continue to operate their respective businesses and manage their respective properties as debtors and debtors in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. The Borrower has requested that TZ SSE Buyer LLC, a Delaware limited liability company (the "DIP Lender") from time to time party to this Debtor in Possession Secured Multi-Draw Term Promissory Note (as amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time, this "Note") make Term Loans (as defined herein) evidenced by this Note on the dates and subject to the terms and conditions of this Note. Holdings and certain Subsidiaries of the Borrower who comprise the other debtors in the Chapter 11 Cases wish to guaranty the Borrower's Obligations under this Note (collectively, the "Guarantors"), and shall execute the Guarantee and Collateral Agreement in favor of the DIP Lender on the Closing Date. Capitalized terms used herein and not otherwise defined herein shall have the meanings provided in Section 18 of this Note.

1. Term Loans.

(a) Subject to the terms and conditions hereof including the DIP Lender's receipt of a Borrowing Request (as defined below), the DIP Lender agrees (i) to provide the Borrower with Term Loans in the aggregate principal amount of up to \$20,000,000 (the "Term Loans"); provided, that (x) on the Closing Date the Borrower shall be limited to a borrowing of up to \$10,000,000 and (y) thereafter, the Borrower may borrow up to (i) \$5,000,000 of additional Term Loans during "Week 4" as set forth in the Budget, so long as the Borrower has delivered the updated Budget required pursuant to Section 14(h) which has been approved by DIP Lender in its sole discretion, (ii) \$2,500,000 of additional Term Loans during "Week 6" as set forth in the Budget and (z) \$2,500,000 upon closing of the Stalking Horse Transaction so long as the Specified Wind Down Budget has been delivered to and approved by DIP Lender in its sole discretion (provided however that with respect to expenses already contained in the Initial Budget related to such wind down period, the Specified Wind Down Budget will be no less favorable to the Borrower than the Initial Budget) and (ii) additional term loans shall be provided to the Borrower by converting the loans outstanding of DIP Lender under the Prepetition ABL Credit Agreement into Term Loans under this Agreement in the aggregate principal amount of \$40,000,000 (the "Converted Term Loans"). Subject to the terms and conditions hereof, to the extent the Interim Order does not permit the full amount of the Term Loans to be incurred by the Borrower on the Closing Date, the DIP Lender shall advance any remainder amount of the Term Loans that are authorized in the Final Order as set forth above (any such Term Loans, the "Final Order Term Loans"). The Final Order Term Loans shall be Term Loans for all purposes of this Note.

(b) The Borrower may request the Term Loans pursuant to written notice (which may be by email) (a "Borrowing Request") delivered to the DIP Lender no later than 3:00 p.m. one (1) Business Day prior to the proposed borrowing date of the Term Loans on the Closing Date (or such shorter period as the DIP Lender may agree) or, with respect to any Term Loans after the Closing Date, three (3) Business Days prior to the proposed borrowing day of the Term Loans (or such shorter period as the DIP Lender may agree). The Borrowing Request shall be in a form reasonably satisfactory to the DIP Lender. The DIP Lender shall provide each Term Loan in an aggregate amount not to exceed the Commitment. Upon receipt of a Borrowing Request with respect to any Term Loan, subject to the satisfaction (or waiver) of the conditions hereof, DIP Lender shall simultaneously make the proceeds of such Term Loan available to the Borrower on the applicable date of funding

of the Term Loan by transferring immediately available funds equal to such proceeds to the Borrower Designated Account. The Commitment shall be permanently reduced upon the making of the relevant Term Loan in an amount equal to such Term Loan advanced by DIP Lender. Any principal amount of the Term Loan which is repaid or prepaid may not be reborrowed.

(c) The aggregate principal amount of Terms Loans outstanding shall not exceed \$60,000,000, subject to any limitation of credit extensions under this Note and the Financing Orders (the "Maximum Amount").

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

(e) The Borrower shall utilize the proceeds of Term Loans, subject to the Financing Orders, to (i) fund general corporate needs, including without limitation working capital and other needs, (ii) pay costs, premiums, fees, and expenses incurred to administer or related to of the Chapter 11 Cases, including fees and expenses of professionals, and (iii) to provide for adequate protection for certain Prepetition Secured Parties, in each case, solely in accordance with the Budget, subject to any Permitted Variance); provided, that, unless otherwise provided in the Budget, subject to any Permitted Variance, or approved by the DIP Lender, no portion of any Term Loans shall be used, directly or indirectly: (a) except as permitted by Section 15(d), to make any payment in respect of, or repurchase, redeem, retire or defease any, prepetition Indebtedness, except pursuant to the terms of the Financing Orders or to finance or make any Restricted Payment, (b) to pay any fees or similar amounts payable to any Person who has proposed or may propose to purchase interests in any of the Borrower or any of its respective Subsidiaries or affiliates or who otherwise has proposed or may propose to invest in the Borrower or any of its respective Subsidiaries or affiliates (including so-called "topping fees," "exit fees," and similar amounts), or (c) to make any distribution under a plan of reorganization in the Chapter 11 Cases or any similar proceeding of any of the Subsidiaries or affiliates of any of the Borrower.

2. Certain Conditions to Making Term Loans.

(a) This Note shall be effective upon receipt by the parties hereto of an executed counterpart of this Note.

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

(1) the Borrower shall have paid any Obligations then payable hereunder (including the reasonable and documented out-of-pocket fees and expenses of counsel to the DIP Lender) or under any other DIP Document;

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

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

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

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

(6) (i) with respect to the Term Loan made on or after the Closing Date prior to entry of the Final Order, (A) the Bankruptcy Court shall have entered the Interim Order; and (B) the Interim Order shall not have been stayed, vacated, reversed, modified or amended without DIP Lender's consent or (ii) with respect to the Final Order Term Loan, (A) the Bankruptcy Court shall have entered the Final Order; and (B) the Final Order shall have not been stayed, vacated, reversed, modified or amended without DIP Lender's consent;

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

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

(9) the DIP Lender shall have received and approved the Initial Budget in accordance with this Note and the Financing Orders;

(10) the Bankruptcy Court shall have entered an order, in form and substance acceptable to the DIP Lender, authorizing the Loan Parties to use Cash Collateral of the Prepetition Secured Parties in a manner consistent with the Budget; and

(11) Borrower shall have delivered to DIP Lender the fully executed Stalking Horse APA and any related agreements, in form and substance and with purchasers satisfactory to the DIP Lender.

(c) The Borrower shall not request a borrowing of a Term Loan after the Closing Date (and no borrowing will be permitted), if, in each case, as of the date thereof:

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

(2) the Interim Order shall have been stayed, vacated, reversed, modified or amended without DIP Lender's consent;

(3) after the entry of the Final Order, the Final Order shall have been stayed, vacated, reversed, modified or amended without DIP Lender's consent; and

(4) any Default or Event of Default shall have occurred and be continuing or would result after giving effect to the advance of the Final Order Term Loans or any release of proceeds of the Term Loans.

Notwithstanding the foregoing, if the DIP Lender determines in its sole discretion that the Borrower has failed to satisfy the conditions precedent set forth in this Section 2 for a Borrowing Notice, the DIP Lender may decline to fund such borrowing.

3. Payment of Principal. FOR VALUE RECEIVED, the Borrower promises to pay to the DIP Lender the lesser of (x) \$60,000,000 and (y) the unpaid principal amount of all Term Loans, on the Maturity Date, together with all accrued and unpaid interest, fees and expenses to the extent required by this Note.

4. Payment of Interest.

(a) Subject to the terms of this Note, the Term Loans or any portion thereof shall bear interest on the principal amount thereof from time to time outstanding, from the date of the Term Loans until repaid, at a rate per annum equal to 5.00%.

(b) Interest on the Term Loans shall be payable in kind monthly, in arrears, on the last Business Day of each month, commencing on the last Business Day of the month in which the applicable Term Loans is made, by automatically and without further action capitalizing and adding such interest to the outstanding principal amount of the Loans. If any payment of any of the Obligations becomes due and payable on a day other than a Business Day, the maturity thereof will be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

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

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

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

(f) If, after the date hereof, the DIP Lender determines that (1) the adoption of or

change in any law, rule, regulation or guideline regarding capital requirements for banks or bank holding companies, or any change in the interpretation or application thereof by any governmental authority charged with the administration thereof, or (2) compliance by the DIP Lender or its parent bank holding company with any guideline, request, or directive of any such entity regarding capital adequacy (whether or not having the force of law), has the effect of reducing the return on the DIP Lender's or such holding company's capital as a consequence of the DIP Lender's Term Loans hereunder to a level below that which the DIP Lender or such holding company could have achieved but for such adoption, change, or compliance (taking into consideration the DIP Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount reasonably deemed by the DIP Lender to be material, then the DIP Lender may notify the Borrower thereof. Following receipt of such notice, the Borrower agrees to pay the DIP Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable promptly after presentation by the DIP Lender to the Borrower of a statement in the amount and setting forth in reasonable detail the DIP Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, the DIP Lender may use any reasonable averaging and attribution methods.

5. Payments. All payments of principal and interest in respect of this Note shall be made in lawful money of the United States of America in same day funds to the DIP Lender at the account as shall be designated in a written notice delivered by the DIP Lender to the Borrower. Each payment made hereunder shall be credited first to interest then due and payable and the remainder of such payment shall be credited to principal, and interest shall thereupon cease to accrue upon the principal so repaid. The Borrower shall make each payment required under this Note prior to 2:00 p.m. New York City time on the date when due, in immediately available funds. Any amounts received after such time on any date may, in the sole discretion of the DIP Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon.

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

7. Mandatory Prepayments. In each case, subject to the terms and conditions of the Financing Orders and the Budget, upon not less than one (1) Business Day prior written notice by the Borrower to the DIP Lender by 1:00 p.m. New York City time:

(a) No later than two (2) Business Days upon receipt by any Loan Party of cash proceeds of any asset disposition, unless the DIP Lender agrees otherwise, the Borrower shall prepay the outstanding principal amount of the Term Loans in an amount equal to all such proceeds, net of (1) commissions and other reasonable and customary transaction costs, fees and expenses properly attributable to such transaction and payable by the Borrower or any Loan Party in connection therewith (in each case, paid to non-affiliates), (2) taxes reasonably expected to be payable by the Borrower in connection with such sale, and (3) with respect to proceeds from the disposition of assets securing obligations owed to a third party, which Lien is senior to the Liens securing the Obligations under this Note, the amount of such proceeds required by an order of the Bankruptcy Court to repay such third party obligations.

(b) No later than two (2) Business Days upon receipt by any Loan Party of cash proceeds

of any debt securities or other indebtedness not permitted under this Note, the Borrower shall prepay the outstanding principal amount of the Term Loans in an amount equal to all such proceeds, net of underwriting discounts and commissions and other reasonable costs or fees paid to non-affiliates in connection therewith.

(c) No later than two (2) Business Days upon receipt by any Loan Party of any Extraordinary Receipts, the Borrower shall prepay the outstanding principal of the Term Loans in an amount equal to all such Extraordinary Receipts, net of (x) any expenses (including reasonable broker's fees or commissions and legal fees) incurred in connection with such Extraordinary Receipts, (y) any taxes paid or reasonably estimated to be payable by the Loan Parties in connection therewith and (z) with respect to Extraordinary Receipts from assets securing obligations owed to a third party, which Lien is senior to the Liens securing the Obligations under this Note, the amount of such Extraordinary Receipts required by an order of the Bankruptcy Court to repay such third party obligations.

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

(e) Any prepayment made pursuant to this Section 7 shall be applied (i) first to the Term Loans until paid in full, (ii) second, to any remaining Obligations as the DIP Lender shall determine in its sole discretion and (iii) third, any excess remaining to the Borrower.

(f) The DIP Lender may elect prior to any prepayment required under this Section 7 to decline all or any portion of the prepayment.

8. Fees. Borrower shall pay to the DIP Lender the following fees:

(a) Exit Fee. On the earlier of (1) the date that all the Obligations under this Note are paid in full in cash and (2) the Maturity Date, the Borrower shall pay in cash to the DIP Lender an exit fee equal to 10.0% of the Term Loans (but excluding any Converted Term Loans) prepaid or paid, which exit fee shall be fully earned upon the entry of the Interim Order and non-refundable when paid; provided, that to the extent the DIP Lender elects to credit bid the Term Loans and/or converts to equity the Term Loans in connection with the consummation of the Stalking Horse Transaction, such fee shall be waived in full.

9. Indemnity. The Borrower shall indemnify and hold harmless the DIP Lender and each of its respective affiliates, and each such Person's respective officers, directors, employees, attorneys, agents and representatives (each, an "Indemnified Person"), from and against any and all suits, actions, proceedings, claims, damages, losses, liabilities and expenses (including reasonable attorneys' fees and disbursements and other costs of investigation or defense, including those incurred upon any appeal) that may be instituted or asserted against or incurred by any such Indemnified Person as the result of credit having been extended, suspended or terminated under this Note and the other DIP Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder and any actions or failures to act in connection therewith, and legal costs and expenses arising out of or incurred in connection with disputes between the DIP Lender on the one hand and the Loan Parties on the other hand; provided, that (i) the Borrower shall not be liable for any indemnification to an Indemnified Person to the extent that any such suit, action, proceeding, claim, damage, loss, liability or expense results solely from that Indemnified Person's gross negligence or willful misconduct as determined in a final nonappealable judgment by a court of competent jurisdiction and (ii) this Section 9 shall not apply with respect to taxes other than any taxes that represent losses, claims, damages, etc. arising from any non-tax claim. **NO INDEMNIFIED PERSON SHALL BE RESPONSIBLE OR LIABLE TO ANY OTHER PARTY TO ANY DIP DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OF SUCH PERSON OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES THAT MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER ANY DIP DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.**

10. Adjustments for Withholding, Capital Adequacy Etc. All payments to the DIP Lender by the Borrower under this Note shall be made free and clear of and without deduction or withholding for Taxes, unless such Taxes are required by applicable law to be deducted or withheld. If the Borrower shall be required by applicable law to deduct or withhold any Taxes from or in respect of any amount payable under this Note, then (A) if such Tax is an Indemnified Tax, the amount payable shall be increased as may be necessary so that after making all required deductions or withholdings, (including deductions or withholdings applicable to any additional amounts paid under this Note) the DIP Lender receives an amount equal to the amount it would have received if no such deduction or withholding had been made, (B) the Borrower shall make such deductions or withholdings, and (C) the Borrower shall timely pay the full amount deducted or withheld to the relevant governmental entity in accordance with applicable law.

If the effect of the adoption, effectiveness, phase-in or applicability after the date hereof of any law, rule or regulation (including without limitation any Tax, duty, charge or withholding on or from payments due from the Borrower (but excluding Indemnified Taxes and Excluded Taxes)), or any change therein or in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, is to reduce the rate of return on the capital of the DIP Lender with respect to this Note or to increase the cost to the DIP Lender of making or maintaining amounts available under this Note, the Borrower agrees to pay to the DIP Lender such additional amount or amounts as will compensate the DIP Lender on an after-tax basis for such reduction or increase.

The Borrower agrees to timely pay to the relevant governmental authority in accordance with applicable law any Other Taxes.

The Borrower shall indemnify the DIP Lender for the full amount of Indemnified Taxes (including, without limitation, any Indemnified Taxes imposed by any jurisdiction on amounts payable by the Borrower hereunder) paid by the DIP Lender and any liability (including penalties, interest and expenses) arising from or with respect to such Indemnified Taxes, whether or not they were correctly or legally asserted. Payment under this indemnification shall be made upon demand. A certificate as to the amount of such Indemnified Taxes submitted to the Borrower by the DIP Lender shall be conclusive evidence, absent manifest error, of the amount due from the Borrower to the DIP Lender.

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

Any Recipient of a payment hereunder shall, to the extent it is legally entitled to do so, deliver to the Borrower and the DIP Lender on or prior to the date hereof (and from time to time thereafter upon the reasonable request of the Borrower or the DIP Lender), two properly completed and executed copies of IRS Forms W-8 or W-9 and properly completed and executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding tax, together with such supplementary documentation as may be prescribed by applicable law to permit the Borrower or the DIP Lender to determine the withholding or deduction (if any) required to be made. In addition, any such Recipient, if reasonably requested by the Borrower or the DIP Lender, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the DIP Lender as will enable the Borrower or the DIP Lender to determine whether or not such Recipient is subject to backup withholding or information reporting requirements. Each Recipient agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall timely update such form or certification or promptly notify the Borrower and the DIP Lender in writing of its legal inability to do so.

11. Priority of Obligations and DIP Lender's Liens.

(a) To secure all of the Borrower's Obligations now existing or hereafter arising, the DIP Lender is granted (i) a super-priority administrative claim against each of the Borrower and Guarantors pursuant to Section 364(c)(1) of the Bankruptcy Code, and except as set forth in the Financing Orders, having a priority over all other costs and expenses of administration of any kind, including those specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 363, 364, 503, 506, 507, 546, 726, 1113 or 1114 or any other provision of the Bankruptcy Code or otherwise (whether incurred in these Chapter 11 Cases and any Successor Case), and, except as set forth in the Financing Orders, shall at all times be senior to the rights of the Borrower or any domestic or foreign Subsidiary of the Borrower, any successor trustee or estate representative, or any other creditor or party in interest in the Chapter 11 Cases or any Successor Case, and (ii) pursuant to Sections 364(c)(2) and 364(c)(3) of the Bankruptcy Code and subject to clause (b) below, Liens on, and security interests in, the Collateral. The security interests and Liens granted to the DIP Lender hereunder pursuant to Sections 364(c)(2) shall not be (i) subject to any Lien or security interest which is avoided and preserved for the benefit of the Loan Parties' estate under Section 551 of the Bankruptcy Code, or (ii) except as set forth in the Financing Orders, subordinated to or made pari passu with any other Lien or security interest under Section 364(d) of the Bankruptcy Code or otherwise.

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

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

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

13. [Reserved].

14. Affirmative Covenants.

The Borrower agrees that until the Obligations payable under the DIP Documents shall have been paid in full:

(a) Upon request of the DIP Lender, the Loan Parties will permit any officer, employee, attorney or accountant or agent of the DIP Lender to audit, review, make extracts from or copy, at the Borrower's expense, any and all corporate and financial and other books and records of the Loan Parties at all times during ordinary business hours and, in the absence of an Event of Default, upon reasonable advance notice and to discuss the Loan Parties' affairs with any of their directors, officers, employees, attorneys, or accountants. The Borrower will permit the DIP Lender, or any of its officers, employees, accountants, attorneys or agent, to examine and inspect any Collateral or any other property of the Loan Parties at any time during ordinary business hours and, in the absence of an Event of Default, upon reasonable prior notice. Notwithstanding the foregoing, none of the Loan Parties will be required to disclose information to the DIP Lender (or any agent or representative thereof)

that is prohibited by applicable law, subject to confidentiality restrictions or is subject to attorney-client or similar privilege or constitutes attorney work product.

(b) (i) The Borrower and its Subsidiaries will comply with all requirements of applicable law, the non-compliance with which could reasonably be expected to have a Material Adverse Effect, except as executed by, or otherwise prohibited by, the provisions of the Bankruptcy Code or as a result of the Chapter 11 Cases and (ii) the Borrower and its Subsidiaries will obtain, maintain in effect and comply with all permits, licenses and similar approvals necessary for the operation of its business as now or hereafter conducted other than to the extent contemplated by the Budget, the Bidding Procedures Motion or the Financing Orders.

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

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

(e) The Borrower and its Subsidiaries will:

(1) Maintain insurance with respect to the Collateral, covering casualty, hazard, theft, malicious mischief, flood and other risks, in amounts, with endorsements and with insurers (with a Best's Financial Strength Rating of at least A, unless otherwise approved by the DIP Lender) satisfactory to the DIP Lender. All proceeds under each policy covering Collateral shall be payable to the DIP Lender as a lender loss payee/mortgagee, other than proceeds required by an order of the Bankruptcy Court to be applied to the repayment of debt secured by a Lien on the related assets that is senior to the Liens securing the Obligations under this Note. From time to time upon request, the Borrower shall deliver to the DIP Lender the originals or certified copies of its insurance policies. Unless the DIP Lender shall agree otherwise, each policy shall include satisfactory endorsements that (i) provide for not less than 30 days prior notice to the DIP Lender of termination, lapse or cancellation of such insurance, and (ii) with respect to insurance covering Collateral, name the DIP Lender as loss payee/mortgagee and additional insured. If the Borrower fails to provide and pay for any insurance, the DIP Lender may, at its option, but shall not be required to, procure the insurance and charge the Borrower therefor. The Borrower agrees to deliver to the DIP Lender, promptly as rendered, copies of all reports made to insurance companies. While no Event of Default exists, the Loan Parties may settle, adjust or compromise any insurance claim, as long as the proceeds are delivered to the DIP Lender. If an Event of Default exists, only the DIP Lender shall be authorized to settle, adjust and compromise such claims.

(2) In addition to the insurance required under clause (e)(1) with respect to Collateral, maintain insurance with insurers (with a Best's Financial Strength Rating of at least A, unless otherwise approved by the DIP Lender in its reasonable discretion) satisfactory to the DIP

Lender, with respect to the properties and business of the Loan Parties, of such type (including product liability, workers' compensation, larceny, embezzlement, or other criminal misappropriation insurance), in such amounts, and with such coverages and deductibles as are at the time of placing such insurance customary for companies similarly situated and which are available at commercially reasonable rates.

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

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

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

(i) The Borrower and its Subsidiaries each agree that they shall take all actions necessary to cause each of the milestones set forth on Annex B attached hereto.

15. Negative Covenants.

So long as DIP Lender shall have any Term Loan or other Obligation hereunder shall remain unpaid or unsatisfied, the Borrower shall not, nor shall it permit any Subsidiary to, without the consent of the DIP Lender:

(a) Neither the Borrower nor any of its Subsidiaries shall directly or indirectly, by operation of law or otherwise, (i) form or acquire any Subsidiary, or (ii) merge with, consolidate with, acquire all or substantially all of the assets or Equity Interests of, or otherwise combine with or acquire, any Person, except in the case of this clause (ii), with respect to existing Subsidiaries to the extent consented to by the DIP Lender (which consent shall not be unreasonably withheld), other than, in each case, any such action approved by an order of the Bankruptcy Court.

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

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

(d) Neither the Borrower nor any of its Subsidiaries shall make any Restricted Payment, except dividends and distributions by Subsidiaries of the Borrower paid to the Borrower or other wholly-owned Subsidiaries of the Borrower.

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

(f) Neither the Borrower nor any of its Subsidiaries will convey, sell, lease, assign, transfer or otherwise dispose of any of its property, business or assets, whether now owned or hereinafter acquired other than (i) the sale of inventory in the ordinary course of business, (ii) the sale or disposition of obsolete equipment, or (iii) the sale of other property on terms acceptable to the DIP Lender.

(g) Neither the Borrower nor any of its Subsidiaries shall consent to any waiver, consent, amendment, restatement, amendment and restatement, supplement or other modification of any of the terms or provisions contained in, or applicable to, (i) the Financing Orders or (ii) the Prepetition Secured Obligations. Except for payments permitted by the Financing Orders and the Budget, subject to Permitted Variance, neither the Borrower nor any of its Subsidiaries shall make any payment in respect of, or repurchase, redeem, retire or defease any, prepetition Indebtedness, except as consented to by the DIP Lender in writing.

(h) Neither the Borrower nor any of its Subsidiaries shall make any investment in, or make loans or advances of money to, any Person (other than another Loan Party), through the direct or indirect lending of money, holding of securities or otherwise.

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

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

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

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

(a) The Borrower (i) shall fail to make any payment of principal of, or interest on, or fees owing in respect of, the Term Loans or any of the other Obligations when due and payable, or (ii) to the extent included in the Budget, shall fail to pay or reimburse the DIP Lender for any expense reimbursable hereunder or under any other DIP Document within one (1) Business Day following the DIP Lender's demands for such reimbursement or payment.

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

(c) Any Loan Party shall fail to comply with any of other provision of this Note or any of the other DIP Documents (other than any provision embodied in or covered by any other clause of this Section 16) and the same, if capable of being remedied, shall remain unremedied for five (5) Business Days after the earlier of the date a senior officer or any Loan Party becomes aware of such failure and the date written notice of such default shall have been given by the DIP Lender to such Loan Party.

(d) Except for defaults occasioned by the filing of the Chapter 11 Cases and defaults resulting from obligations with respect to which the Bankruptcy Code prohibits any Loan Party from complying

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

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

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

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

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

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

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

(k) The entry of an order in any Chapter 11 Case avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under this Note or the other DIP Documents.

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

(m) The entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code to allow any creditor (other than the DIP Lender) to execute upon or enforce a Lien on any Collateral except with respect to Permitted Encumbrances arising prior to the Petition Date in an aggregate amount not to exceed \$100,000.

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

(o) There shall commence any suit or action against the DIP Lender by or on behalf of (i) any Loan Party or (ii) any official committee in the Chapter 11 Cases, in each case, that asserts a claim or seeks a legal or equitable remedy that would have the effect of subordinating the claim or Lien of DIP Lender arising under the DIP Facility and, if such suit or action is commenced by any Person other than Borrower or any Subsidiary, officer, or employee of Borrower, such suit or action shall not have been dismissed or stayed within 10 days after service thereof on the DIP Lender and, if stayed, such stay shall have been lifted.

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

(q) Termination of the use of Cash Collateral pursuant to the terms of the Financing Orders.

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

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

(t) The failure of the Borrower to achieve any of the milestones set forth on Annex B attached hereto, unless otherwise extended by the DIP Lender in its sole discretion.

(u) The Stalking Horse APA or any provision thereof (i) shall fail to be in full force and effect or binding upon and enforceable against any Loan Party (subject to entry of a sale order applicable to the Stalking Horse APA) or any other party thereto in accordance with its terms; provided, however, that it shall not be an Event of Default if the Stalking Horse APA ceases to be in full force and effect or binding upon and enforceable against any Loan Party as a result of being out bid in the auction pursuant to the Bidding Procedures Order and all Obligations and Specified Prepetition ABL Obligations of Borrower hereunder are satisfied in full, (ii) has been amended or modified without the consent of the DIP Lender, or (iii) has been breached due to the action or inaction of any Loan Party or any other party thereto. Any party to the Stalking Horse APA shall have notified any other party to the Stalking Horse APA of its intent to terminate the Stalking Horse APA or any other event shall occur, or shall fail to occur, which, subject to a notice requirement or passage of time, would result in the termination of the Stalking Horse APA.

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

If any Event of Default shall have occurred and be continuing, then the DIP Lender may, upon written notice to the Borrower and subject to the terms of the Financing Orders: (i) terminate the Commitment of DIP Lender with respect to further Term Loans; (ii) declare all or any portion of the Obligations, including all or any portion of any Term Loan, to be forthwith due and payable; (iii) revoke the Borrower's rights to use Cash Collateral in which the DIP Lender have an interest; and (iv) exercise any rights and remedies under the DIP Documents or at law or in equity, all in accordance with the Financing Orders. Upon the occurrence of an Event of Default and the exercise by the DIP Lender of its rights and remedies under this Note and the other DIP

Documents pursuant to clause (iv) above and subject to the Financing Orders, each Loan Party shall assist the DIP Lender in effecting a sale or other disposition of the Collateral upon such terms as are designed to maximize the proceeds obtainable from such sale or other disposition. Except as otherwise provided for in this Note or by applicable law, the Borrower waives: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by the DIP Lender on which the Borrower may in any way be liable, and hereby ratifies and confirms whatever the DIP Lender may do in this regard; (b) subject to the terms of the Financing Orders, all rights to notice and a hearing prior to the DIP Lender taking possession or control of, or DIP Lender's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing DIP Lender to exercise any of its remedies; and (c) the benefit of all valuation, appraisal, marshaling and exemption laws.

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

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

17. Reference Agreements. This Note evidences the Term Loans that may be made to Borrower from time to time in the aggregate principal amount outstanding of up to \$60,000,000 and is issued pursuant to and entitled to the benefits of the Financing Orders, to which reference is hereby made for a more complete statement of the terms and conditions under which the Term Loans evidenced by this Note are made and are to be repaid.

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

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

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

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

Borrower has taken or intend to take with respect thereto and (b) which such reports shall contain supporting information, satisfactory to the DIP Lender in its sole discretion.

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

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

“Bidding Procedures Motion” shall have the meaning given to such term in the Stalking Horse APA.

“Bidding Procedures Order” shall have the meaning given to such term in the Stalking Horse APA.

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

“Borrower Designated Account” means the deposit account designated to the DIP Lender in the applicable Borrowing Request.

“Budget” shall mean a rolling thirteen (13) week forecast of projected receipts and disbursements for the immediately following consecutive thirteen (13) weeks after the date of delivery, which shall be in substantially the form of the Initial Budget or otherwise in form and substance acceptable to the DIP Lender and shall be approved by the DIP Lender, in the DIP Lender’s sole discretion; provided, that, for the avoidance of doubt, the Specified Wind Down Budget shall become the Budget once approved by the DIP Lender in its sole discretion. The initial Budget (the “Initial Budget”) is attached hereto as Exhibit A.

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

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

“Business Day” shall mean any day other than a Saturday, Sunday or legal holiday under the laws of the State of New York or any other day on which banking institutions located in the State of New York are authorized or required by law or other governmental action to close.

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

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

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

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

“Collateral Documents” shall mean the Guarantee and Collateral Agreement and each

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

“Commitment” shall mean the commitment of DIP Lender to make the Term Loans to the Borrower in the aggregate principal amount of \$20,000,000 (for the avoidance of doubt, excluding the Converted Term Loans), as the same may be terminated or reduced from time to time in accordance with the terms of this Note.

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

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

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

“Designated Jurisdiction” shall mean any country or territory that is the target of a Sanction.

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

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

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

“Equity Interests” shall mean, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination (provided, however, that debt securities that are or by their terms may be convertible or exchangeable into or for Equity Interests shall not constitute Equity Interests prior to conversion or exchange thereof).

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

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

unreasonable failure to provide the Borrower with the tax documentation described in Section 10 hereof and (d) any withholding Taxes imposed under FATCA.

“Extraordinary Receipts” shall mean any cash received by Borrower or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Sections 7(a) and (b) hereof) from (i) foreign, United States, state or local tax refunds, (ii) pension plan reversions, (iii) proceeds of insurance, (iv) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (v) condemnation awards (and payments in lieu thereof), (vi) indemnity payments and (vii) any purchase price adjustment received in connection with any purchase agreement.

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

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

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

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

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

“Guaranteed Obligations” shall mean the obligations to be guaranteed by each Guarantor pursuant to the terms of the Guarantee and Collateral Agreement.

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

“Guarantee and Collateral Agreement” shall mean the Guarantee and Collateral Agreement, dated as of the date hereof, made by the Guarantors in favor of the DIP Lender.

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

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

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

“Interim Order” shall mean the interim order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the

Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), together with all extensions, modifications and amendments thereto, satisfactory in form and substance to the DIP Lender, authorizing, on an interim basis, Borrower to execute and perform under the terms of this Note and the other DIP Documents.

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

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

“Material Adverse Effect” shall mean a material adverse effect on (i) the operations, business, assets, properties or financial condition of the Loan Parties taken as a whole, (ii) the ability of the Loan Parties to perform payment or other material obligations under any DIP Document, (iii) the legality, validity or enforceability of this Note or any other DIP Document, (iv) the rights and remedies of the DIP Lender under any DIP Document, or (v) the validity, perfection or priority of a Lien in favor of DIP Lender on any of the Collateral.

“Maturity Date” shall mean the earliest to occur of (i) the six (6) month anniversary of the Effective Date, or if such date is not a Business Day the immediately following Business Day, (ii) the date that is thirty-five (35) days after the Petition Date, if the Final Order has not been entered by the Bankruptcy Court on or prior to such date, or if such date is not a Business Day the immediately following Business Day, (iii) the consummation of the Stalking Horse Transaction; (iv) the substantial consummation of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order of the Bankruptcy Court, or (v) the date on which the Term Loans are accelerated pursuant to Section 16.

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

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

“Obligations” shall mean all loans, advances, debts, liabilities and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by Borrower to DIP Lender arising under the Note or any of the other DIP Documents, and all covenants and duties regarding such amounts, of any kind or nature, present or future, arising under the Note or any of the other DIP Documents. This term includes all principal, interest, fees, charges, expenses, attorneys’ fees and any other sum chargeable to Borrower under the Note or any of the other DIP Documents.

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

“Other Taxes” shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes or any other excise or property Taxes, charges, financial institutions duties, debits Taxes or similar levies which arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Note or any of the other DIP Documents.

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

“Permitted Encumbrances” shall mean the following encumbrances: (a) Liens for taxes or assessments or other governmental charges (i) not yet due and payable, (ii) that are being contested in good faith

by appropriate proceedings diligently conducted and adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP, or (iii) the nonpayment of which is permitted or required by the Bankruptcy Code; (b) pledges or deposits of money securing statutory obligations under workmen's compensation, unemployment insurance, social security or public liability laws or similar legislation (excluding Liens under ERISA); (c) pledges or deposits of money securing bids, tenders, contracts (other than contracts for the payment of money) or leases to which any Loan Party is a party as lessee made in the ordinary course of business; (d) carriers', warehousemen's, suppliers' or other similar possessory liens arising in the ordinary course of business; (e) deposits securing, or in lieu of, surety, appeal or customs bonds in proceedings to which any Loan Party is a party; (f) zoning restrictions, easements, licenses, or other restrictions on the use of any real estate or other minor irregularities in title (including leasehold title) thereto so long as the same do not materially impair the use, value, or marketability of such real estate; (g) the DIP Lender's Liens; (h) Liens existing on the Petition Date (to the extent valid, enforceable, perfected and not subject to avoidance as of the Petition Date or perfected after the Petition Date pursuant to section 546(b) of the Bankruptcy Code); (i) Liens in favor of the Prepetition Secured Parties and other Liens granted pursuant to the Financing Orders; and (j) to the extent constituting Liens, Liens on goods delivered to any Loan Party after the Petition Date under any consignment or similar title retention agreements.

"Permitted Indebtedness" shall mean: (a) current Indebtedness incurred in the ordinary course of business for inventory, supplies, equipment, services, taxes or labor; (b) Indebtedness arising under this Note and the other DIP Documents; (c) Prepetition Secured Obligations; (d) deferred taxes and other expenses incurred in the ordinary course of business; (e) any Indebtedness existing on the Petition Date; and (f) administrative expenses of Borrower for which the Bankruptcy Court has not directed payment.

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

"Permitted Variance" shall mean, with respect to any Variance Testing Period, (a) in respect of the aggregate amount of Actual Operating Disbursement Amounts, 10% and (b) in respect of Actual Cash Receipts, 15%.

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

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

"Prepetition ABL Credit Agreement" means that certain Credit Agreement, dated as of June 30, 2020, by and among, inter alios, the Borrower and certain of its subsidiaries (the "ABL Borrowers"), Holdings, the lenders from time to time party thereto (the "ABL Lenders") and ACF FINCO I LP, as administrative agent (the "ABL Agent"), as amended by that certain Amendment No. 1 to ABL Credit Agreement, dated as of November 13, 2020, that certain Amendment No. 2 to ABL Credit Agreement, dated as of January 5, 2021, that certain Amendment No. 3 to ABL Credit Agreement, dated as of January 15, 2021, that certain Amendment No. 4 to ABL Credit Agreement, dated as of February 3, 2021, that certain Amendment No. 5 to ABL Credit Agreement, dated as of April 2, 2021, and that certain Limited Waiver and Amendment No. 6 to ABL Credit Agreement, dated as of December 5, 2022 and as further amended, restated, amended and restated, supplemented or otherwise modified.

"Prepetition Secured Obligations" shall have the meaning given such term in the Financing Orders.

"Prepetition Secured Parties" shall have the meaning given such term in the Financing Orders.

“Recipient” shall mean the DIP Lender.

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

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

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

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

“Sale Order” shall have the meaning given to such term in the Stalking Horse APA.

“Sanction” shall mean any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“Specified Prepetition ABL Obligations” the obligations under and as defined in the Prepetition ABL Credit Agreement which are part of the credit bid described in the Stalking Horse APA.

“Specified Wind Down Budget” has the meaning set forth on Annex A.

“Stalking Horse Transaction” shall mean the sale transaction set forth in the Stalking Horse APA.

“Stalking Horse APA” shall mean that certain Asset Purchase Agreement between TZ SSE Buyer LLC, a Delaware limited liability company, and Supply Source Enterprises, Inc., a Georgia corporation, Impact Products LLC, a Delaware limited liability company and The Safety Zone, LLC, a Connecticut limited liability company (collectively, the “Sellers”).

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

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

“Taxes” shall mean any and all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, or other charges imposed by any governmental authority and all related or similar liabilities, including any interest, additions to tax or penalties applicable thereto.

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

“Variance Testing Period” shall mean each of (w) the one week period ending on the Friday of the first full calendar week after the Petition Date, (x) the two week period ending on the Friday of the calendar week after the one week period described in previous clause (i), and (y) the three week period on the Friday of the calendar week after the two week period described in previous clause (ii) and thereafter the rolling three week period ending on each Friday thereafter.

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

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

(b) upon entry of the Financing Orders, the execution and delivery of this Note and the other DIP Documents and the performance by the Borrower of the Borrower’s obligations hereunder and under the other DIP Documents are within its corporate powers, have been duly authorized by all necessary corporate action of the Borrower, have received all necessary bankruptcy, insolvency or governmental approvals, and do not and will not contravene or conflict with any provisions of applicable material law or of the Borrower’s corporate charter or by-laws or of any agreements binding upon or applicable to the Borrower or any of its Subsidiaries or any of their properties;

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

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

(e) the Borrower and the Loan Parties have good and marketable title to, or valid leasehold interests in, all of its material property and assets; none of the properties and assets of the Borrower and its Subsidiaries are subject to any Liens other than Permitted Encumbrances;

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

(g) upon entry of the Financing Orders, the Liens granted to the DIP Lender pursuant to the Collateral Documents and the Financing Orders will at all times be fully perfected Liens in and to the Collateral described therein, subject, as to priority, only to Permitted Prior Liens or other Liens permitted to have such priority under the Financing Orders;

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

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

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

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

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

(m) the Borrower and its Subsidiaries have filed all material federal, state, local, foreign and other Tax returns and reports required to be filed, and have paid all material federal, state, local, foreign and other Taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable other than those not yet delinquent or are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves with respect thereto are maintained on the books of the Borrower and its Subsidiaries in accordance with GAAP.

20. DIP Lender.

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

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

(c) Subject to the Financing Orders, the DIP Lender may in its sole discretion, but is under no obligation to credit bid any part of the Obligations or to purchase or retain or acquire any portion of the Collateral.

21. Miscellaneous.

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

If to Borrower: Supply Source Enterprises, Inc.
385 Long Hill Road
Guilford, Connecticut 06437
Attn: Christine Barringer, CFO
Email: Christine.Barringer@supplysourceglobal.com

and

Portage Point Partners
640 Fifth Avenue, 10th Floor
New York, NY 10019
Attn: Thomas Studebaker
Email: tstudebaker@pppllc.com

with copies to: McDermott Will & Emery LLP
444 West Lake Street, Suite 4000
Chicago, IL 60606-0029
Attn: Bradley T. Giordano and Felicia Perlman
Email: bgiordano@mwe.com; fperlman@mwe.com

and

Potter Anderson & Corroon LLP
1313 N. Market Street, 6th Floor
Wilmington, DE 19801
Attn: M. Blake Cleary and R. Stephen McNeill
Email: bcleary@potteranderson.com;
rmcneill@potteranderson.com

If to DIP Lender: TZ SSE Buyer LLC
c/o Tranzonic Parent LLC
26301 Curtiss Wright Parkway
Cleveland, OH 44143
Attn: Tom Friedl; Pat Fitzmaurice
Email: tfriedl@tranzonic.com; pfitzmaurice@tranzonic.com

with copies to: Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attn: Kevin Bostel and Vynessa Nemunaitis
Email: Kevin.Bostel@weil.com
Vynessa.nemunaitis@weil.com

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

(a) The Borrower shall reimburse the DIP Lender for all reasonable and documented out-of-pocket expenses incurred in connection with the negotiation and preparation of the DIP Documents and the obtaining of approval of the DIP Documents by the Bankruptcy Court, including fees, costs and expenses of financial and other advisors. Subject to the foregoing, the Borrower shall reimburse the DIP Lender for all reasonable and documented out-of-pocket fees, costs and expenses, including fees, costs and expenses of financial and other advisors, in connection with:

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

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

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

(c) Borrower and any endorser of this Note hereby consent to renewals and extensions of time at or after the maturity hereof without notice, and hereby waive diligence, presentment, protest, demand

and notice of every kind and, to the full extent permitted by law, the right to plead any statute of limitations as a defense to any demand hereunder.

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

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

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

(g) THE BORROWER AND, BY THEIR ACCEPTANCE OF THIS NOTE, THE DIP LENDER AND ANY SUBSEQUENT HOLDER OF THIS NOTE, HEREBY IRREVOCABLY AGREE TO WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS NOTE OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS NOTE AND THE DIP LENDER'S/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including without limitation contract claims, tort claims, breach of duty claims and all other common law and statutory claims. The Borrower and, by their acceptance of this Note, the DIP Lender and any subsequent holder of this Note, each (i) acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this relationship, and that each will continue to rely on this waiver in their related future dealings and (ii) further warrants and represents that each has reviewed this waiver with its legal counsel and that each knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. **THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING) THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS OF THIS NOTE.** In the event of litigation, this provision may be filed as a written consent a trial by the court.

(h) The Borrower shall not have the right to assign their obligations or liabilities under this Note without the prior written consent of the DIP Lender. The DIP Lender may, with the prior written consent of, to the extent no Event of Default then exists, the Borrower (which consent of the Borrower shall not be required for any assignment to the DIP Lender, a Related Fund or an affiliate of the DIP Lender or a DIP Lender or which consent shall not be unreasonably conditioned, withheld or delayed), assign to one or more entities all or any part of, or may grant participation's to one or more entities in or to all or any part of, the amounts outstanding hereunder, and to the extent of any such assignment or participation (unless otherwise stated therein) the assignee or participant shall have the same rights and benefits hereunder as it would have if it were a DIP Lender hereunder. An assigning DIP Lender shall deliver to the assignor DIP Lender (and notify the Borrower thereof) an assignment agreement in a form approved by the assigning DIP Lender, which shall include a description of the assignment and include customary instructions from the assigning DIP Lender and

such assignee with respect to the making of payments and other communications with the assigning DIP Lender and such assignee and all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations.

(i) [Reserved].

(j) [Reserved].

(k) [Reserved].

(l) No provision of this Note may be amended or waived unless such amendment or waiver is in writing and is signed by the Borrower and the DIP Lender.

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

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

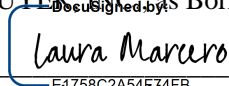
(o) In the event of any inconsistency between the terms and conditions of this Note and the Financing Orders, the provisions of the Financing Orders shall govern and control.

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

* * * * *

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

SSE BUYER, INC. as Borrower

By: 
Name: Laura Marcero
Title vice President

Acknowledged and Agreed

TZ SSE BUYER LLC, as DIP Lender

By: _____

Name:

Title:

EXHIBIT A

Budget

See attached.

Annex A

Deliver (which delivery may be made by electronic communication (including email)) to the DIP Lender, the annual reports, monthly reports and quarterly reports and other information required by Sections 6.1 and 6.2 of the Prepetition ABL Credit Agreement (and the defined terms used in such sections and defined in the Prepetition ABL Credit Agreement shall have the meanings given such terms therein, unless any such term is also defined herein, in which case each such defined term used in such definition shall have the meaning provided herein) (whether or not such agreement remains in effect and without giving effect to any amendments or other modifications thereto made after the Effective Date unless the DIP Lender shall otherwise agree) and each of the financial statements, reports, or other items set forth below at the following times in form reasonably satisfactory to the DIP Lender:

<p>on the Thursday of the first full calendar week after the Petition Date and every Thursday of each week ending thereafter</p>	<p>(a) a certificate which shall include such detail as is reasonably satisfactory to the DIP Lender (i) certifying that the Loan Parties are in compliance with the covenants contained in <u>Section 15(j)</u> and (ii) certifying that no Default or Event of Default has occurred or, if such a Default or Event of Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto, and attaching thereto (x) the Approved Budget Variance Report which shall be prepared by the Borrower as of the last day of the most recently ended Variance Testing Period and (y) a detailed aging listing of post-petition trade payables by vendor and their stated payment terms,</p>
<p>on the Thursday of the third full calendar week after the Petition Date and every third Thursday ending thereafter</p>	<p>(b) a revised proposed budget (it being understood that upon written approval of such proposed budget by the DIP Lender (and not before such written approval), in its sole discretion, such proposed budget shall become the “<u>Budget</u>”) and timing changes with respect to any periods that were included in a previously delivered report and which shall be in form and substance acceptable to the DIP Lender and DIP Lender,</p>
<p>Promptly,</p>	<p>(c) copies of all pleadings, motions, applications or financial information filed by any Loan Party with the Bankruptcy Court;</p>
<p>promptly, but in any event within three (3) Business Days after Borrower has knowledge of any event or condition that constitutes a Default,</p>	<p>(d) notice of such event or condition and a statement of the curative action that Borrower proposes to take with respect thereto,</p>
<p>By 1:00 pm (est) on the Monday of the eighth full calendar week after the Petition Date,</p>	<p>(e) the rolling thirteen (13) week forecast of projected receipts and disbursements for the immediately following consecutive thirteen (13) weeks after the date of delivery, which shall be in substantially the form of the Initial Budget or otherwise in form and substance acceptable to the DIP Lender and shall be approved by the DIP Lender, in the DIP Lender’s sole discretion (the “<u>Specified Wind Down Budget</u>”), together with an updated detailed aging listing of post-petition trade payables by vendor and their stated payment terms,</p>
<p>upon the request of the DIP Lender,</p>	<p>(f) any other information relating to the business, financial, legal or corporate affairs of the Borrower or its Subsidiaries.</p>

Annex B

Milestones

1. On the Petition Date, (i) the Debtors shall file a motion with the Bankruptcy Court seeking approval of the Interim Order, (ii) the Debtors shall file the Bidding Procedures Motion with the Bankruptcy Court, and (iii) the Debtors shall have entered into the Stalking Horse APA.
2. On or before the date that is three (3) days after the Petition Date, the Bankruptcy Court shall have entered the Interim Order.
3. On or before the date that is thirty (30) days after the Petition Date, the Bankruptcy Court shall have entered the Bidding Procedures Order.
4. On or before the date that is thirty-five (35) days after the Petition Date, the Bankruptcy Court shall have entered the Final Order.
5. On or before the date that is forty (40) days after the Petition Date, the deadline to submit bids under the Bidding Procedures Order shall have occurred.
6. On or before the date that is forty-five (45) days after the Petition Date, the Debtors shall have commenced the auction pursuant to the Bidding Procedures Order, if necessary.
7. On or before the date that is fifty (50) days after the Petition Date, a hearing shall have occurred in the Bankruptcy Court to consider approval of the Stalking Horse APA and the Stalking Horse Transaction.
8. On or before the date that is fifty (50) days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order.
9. On or before the date that is seventy (70) days after the Petition Date, the Stalking Horse Transaction shall be consummated and closed.

Exhibit B

Initial DIP Budget

Forecast Week Week Ended	Estimated Sale Close								Estimated Emergence								Total / Ending	
	Forecast 1 5/24/2024	Forecast 2 5/31/2024	Forecast 3 6/7/2024	Forecast 4 6/14/2024	Forecast 5 6/21/2024	Forecast 6 6/28/2024	Forecast 7 7/5/2024	Forecast 8 7/12/2024	Forecast 9 7/19/2024	Forecast 10 7/26/2024	Forecast 11 8/2/2024	Forecast 12 8/9/2024	Forecast 13 8/16/2024	Forecast 14 8/23/2024	Forecast 15 8/30/2024	Forecast 16 9/6/2024		Forecast 17 9/13/2024
Cash Receipts:																		
A/R Collections:	\$ 4,314	\$ 4,384	\$ 4,331	\$ 4,339	\$ 4,390	\$ 3,879	\$ 4,408	\$ 4,976	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 35,021
Other Receipts ¹	-	-	-	-	-	-	-	-	475	-	-	-	-	-	-	-	-	475
Total Receipts	\$ 4,314	\$ 4,384	\$ 4,331	\$ 4,339	\$ 4,390	\$ 3,879	\$ 4,408	\$ 4,976	\$ 475	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 35,496
Cash Disbursements:																		
Payroll																		
Salaries & Wages	\$ (800)	\$ (75)	\$ (800)	\$ (65)	\$ (800)	\$ (65)	\$ (800)	\$ (800)	\$ (20)	\$ (4)	\$ (40)	\$ (3)	\$ (40)	\$ (3)	\$ (40)	\$ (3)	\$ (40)	\$ (4,398)
Employee Benefits & Runoff	(38)	(38)	(283)	(33)	(33)	(33)	(285)	(35)	(2)	(2)	(252)	(2)	(2)	(2)	(2)	(5)	(5)	(1,051)
Total Payroll	\$ (838)	\$ (113)	\$ (1,083)	\$ (98)	\$ (833)	\$ (98)	\$ (1,085)	\$ (835)	\$ (22)	\$ (5)	\$ (292)	\$ (5)	\$ (42)	\$ (5)	\$ (42)	\$ (8)	\$ (45)	\$ (5,449)
Trade																		
Trade Payables	\$ (3,500)	\$ (3,500)	\$ (3,500)	\$ (3,500)	\$ (2,875)	\$ (2,875)	\$ (2,875)	\$ (2,875)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (25,500)
Sales Adj. (Rebates, Refunds, etc.)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	(100)	-	-	-	-	-	-	-	-	-	(800)
Total Trade	\$ (3,600)	\$ (3,600)	\$ (3,600)	\$ (3,600)	\$ (2,975)	\$ (2,975)	\$ (2,975)	\$ (2,975)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (26,300)
Other Operating Expenses																		
Rent	\$ -	\$ -	\$ (614)	\$ -	\$ -	\$ -	\$ (610)	\$ -	\$ -	\$ (101)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (1,325)
Utilities	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	(15)	-	-	-	-	-	-	-	(151)
Property Taxes	-	-	-	(32)	-	-	-	-	(32)	-	-	-	-	-	-	-	-	(64)
Insurance	(47)	-	-	-	-	-	(107)	(250)	-	-	-	-	-	-	-	-	-	(404)
Total Commissions	-	-	-	-	-	-	(342)	-	(171)	-	-	-	-	-	-	-	-	(514)
Delivery (Freight Out)	(501)	(501)	(501)	(501)	(501)	(501)	(501)	(501)	-	-	-	-	-	-	-	-	-	(4,012)
Storage Expenses	(124)	(124)	(362)	(128)	(128)	(128)	(298)	(103)	-	-	-	-	-	-	-	-	-	(1,393)
Data Proc Equip & Supplies	(45)	(45)	(45)	(45)	(45)	(45)	(45)	(45)	(45)	(45)	-	-	-	-	-	-	-	(453)
Marketing / Sales Misc	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	-	-	-	-	-	-	-	-	-	(77)
Other Opex	(95)	(95)	(95)	(95)	(95)	(90)	(90)	(90)	(90)	-	-	-	-	-	-	-	-	(835)
Total Other Operating Expenses	\$ (837)	\$ (790)	\$ (1,643)	\$ (826)	\$ (794)	\$ (1,239)	\$ (1,819)	\$ (968)	\$ (150)	\$ (60)	\$ (101)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (9,227)
Restructuring Costs																		
Professional Fees Escrow	\$ (800)	\$ (400)	\$ (550)	\$ (500)	\$ (270)	\$ (420)	\$ (568)	\$ (1,410)	\$ (270)	\$ (50)	\$ (200)	\$ (40)	\$ (65)	\$ (40)	\$ (40)	\$ (65)	\$ (65)	\$ (5,753)
Critical / Foreign Vendors	(2,000)	(1,000)	(500)	(500)	-	-	-	-	-	-	-	-	-	-	-	-	-	(4,000)
503(b)(9)	-	(500)	(500)	(1,750)	(1,000)	(250)	-	-	-	-	-	-	-	-	-	-	-	(4,000)
Utilities Adequate Assurance	(25)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(25)
Filing Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Trustee Fees	-	-	-	-	-	-	-	-	-	(250)	-	-	-	-	-	-	(139)	(389)
Cure Costs	-	-	-	-	-	-	-	(100)	-	-	-	-	-	-	-	-	-	(100)
LC Cash Collateralization	(475)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(475)
Other Restructuring Costs	-	-	-	-	-	-	-	(2,279)	-	-	-	(100)	(100)	(100)	(100)	(100)	(100)	(2,779)
Total Restructuring Costs	\$ (3,300)	\$ (1,900)	\$ (1,550)	\$ (2,750)	\$ (1,270)	\$ (670)	\$ (568)	\$ (3,789)	\$ (270)	\$ (300)	\$ (200)	\$ (40)	\$ (165)	\$ (140)	\$ (140)	\$ (165)	\$ (304)	\$ (17,521)
Total Cash Disbursements:	\$ (8,575)	\$ (6,403)	\$ (7,876)	\$ (7,274)	\$ (5,873)	\$ (4,981)	\$ (6,447)	\$ (8,567)	\$ (442)	\$ (366)	\$ (593)	\$ (45)	\$ (207)	\$ (145)	\$ (182)	\$ (173)	\$ (349)	\$ (58,496)
Financing:																		
Total Debt Proceeds	\$ 10,000	\$ -	\$ -	\$ 5,000	\$ -	\$ 2,500	\$ -	\$ 2,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 20,000
Beginning Cash	\$ 3,000	\$ 8,739	\$ 6,721	\$ 3,175	\$ 5,240	\$ 3,758	\$ 5,156	\$ 3,117	\$ 2,026	\$ 2,059	\$ 1,694	\$ 1,101	\$ 1,056	\$ 849	\$ 704	\$ 522	\$ 349	\$ 3,000
Net Cash Flow	5,739	(2,018)	(3,546)	2,065	(1,482)	1,398	(2,038)	(1,091)	33	(366)	(593)	(45)	(207)	(145)	(182)	(173)	(349)	(3,000)
Ending Cash per Bank	\$ 8,739	\$ 6,721	\$ 3,175	\$ 5,240	\$ 3,758	\$ 5,156	\$ 3,117	\$ 2,026	\$ 2,059	\$ 1,694	\$ 1,101	\$ 1,056	\$ 849	\$ 704	\$ 522	\$ 349	\$ -	\$ -

1. LC Cash Collateral shall remain an estate asset following closing of the Stalking Horse Transaction and shall be included as a deduct from the total amount required to be funded under the Specified Wind Down Budget