

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Supply Source Enterprises, Inc., <i>et al.</i> , <sup>1</sup>	Case No. 24- 11054 (BLS)
Debtors.	(Jointly Administered)
	Re: Docket Nos: 14, 15 & 49

**FINAL 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, AND  
(V) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> 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 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 was 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 this Final Order and satisfaction of the

<sup>1</sup> 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.

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



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applicable conditions set forth in the DIP Credit Agreement, and (2) upon entry of this 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 this Final Order (the “Roll-Up Amount”) on the terms and conditions set forth in this Final 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”), substantially in the form 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 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*, dated as of May 24, 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 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 Final 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, any Avoidance Proceeds (as defined below));
- G. 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. 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; and
- I. the modification of the automatic stay to accomplish the transactions and remedies set forth herein and in the DIP Documents.

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 May 23, 2024 (the “Interim Hearing”) and the final hearing, if any (the “Final Hearing”); and the Court having entered that certain *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* (Docket No. 49) (the “Interim Order”); and due and sufficient notice of the Motion and the Final 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 interest of the Debtors, their estates and creditors, and all parties in interest; 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:<sup>3</sup>**

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.** On June 3, 2024, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors in the Chapter 11 Cases (the “Committee”) pursuant to section 1102 of the Bankruptcy Code.

D. **Notice.** Notice of the Motion and the Final 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 Final Hearing or the entry of this Final Order shall be required.

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”):

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<sup>3</sup> 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.

- (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 ABL 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 Final 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 Final 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 Final 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 Final 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 Final 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 Final 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 Final 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 Final 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 Final 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 the Interim Order, this 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 Final 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 Final 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 Final 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 Final 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 Final Order and in the context of the DIP Financing authorized by this Final 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 to the Interim Order 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 and counsel to the Committee 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”). Nothing herein shall be construed to limit the rights of the U.S. Trustee or the Committee to object to any Revised DIP Budget or the Specified Wind Down Budget. On or before 1:00 p.m. (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 and counsel to the Committee. The Specified Wind Down Budget shall be prepared by the Debtors in consultation with the Committee and the Debtors shall consult with the Committee with respect to any chapter 11 plan of liquidation proposed by the Debtors. 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 except that the “Other Restructuring Costs” line item shall be reduced by \$805,000),<sup>4</sup> 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”). Any such Approved DIP Budget shall be served on the U.S. Trustee and counsel to the Committee. 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

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<sup>4</sup> For the avoidance of doubt, solely for purposes of calculating “Excess Cash” (as defined in the Stalking Horse APA), the total funding commitment under DIP Financing shall reflect a permanent reduction of \$805,000.00.

Final Order in determining to enter into the postpetition financing arrangements provided for in this Final Order.

ix. Consummation of the DIP Financing and the use of Prepetition Collateral, including Cash Collateral, in accordance with this Final Order and the DIP Documents are 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 Final Order and the other DIP Documents, including the Approved DIP Budget, 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 a final basis. Unless otherwise modified herein, all findings of fact, conclusions of law, and authorizations made by this Court in the Interim Order are hereby ratified and incorporated herein by reference as though set forth fully herein. Any objections, reservations of rights, or other statements with respect to entry of this Final 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.

(b) 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 shall receive notice at least two days in advance of any such amendment, waiver, consent, or other modification, to the extent reasonably practicable. 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 Final 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 14 of this Final 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) The DIP Documents constitute valid, binding, and unavoidable obligations of the Debtors, enforceable against the Debtors in accordance with the terms of the DIP Documents and this Final Order. No obligation, payment, transfer, or grant of security under the DIP Documents or this Final 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 Final 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 three week period ending on June 21, 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.** Subject to the Carve Out in all respects, 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), 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 to the extent permitted under the Bankruptcy Code (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 any proceeds or property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement, or otherwise (the “Avoidance Proceeds”); *provided that* the DIP Superpriority Claims shall be junior in all respects to the Carve Out. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Final Order or any provision hereof is vacated, reversed, or modified, on appeal.

5. **DIP Liens.** As security for the DIP Obligations, effective and perfected upon the date of the 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 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 Final 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 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 (either (i) before the Petition Date or (ii) subsequent to the petition date as permitted by section 546(b)), 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 Final 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 Final 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 Final 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 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 Final 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 as of 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 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 Final Order, the priority set forth in section 507(b) (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 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 Final 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. Subject to paragraph 14 hereof, as further adequate protection, the Debtors are authorized and directed to pay, in accordance with the terms of Paragraph 7 of this Final 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 Final 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 the Interim Order (and continuing upon entry of this Final Order), and to the extent set forth therein, the Debtors shall apply the proceeds of DIP Collateral and Prepetition Collateral solely in accordance with this 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 Final Order and permit the DIP Lender to exercise the rights and remedies provided for in paragraph 11 of this Final Order and the DIP Documents:

a. 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).

b. 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.

c. 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.

d. 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).

e. On or before the date that is fifty (50) days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order (as defined in the DIP Documents).

f. 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 (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 Final 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, 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 Final 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 Final Order. No rights, protections or remedies of the DIP Lender and the Prepetition Secured Parties granted by the provisions of this Final 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, 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 Marshalling**. None of the DIP Lender or the Prepetition Secured Parties shall be subject to (a) other than as set forth in Paragraph 42(e), 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 Final Order, including in paragraph E of this Final Order, shall be binding upon the Debtors and any successor thereto (including, following the expiration of the Challenge Period (defined herein), any chapter 7 or chapter 11 trustee or examiner appointed or elected for the Debtors, if such chapter 7 or chapter 11 trustee or examiner has not timely filed a challenge) in all circumstances and for all purposes upon entry of this Final Order. The Debtors' Stipulations, admissions, releases, and agreements contained in this Final Order, including in paragraph E of this Final 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, August 6, 2024;

(ii) entry of the Sale Order (as defined in DIP Documents); 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”); *provided, however*, if a chapter 7 or chapter 11 trustee is elected or appointed before the Challenge Period expires, then such trustee shall have until the later of (x) the existing Challenge Period and (y) thirty (30) days after appointment or election to bring a Challenge; *provided, further, however*, that the timely filing of an emergency motion seeking standing to file a Challenge consistent with applicable law and rules of procedure before the expiration of the Challenge Period, which attaches a draft complaint setting forth the legal and factual bases of the proposed Challenge(s), shall toll the Challenge Period only as to the party that timely filed such emergency standing motion, and solely with respect to the Challenge(s) asserted in the draft complaint, until entry of an order granting the emergency motion for standing to prosecute such Challenge(s) described in the draft complaint and permitted by the Court; *provided, further, however*, if standing is denied by the Court, the Challenge Period shall be deemed to have immediately expired with respect to such Challenge(s); 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. For the avoidance of doubt, any chapter 7 or chapter 11 trustee appointed or elected in these Cases shall, until the expiration of the applicable Challenge Period, and thereafter for the duration of any adversary proceeding or contested matter commenced pursuant to this paragraph (whether commenced by such trustee or commenced by any other party in interest on behalf of the Debtors’ estates), be deemed to be a party other than

the Debtors and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgements, admissions, confirmations and stipulations of the Debtors in this Final Order. 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 Final 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 Final Order, including those contained in paragraphs E of this Final Order, shall be binding on all parties in interest, including the Committee 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, 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 Final Order, including those contained in paragraph E of this Final 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 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 Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee 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. This Court may fashion an appropriate remedy following a successful Challenge.

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 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; *provided, however*, the U.S. Trustee reserves the right to seek copies of invoices containing detailed time entries of any professional. Any objections raised by the Debtors, the U.S. Trustee, or the Committee 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, and 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. Notwithstanding the foregoing, the Debtors shall not be

required to indemnify any Indemnified Person for costs, expenses, or liabilities incurred in connection with a successful Challenge made in accordance with paragraph 13 hereof with respect to the Prepetition Secured Obligations and/or the Prepetition Liens.

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 (which statutory fees shall not be limited by any budget); (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 the 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 the Interim Order, this 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; *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, 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 the Interim 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 Final 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 Final 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 Final 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 Final 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 Final 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 Final 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 or this 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.** 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 Final 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, subject to paragraph 13 hereof, the Prepetition Secured Parties pursuant to the provisions of the Interim Order, this Final Order, 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 Final Order, and such consent shall not be deemed to extend to any other Cash Collateral usage or other replacement financing or debtor-in-possession financing other than the DIP Facility provided under the DIP Documents; *provided further*, however, that such consent shall be of no force and effect in the event this Final 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 Final 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 Final Order or otherwise following the date of this Final 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 the 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 Final 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 Final 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 Final 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 Final Order.**

(a) Other than the Carve-Out and other claims and liens expressly granted or permitted by this Final Order and the DIP Documents, no claim or lien having a priority superior to or *pari passu* with those granted by this Final 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 Final 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 Final 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 Final Order.

(c) If any or all of the provisions of this Final 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 Final 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 Final 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 Final 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 Final 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 Final 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 Final Order (including the Carve-Out) and the DIP Documents shall continue in full force and effect until 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 Final 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, 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 this 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 the Interim Order, this 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 the 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 \$50,000 in the aggregate with such amounts to be paid from Cash Collateral or proceeds of the DIP Loans; (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 this Final Order, each in accordance with the DIP Documents, the Prepetition Credit Documents, or this 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 Final 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 Final 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 Final 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.** (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 this Final Order, the Prepetition Credit Documents and the DIP Documents in accordance with the terms and conditions of this Final Order until such time as all DIP Obligations and Prepetition Secured Obligations have been paid in full in cash.

29. **Final Order Governs.** In the event of any inconsistency between the provisions of this Final 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 Final 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 Final Order and the DIP Documents, including the Approved DIP Budget.

30. **Binding Effect; Successors and Assigns.** The DIP Documents and the provisions of this Final 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, 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 (but only those Prepetition Secured Parties who were parties to the Prepetition Credit Documents as of the Petition Date) 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 Final 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 Final 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 the Interim Order and this Final Order, together with any evidence accompanying the Motion and presented at the Interim Hearing or the Final 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 the Interim Order and this Final 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 Final 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 Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

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 Final Order.

38. **Payments Held in Trust.** Except as expressly permitted in this Final 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 Final 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 Final 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. **Committee Resolution.** The Debtors, the Committee, the Prepetition Secured Parties, the DIP Lender, and H.I.G. Capital LLC, H.I.G. Advantage Buyout Fund, L.P., H.I.G. Whitehorse Equity Side-Car, L.P., H.I.G. Capital Finance, LLC, and all of its affiliates (collectively, “HIG”) have agreed to resolve the Committee’s objections to entry of this Final Order, the Bidding Procedures Order and the Sale Order (the “Committee Resolution”) on the following terms:

(a) The Committee shall support and not object to the sale process, the consummation of the Transactions (as defined in the Stalking Horse APA), and entry of the Sale Order, including the purchase of the Debtors’ claims and causes of action and the waiver and release of such claims and causes of action by the Purchaser as set forth in Section 2.1(c) of the Stalking Horse APA (as amended by the APA Amendment (as defined below)).

(b) Subject to consummation of the Transactions and the Committee not initiating a Challenge or filing a motion for standing to initiate a Challenge (a “Standing Motion”), (i) the Specified Wind Down Budget shall include an additional line item titled “Additional Excluded Cash” in the amount of \$1,350,000 (the “Additional Excluded Cash”), (ii) the DIP Lender and the Prepetition Secured Parties shall waive any rights to receive a distribution on account of any and all claims that such parties may have against the Debtors and the Debtors’ estates, including from the Additional Excluded Cash, and (iii) HIG shall waive any and all claims against the Debtors, the Debtors’ estates and the Purchaser Released Persons (as defined in the Stalking Horse APA).

(c) The “Professional Fees Escrow: UCC” line item in the Revised DIP Budget shall be \$1,000,000.

(d) If no Challenge is initiated by the Committee and no Standing Motion is filed by the Committee, the Stalking Horse APA shall be amended (the “APA Amendment”) to provide:



- (i) fifty-percent (50%) of Excess Cash (as defined in the Stalking Horse APA) is an “Excluded Asset” under the Stalking Horse APA; *provided, however*, that no more than \$600,000 of Excess Cash shall be an Excluded Asset;
- (ii) the Purchaser (as defined in the Stalking Horse APA) will work in good faith with those vendors to be set forth in a schedule to the APA Amendment (the “Specified Vendors”) to create an agreement with those vendors that will provide assurances that the Purchaser will actively engage with them to create a structure to assure that the Purchaser’s supply chain has minimal disruptions. In connection with the foregoing, the Purchaser will give the Specified Vendors opportunities to provide quotes to supply the Purchaser the products such vendors have been providing to the Debtors as long as the vendors are able to meet delivery times, quality of product and pricing competitive with other vendors. In the event a Specified Vendor’s delivery time, quality of product or price is not competitive, the Purchaser will notify the vendor and give the vendor the opportunity to requote;
- (iii) the following claims and causes of action shall be “Excluded Assets” under the Stalking Horse APA: (a) Avoidance Actions against vendors that are not related to the Purchased Assets (as defined in the Stalking Horse APA), to be set forth in a schedule to the APA Amendment reasonably acceptable to the Committee (the “Excluded Vendors”), and (b) any other causes of action (including commercial tort claims) against the Excluded Vendors; and
- (iv) in the event that the Debtors, on the Closing Date (as defined in the Stalking Horse APA), have insufficient cash on hand or remaining availability under

the DIP Facility to fund the Additional Excluded Cash, the Purchase Price (as defined in the Stalking Horse APA) shall be increased by the amount necessary to fund the shortfall (the “Shortfall Amount”); provided, however, that in no event shall the Shortfall Amount exceed \$545,000. The Shortfall Amount, if any, shall be paid by the Purchaser (as defined in the Stalking Horse APA) in cash on the Closing Date.

(e) Notwithstanding anything to the contrary in this Final Order or the DIP Documents, (i) the DIP Collateral shall not include any Avoidance Actions or any other cause of action but shall include the proceeds of any Avoidance Actions or other causes of action constituting DIP Collateral, and (ii) in the event of an enforcement of remedies in accordance with the terms of this Final Order, the DIP Lender shall use commercially reasonable efforts to satisfy the DIP Obligations in the following order: (a) *first* from the DIP Collateral other than the proceeds of Avoidance Actions and any other causes of action, and (b) *second* from the proceeds of Avoidance Actions and any other causes of action. For the avoidance of doubt, the DIP Lender shall release the DIP Liens on Avoidance Actions upon either (a) Closing Date or (b) payment in full of the DIP Obligations.

(f) The initiation of any Challenge by the Committee or the filing by the Committee of a Standing Motion shall terminate all obligations pursuant to this paragraph 42.

(g) Pursuant to the Committee Resolution, the Debtors, the DIP Lender, the Purchaser, HIG, and Ares Capital Corporation and its affiliates, in its capacity as Prepetition ABL Agent, Prepetition Term Loan Agent, Prepetition ABL Lender, Prepetition Term Loan Lender, equityholder, and every other capacity (the “Bound Parties”) have agreed upon certain key terms of a consensual chapter 11 liquidating plan as set forth in this Final Order. The Debtors have

agreed to file a plan consistent with the terms of the Committee Resolution as set forth in this Final Order (the “Agreed Plan”) and have agreed to consult with the Committee with respect to the form and substance of the Agreed Plan to ensure that the terms of the Agreed Plan are consistent in all aspects with the Committee Resolution. The Agreed Plan shall provide for (i) customary releases and exculpations of the Debtors and Committee professionals and the Committee members solely in such capacity as members and (ii) mutual releases and waiver of claims by and among the Debtors, their estates and creditors, the Committee, and HIG. The Committee Resolution shall bind each of the Bound Parties to work in good faith to formulate and prosecute the Agreed Plan. Nothing contained in this Final Order constitutes any finding of fact or conclusion of law with respect to whether the Agreed Plan satisfies the confirmation requirements set forth in section 1129 of the Bankruptcy Code, nor does this paragraph bind any party other than the Bound Parties.

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

Dated: June 24th, 2024  
Wilmington, Delaware

  
BRENDAN L. SHANNON  
UNITED STATES BANKRUPTCY JUDGE

**REVISED DIP BUDGET**

(\$ in 000s)	Estimated Sale Close					Estimated Emergence										
	Forecast 1	Forecast 2	Forecast 3	Forecast 4	Forecast 5	Forecast 6	Forecast 7	Forecast 8	Forecast 9	Forecast 10	Forecast 11	Forecast 12	Forecast 13	Forecast 14	Forecast 15	Forecast Total/Ending
Week Ended	6/21/2024	6/28/2024	7/5/2024	7/12/2024	7/19/2024	7/26/2024	8/2/2024	8/9/2024	8/16/2024	8/23/2024	8/30/2024	9/6/2024	9/13/2024	9/20/2024	9/27/2024	
<b>Cash Receipts:</b>																
APR Collections:	\$4,064	\$4,038	\$4,396	\$4,280	\$4,358											\$21,136
Other Receipts <sup>1</sup>						\$469										\$469
<b>Total Receipts</b>	<b>\$4,064</b>	<b>\$4,038</b>	<b>\$4,396</b>	<b>\$4,280</b>	<b>\$4,358</b>	<b>\$469</b>										<b>\$21,604</b>
<b>Cash Disbursements:</b>																
<b>Payroll</b>																
Salaries & Wages	(\$750)	(\$50)	(\$750)	(\$50)	(\$1,125)	(\$4)	(\$20)	(\$3)	(\$40)	(\$3)	(\$40)	(\$3)	(\$40)	(\$3)	(\$40)	(\$2,922)
Employee Benefits	(33)	(33)	(285)	(30)	(2)	(2)	(252)	(2)	(2)	(2)	(152)	(3)	(3)	(3)	(153)	(\$956)
<b>Total Payroll</b>	<b>(\$783)</b>	<b>(\$83)</b>	<b>(\$1,035)</b>	<b>(\$80)</b>	<b>(\$1,127)</b>	<b>(\$5)</b>	<b>(\$272)</b>	<b>(\$5)</b>	<b>(\$42)</b>	<b>(\$5)</b>	<b>(\$192)</b>	<b>(\$6)</b>	<b>(\$43)</b>	<b>(\$6)</b>	<b>(\$193)</b>	<b>(\$3,878)</b>
<b>Trade</b>																
Trade Payables	(\$3,675)	(\$3,500)	(\$3,500)	(\$3,500)	(\$3,500)											(\$17,675)
Sales Adj. (Rebates, Refunds, etc.)	(250)	(250)	(250)	(250)	(160)											(\$1,160)
<b>Total Trade</b>	<b>(\$3,925)</b>	<b>(\$3,750)</b>	<b>(\$3,750)</b>	<b>(\$3,750)</b>	<b>(\$3,660)</b>											<b>(\$18,835)</b>
<b>Recurring</b>																
Rent		(15)	(15)	(15)	(45)											(\$610)
Utilities		(32)		(32)												(\$108)
Property Taxes																(\$640)
Insurance		(175)														(\$175)
Total Commissions	(30)	(30)	(30)	(30)	(30)											(\$150)
Delivery (Freight Out)	(501)	(501)	(501)	(501)	(2,006)											(\$4,012)
Storage Expenses	(128)	(128)	(323)	(128)	(665)											(\$1,371)
Data Proc Equip & Supplies	(50)	(50)	(50)	(50)	(150)											(\$350)
Marketing / Sales Misc	(13)	(13)	(13)	(13)	(13)											(\$63)
Other Opex	(105)	(105)	(105)	(105)	(199)											(\$619)
<b>Recurring Operating Disbursements</b>	<b>(\$874)</b>	<b>(\$1,017)</b>	<b>(\$1,647)</b>	<b>(\$874)</b>	<b>(\$3,107)</b>											<b>(\$7,518)</b>
<b>Restructuring Costs</b>																
Critical / Foreign Vendors	(1,215)	(1,748)														(2,963)
503(b)(9)	(1,000)	(783)														(1,783)
Utilities Adequate Assurance																
Filing Fees																
Trustee Fees																
Cure Costs					(100)		(259)									(478)
LC Cash Collateralization																(100)
<b>Wind Down:</b>																
KEIP					(376)											(376)
KEIP					(98)											(98)
Wind Down Retention					(750)											(750)
Employee Related Liabilities					(1,350)											(1,350)
Additional Excluded Cash					(750)											(750)
Wind Down Reserve					(3,324)											(3,324)
<b>Professional Fees Escrow:</b>																
Debtor Advisors	(2,395)	(245)	(368)	(245)	(1,300)	(80)	(200)	(65)	(65)	(40)	(40)	(40)	(40)	(40)	(40)	(5,203)
Claims and Noticing Agent	(100)				(100)											(250)
UCC Advisors	(200)	(75)	(75)	(75)	(75)	(75)	(75)	(50)	(50)	(50)	(50)	(50)	(50)	(25)	(25)	(1,000)
Director Fees			(25)													(75)
<b>Professional Fees Escrow</b>	<b>(2,695)</b>	<b>(320)</b>	<b>(468)</b>	<b>(320)</b>	<b>(1,475)</b>	<b>(155)</b>	<b>(300)</b>	<b>(115)</b>	<b>(140)</b>	<b>(90)</b>	<b>(90)</b>	<b>(115)</b>	<b>(115)</b>	<b>(65)</b>	<b>(65)</b>	<b>(\$6,520)</b>
<b>Total Restructuring Costs</b>	<b>(\$4,910)</b>	<b>(\$2,851)</b>	<b>(\$468)</b>	<b>(\$320)</b>	<b>(\$4,899)</b>	<b>(\$414)</b>	<b>(\$300)</b>	<b>(\$115)</b>	<b>(\$140)</b>	<b>(\$90)</b>	<b>(\$90)</b>	<b>(\$115)</b>	<b>(\$115)</b>	<b>(\$65)</b>	<b>(\$283)</b>	<b>(\$15,176)</b>
<b>Total Cash Disbursements:</b>	<b>(\$10,492)</b>	<b>(\$7,702)</b>	<b>(\$6,899)</b>	<b>(\$5,024)</b>	<b>(\$12,793)</b>	<b>(\$420)</b>	<b>(\$572)</b>	<b>(\$120)</b>	<b>(\$182)</b>	<b>(\$95)</b>	<b>(\$282)</b>	<b>(\$121)</b>	<b>(\$158)</b>	<b>(\$71)</b>	<b>(\$476)</b>	<b>(\$45,407)</b>
<b>Financing:</b>																
Total Debt Proceeds		\$2,500	\$2,500	\$2,500	\$2,500											\$10,000
TSA Reimbursement																
Beginning Cash	\$13,803	\$7,375	\$6,211	\$6,207	\$7,963	\$2,028	\$2,077	\$1,505	\$1,385	\$1,203	\$1,108	\$826	\$705	\$547	\$476	\$13,803
Net Cash Flow	(6,428)	(1,163)	(4)	1,756	(5,935)	49	(572)	(120)	(182)	(95)	(282)	(121)	(158)	(71)	(476)	(13,803)
Change in Float																
<b>Ending Cash</b>	<b>\$7,375</b>	<b>\$6,211</b>	<b>\$6,207</b>	<b>\$7,963</b>	<b>\$2,028</b>	<b>\$2,077</b>	<b>\$1,505</b>	<b>\$1,385</b>	<b>\$1,203</b>	<b>\$1,108</b>	<b>\$826</b>	<b>\$705</b>	<b>\$547</b>	<b>\$476</b>	<b>\$0</b>	<b>\$0</b>

Note: TSA related expenses and reimbursements excluded from budget as negotiations progress and details are finalized; post-sale close payroll and benefits included are related to potential non-TSA related employee retention obligations per initial approved DIP Budget  
 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