Docket #0102 Date Filed: 04/15/2026
United States Bankruptcy Court
Southern District of Texas
ENTERED
April 13, 2026
Nathan Ochsner, Clerk

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	:	Chapter 11
ASCEND ELEMENTS, INC. *et al.*,[1]	:	Case No. 26-90440 (CML)
Debtors.	:	(Jointly Administered)

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL; (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES; (III) MODIFYING AUTOMATIC STAY; (IV) SCHEDULING A FINAL HEARING; AND (V) GRANTING RELATED RELIEF

Upon the motion (the "***Motion***") of the above-referenced debtors, as debtors in possession (the "**Debtors**") in the above-captioned cases (the "**Cases**"), pursuant to sections 105, 361, 362, 363, 503, 506, 507, and 552 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Rules 2002-1, 4001-1 and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (the "**Local Rules**"), and the Procedures for Complex Cases in the Southern District of Texas seeking, among other things:

(a) authorization for the Debtors, pursuant to sections 105, 361, 362, 363, 503, and 507 of the Bankruptcy Code, to (i) use cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code, and all other Prepetition Collateral (as defined below), solely in accordance with the terms of this interim order (together with all annexes and exhibits hereto, this "**Interim Order**") and (ii) grant adequate protection to the Prepetition Secured Parties (as defined below) as set forth herein;

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

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(b) modification of the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order;

(c) except to the extent of the Carve Out (as defined herein), the waiver of all rights to surcharge any Prepetition Collateral or Adequate Protection Collateral (each as defined herein) under section 506(c) of the Bankruptcy Code; *provided*, that the foregoing waiver shall be without prejudice to any provisions of the Final Order (as defined herein) with respect to costs or expenses incurred following such entry of the Final Order;

(d) for the "equities of the case" exception under section 552(b) of the Bankruptcy Code to not apply to any of the Prepetition Secured Parties (as defined herein) with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or Adequate Protection Collateral under section 552(b) of the Bankruptcy Code or any other applicable principle of equity or law; *provided*, that the foregoing waiver shall be without prejudice to any provisions of the Final Order;

(e) that this Court schedule a final hearing (the "**Final Hearing**") to consider entry of a final order granting the relief requested in the Motion on a final basis (the "**Final Order**");

(f) waiver of any applicable stay with respect to the effectiveness and enforceability of this Interim Order (including a waiver pursuant to Bankruptcy Rule 6004(h)); and

(g) granting related relief;

and a hearing (the "***Interim Hearing***") having been held by the Court on April 10, 2026, to consider the relief requested in the Motion; pursuant to Bankruptcy Rule 4001 and Local Rule 2002-1, notice of the Motion and the relief sought therein having been given by the Debtors as set forth in the Motion; and the Court having considered the *Declaration of Linh Austin in Support of the Debtors' Chapter 11 Petitions and First Day Motions* (the "**First Day Declaration**"), the *Declaration of Adam Titus in Support of Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Use Cash Collateral, (II) Granting Adequate Protection for the Use of Cash Collateral, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* (the "**Titus Declaration**" and together with the First Day Declaration, the "**Declarations**"), the initial Approved Budget (as defined herein) attached hereto as **Exhibit 1** (the

"**Initial Approved Budget**"), offers of proof, evidence adduced, and the statements of counsel at the Interim Hearing; and the Court having considered the relief requested in the Motion, and it appearing to the Court that granting the interim relief sought in the Motion on the terms and conditions herein contained is necessary and essential to avoid irreparable harm to the Debtors and their estates and that authorizing the Debtors to use Cash Collateral as contemplated herein will enable the Debtors to preserve the value of the Debtors' business and assets and that such relief is fair and reasonable and that entry of this Interim Order is in the best interest of the Debtors and their estates and creditors; and due deliberation and good cause having been shown to grant the relief sought in the Motion;

IT IS HEREBY FOUND AND DETERMINED THAT:[2]

A. ***Petition Date***. On April 9, 2026 (the "**Petition Date**"), the Debtors commenced these Cases by each filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas (the "**Court**").

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

C. ***Jurisdiction and Venue***. The Court has jurisdiction over the Motion, these Cases, and the parties and property affected hereby pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas* dated May 24, 2012. Venue for these Cases is proper pursuant to 28 U.S.C. § 1408. This

[2] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Bankruptcy Rule 7052.

Court may enter a final order consistent with Article III of the United States Constitution. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

D. ***Committee***. As of the date hereof, no official committee of unsecured creditors has been appointed in these Cases pursuant to section 1102 of the Bankruptcy Code (any such committee, the "**Committee**").

E. ***Debtors' Stipulations***. Subject only to the rights of parties in interest specifically set forth in paragraph 18 of this Interim Order (and subject to the limitations thereon contained in such paragraph), the Debtors admit, stipulate, and agree that (collectively, paragraphs E.1 through E.5 below are referred to herein as the "**Debtors' Stipulations**"):

1. ***Senior Secured Convertible Notes***.

(a) *Senior Secured Convertible Notes*. Pursuant to that certain Senior Secured Convertible Notes and Warrant Purchase Agreement dated as of December 22, 2025 governing the senior secured convertible notes (collectively, the "**Senior Secured Convertible Notes**" and the holders of Senior Secured Convertible Notes, the "**Senior Secured Noteholders**"), (as amended, restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the "**Senior Notes Agreement**," and collectively with the other Transaction Documents (as defined in the Senior Notes Agreement), in each case as may have been, amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date, the "**Prepetition SSN Documents**"), by and between Ascend Elements, Inc., a Delaware corporation (together with its successors and assigns, the "**Company**") and the Senior Secured Noteholders (the Senior Secured Noteholders together with the SSN Collateral Agent (as defined below), collectively, the "**Prepetition Senior Secured Parties**").

(b) As of the Petition Date, the Debtors were indebted to the Prepetition Senior Secured Parties pursuant to the Prepetition SSN Documents, without objection, defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $20,000,000.00, plus all accrued and unpaid interest with respect thereto and, without duplication, any other fees, premiums, costs, expenses (including any attorneys', accountants', consultants', appraisers', financial advisors', and other professionals' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition SSN Documents), payment obligations, reimbursement obligations, indemnification obligations, guarantee obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations owing under or in connection with the Prepetition SSN Documents (collectively, the "**Prepetition Senior Secured Indebtedness**").

(c) *Prepetition Senior Secured Collateral*. As more fully set forth in the Prepetition SSN Documents, prior to the Petition Date, the Company granted to Alter Domus (US) LLC, as collateral agent for the Senior Secured Noteholders under the Senior Security Agreement[3] and the other Collateral Documents (as defined in the Senior Notes Agreement) (in such capacity, together with its successors and assigns in such capacity, the "**SSN Collateral Agent**"), for the benefit of itself and the other Prepetition Senior Secured Parties, a security interest in and continuing lien on substantially all of the Company's assets and property (with certain exceptions set out in the Prepetition SSN Documents), including a first priority (subject to Permitted Liens (as defined in the Senior Security Agreement)) security interest in and continuing lien on (the "**Senior Secured Liens**") the Collateral (as defined in the Senior Notes Agreement),

[3] "**Senior Security Agreement**" means that certain Security Agreement, dated as of December 22, 2025 (as amended, restated, amended and restated supplemented or otherwise modified from time to time prior to the Petition Date), by and among the Company, the SSN Collateral Agent and the Senior Secured Noteholders.

which includes all of the Company's cash (collectively, and excluding the assets of the Company described in Section 2(e) of the Senior Security Agreement, the "**Prepetition SSN Collateral**").

2. ***Junior Secured Convertible Notes***.

(a) *Junior Secured Convertible Notes*. Pursuant to that certain Subordinated Secured Convertible Note and Warrant Purchase Agreement, dated as of June 13, 2025 governing the convertible loan notes issued under such agreement (collectively, the "**Junior Secured Convertible Notes**," and together with the Senior Secured Convertible Notes, the "**Notes**," and the holders of Junior Secured Convertible Notes, the "**Junior Secured Noteholders**," and together with the Senior Secured Noteholders, the "**Secured Noteholders**"), (as amended, restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the "**Junior Notes Agreement**," and collectively with the other Transaction Documents (as defined in the Junior Notes Agreement), in each case as may have been, amended, restated, supplemented or otherwise modified from time to time prior to the Petition Date, the "**Prepetition JN Documents**," and together with the Prepetition SSN Documents, the "**Prepetition Notes Documents**"), by and among the Company, as issuer, and the Junior Secured Noteholders (the Junior Secured Noteholders together with the Junior Notes Collateral Agent (as defined below), collectively, the "**Prepetition Junior Secured Parties**" and together with the Prepetition Senior Secured Parties, the "**Prepetition Secured Parties**").

(b) As of the Petition Date, the Debtors were indebted to the Prepetition Junior Secured Parties pursuant to the Prepetition JN Documents, without objection, defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $83,120,777.96, plus all accrued and unpaid interest with respect thereto and, without duplication, any other fees, premiums, costs, expenses (including any attorneys', accountants', consultants',

appraisers', financial advisors', and other professionals' fees and expenses, in each case, that are chargeable or reimbursable under the Prepetition JN Documents), payment obligations, reimbursement obligations, indemnification obligations, guarantee obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, and all other Obligations owing under or in connection with the Prepetition JN Documents (collectively, the "**Prepetition Junior Indebtedness**," and together with the Prepetition Senior Secured Indebtedness, the "**Prepetition Secured Indebtedness**").

(c) *Prepetition Junior Collateral*. As more fully set forth in the Prepetition JN Documents, prior to the Petition Date, the Company granted to Alter Domus (US) LLC, as collateral agent for the Junior Secured Noteholders under the Junior Security Agreement[4] and the other Collateral Documents (as defined in the Senior Notes Agreement) (in such capacity, together with its successors and assigns in such capacity, the "**JN Collateral Agent**"), for the benefit of itself and the other Prepetition Junior Secured Parties, a second lien security interest in and continuing lien on substantially all of the Company's assets and property (with certain exceptions set out in the Prepetition SSN Documents), including a second priority (subject to Permitted Liens (as defined in the Junior Security Agreement)) security interest in and continuing lien on (the "**Junior Secured Liens**", and together with the Senior Secured Liens, the "**Prepetition Liens**") the Collateral (as defined in the Junior Notes Agreement) (collectively, and excluding the assets of the Company described in Section 2(e) of the Junior Security Agreement, the "**Prepetition JN Collateral**", and together with the Prepetition SSN Collateral, the "**Prepetition Collateral**").

[4] "**Junior Security Agreement**" means that certain Security Agreement, dated as of June 13, 2025 (as amended by that certain Amendment No. 1 to Security Agreement, dated as of December 22, 2025, and as further amended, restated, amended and restated supplemented or otherwise modified from time to time prior to the Petition Date), by and among the Company, the SSN Collateral Agent and the Junior Secured Noteholders.

3. ***Validity, Perfection, and Priority of Prepetition Liens and Prepetition Secured Indebtedness***. The Debtors acknowledge and agree that, in each case as of the Petition Date: (i) the Prepetition Liens are valid, binding, enforceable, non-avoidable, and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value and were granted contemporaneously with, or covenanted to be provided as an inducement for, the making of the commitments and other financial accommodations secured thereby; (ii) the Prepetition Liens are senior in priority over any and all other liens on the Prepetition Collateral, subject only to Permitted Liens (as defined in the Senior Secured Notes Indentures) (solely to the extent any such Permitted Liens were valid, properly perfected, non-avoidable, not subject to recharacterization, offset, or subordination, and senior in priority to the Prepetition Liens as of the Petition Date, or valid, non-avoidable, senior priority Permitted Liens in existence as of the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, the "**Prepetition Permitted Liens**"); (iii) the Prepetition Secured Indebtedness constitutes legal, valid, binding, and non-avoidable obligations of the Debtors, enforceable in accordance with the terms of the applicable Notes and Prepetition Notes Documents, (iv) no offsets, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Secured Indebtedness exist, and no portion of the Prepetition Liens or Prepetition Secured Indebtedness is subject to any challenge, cause of action, or defense, including impairment, set-off, right of recoupment, avoidance, attachment, disallowance, disgorgement, reduction, recharacterization, recovery, subordination (whether equitable or otherwise), attack, offset, contest, defense, counterclaims, cross-claims, or "claim" (as defined in the Bankruptcy Code), pursuant to the Bankruptcy Code or applicable nonbankruptcy law; and (v) the Debtors and their estates have no

claims, objections, challenges, causes of actions, recoupments, counterclaims, cross-claims, setoff rights, and/or choses in action, including "lender liability" causes of action or avoidance claims under chapter 5 of the Bankruptcy Code, whether arising under applicable state law or federal law (including any recharacterization, subordination, avoidance, disgorgement, recovery, or other claims arising under or pursuant to sections 105, 510, or 542 through 553 of the Bankruptcy Code), against the Prepetition Secured Parties or any of their respective affiliates, agents, representatives, attorneys, advisors, professionals, officers, directors, and employees in such capacity arising out of, based upon, or related to the Prepetition SSN Documents, the Prepetition JN Documents, the Prepetition Secured Indebtedness, or the Prepetition Liens.

4. ***Prepetition Subordination Agreement***. Pursuant to that certain Subordination Agreement, dated as of December 22, 2025 (as amended, restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the "**Subordination Agreement**"), by and among the Senior Secured Noteholders, the Junior Secured Noteholders, and Alter Domus (US) LLC, as collateral agent, and acknowledged and agreed by the Debtors, the parties to the Subordination Agreement agreed and acknowledged that the payment and lien priority of the Secured Noteholders with respect to the Notes and the Collateral securing the Notes are governed by the terms and conditions set forth therein.

5. ***Cash Collateral***. Substantially all of the Debtors' cash constitutes cash collateral of the Prepetition Secured Parties within the meaning of Bankruptcy Code section 363(a) (the "**Cash Collateral**"), including amounts generated by the collection of Prepetition Collateral, including but not limited to accounts receivable, cash proceeds of the Prepetition Collateral, and amounts now or hereafter held in any of the Debtors' banking, checking, or other deposit accounts

as of the Petition Date or amounts deposited or transferred into the Debtors' banking, checking, or deposit accounts after the Petition Date.

6. ***Bank Accounts***. The Debtors acknowledge and agree that, as of the Petition Date, the Debtors do not maintain any bank accounts other than those accounts listed in the exhibit attached to any order authorizing the Debtors to continue to use the Debtors' existing cash management system.

F. *Adequate Protection*. Pursuant to sections 105, 361, 362 and 363(e) of the Bankruptcy Code, the Prepetition Secured Parties are entitled, as a condition to the use of their Prepetition Collateral, to adequate protection of their respective interests in the Prepetition Collateral, including the Cash Collateral, to the extent of any postpetition diminution in value of their respective interests in the Prepetition Collateral resulting from, among other things, the Carve Out, the use of Cash Collateral, the use, sale, or lease of any of the Prepetition Collateral, the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code, and/or for any other reason for which adequate protection may be granted under the Bankruptcy Code ("**Diminution in Value**"). The foregoing shall not, nor shall any provision of this Interim Order be construed as, a determination or finding that there has been or will be any Diminution in Value of the Prepetition Collateral (including Cash Collateral) and the rights of all parties as to such issues are hereby preserved. Based on the Motion, the First Day Declaration and the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and the use of the Prepetition Collateral, including Cash Collateral, are fair and reasonable and reflect the Debtors' prudent business judgment.

G. *Need to Use Cash Collateral*. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and have an immediate and critical need to obtain

use of the Prepetition Collateral, including the Cash Collateral (subject to and in compliance with the Approved Budget and the Budget Provisions (each as defined below) in accordance with paragraph 3 hereof) in order to, among other things, (A) permit the orderly continuation of their business, (B) pay certain adequate protection payments; and (C) pay the costs of administration of their estates, including the payment of professional fees and expenses, and to satisfy other working capital and general corporate needs of the Debtors. Access to liquidity through the use of the Cash Collateral, consistent with the Approved Budget and the Budget Provisions through the date of the Final Hearing, is vital to the Debtors and their efforts to maximize the value of their estates. Absent entry of this Interim Order, the Debtors' estates and reorganization efforts will be immediately and irreparably harmed.

H. *Notice*. In accordance with Bankruptcy Rules 2002, 4001(b) and (c), and 9014, and Local Rule 2002-1, notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors to the Notice Parties (as defined in the Motion) as set forth therein. Under the circumstances, the notice given by the Debtors of (and as described in) the Motion, the relief requested herein, and the Interim Hearing complies with Bankruptcy Rules 2002, 4001(b) and (c), and 9014 and Local Rule 2002-1.

I. *Consent by Prepetition Secured Parties*. The requisite Prepetition Secured Parties, including those certain Prepetition Secured Parties (collectively, the "**Senior Secured Holders**") represented by Weil, Gotshal & Manges LLP, as primary counsel, and Uzzi & Lall, as financial advisor, and Fifth Wall Early Stage Climate Technology Fund, L.P. represented by Goodwin Procter, as primary counsel, and Gray Reed, as local counsel (collectively, the "**Senior Secured Holder Advisors**"), have consented to the Debtors' use of Cash Collateral in accordance with and subject to the terms and conditions provided for in this Interim Order.

J. *Relief Essential; Best Interest*. The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). The relief requested in the Motion (and as provided in this Interim Order) is necessary, essential, and appropriate for the continued operation of the Debtors' business, the administration of the Cases, and the management and preservation of the Debtors' assets and the property of their estates. It is in the best interest of the Debtors' estates that the Debtors be allowed to use the Cash Collateral under the terms hereof. The Debtors have demonstrated good and sufficient cause for the relief granted herein. The terms of the Order and the use of Cash Collateral are fair and reasonable and reflect the Debtors' exercise of prudent business judgment consistent with the Debtors' fiduciary duties.

K. *Arm's-Length, Good Faith Negotiations*. The terms of this Interim Order were negotiated in good faith and at arm's length between the Debtors and the Senior Secured Holders. The Senior Secured Holders have acted without negligence, in good faith, and not in violation of public policy or law in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the use of Cash Collateral on the terms set forth herein, including in respect of the granting of adequate protection as provided for herein and all documents and transactions related thereto.

Now, therefore, upon the record of the proceedings heretofore held before this Court with respect to the Motion, the evidence adduced at the Interim Hearing, and the statements of counsel thereat, and based upon the foregoing findings and conclusions,

IT IS HEREBY ORDERED THAT:

1 ***Motion Granted***. The Motion is granted on an interim basis as set forth herein, and the use of Cash Collateral on an interim basis is authorized, subject to the terms of this Interim Order.

2 ***Objections Overruled***. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled and all reservations of rights included therein, are hereby denied and overruled in all respects.

3 ***Authorization to Use Cash Collateral; Budget***.

(a) *Authorization*. Subject to the terms and conditions of this Interim Order, the Court hereby authorizes the Debtors' consensual use of Cash Collateral during the period beginning with the Petition Date and ending on the Termination Date (as defined below), in each case, solely and exclusively in a manner consistent with and not in violation of this Interim Order, the Approved Budget, and the budget related provisions set forth in this paragraph 3 (collectively, the "**Budget Provisions**"); provided that, to the extent applicable, payments or obligations made in accordance with the Approved Budget shall be satisfied first from funds from the Excluded Accounts (as defined in the Senior Security Agreement).

(b) *Approved Budget; Budget Period*. As used in this Interim Order: (i) "**Approved Budget**" means the Initial Approved Budget, as such Initial Approved Budget may be modified, supplemented, or extended from time to time by the Debtors, subject to the procedures set forth in paragraph 3(e) of this Interim Order; and (ii) "**Budget Period**" means the initial one-week period set forth in the Approved Budget, and each trailing one-week period thereafter.

(c) *Budget Testing*. The Debtors may use Cash Collateral on a consensual basis in accordance with the Approved Budget, subject to Permitted Variances (as defined below), and in accordance with the Budget Provisions. Permitted Variances for each Budget Period shall be tested on a rolling one-week basis beginning on the second Sunday following the Petition Date and on every other Sunday thereafter (each such date, a "**Testing Date**"). On or before 5:00 p.m. (prevailing Central time) on the third Thursday following the Petition Date and every Thursday

thereafter, the Debtors shall prepare and deliver to the Collateral Agents, the Senior Secured Holders, and the Senior Secured Holder Advisors, in form and substance satisfactory to the Senior Secured Holders, a variance report (the "**Variance Report**") setting forth for the Budget Period just ended: (i) the Debtors' actual disbursements, including Restructuring Professional Fees (as defined below) (the "**Actual Disbursements**") on a line-by-line and aggregate basis (including and excluding Restructuring Professional Fees); (ii) a comparison (whether positive or negative, in dollars and expressed as a percentage) for the Actual Disbursements (and each line item thereof) and projected disbursements (and each line item thereof), respectively, as set forth in the Approved Budget for the applicable Budget Period; (iv) a cumulative comparison (whether positive or negative, in dollars and expressed as a percentage) covering the Budget Period setting forth the Actual Disbursements (and each line item thereof) against the amount of the Debtors' projected disbursements (and each line item thereof), as set forth in the Approved Budget for such Budget Period; and (v) as to each variance contained in the Variance Report, an indication as to whether such variance is temporary or permanent and an analysis and explanation in reasonable detail for any variance.

(d) *Permitted Variances*. The Debtors shall not permit during any Budget Period: the Actual Disbursements to be more than 110.0% of the projected disbursements in the aggregate for such Budget Period (such deviations, the "**Permitted Variances**"); *provided*, that for the avoidance of doubt, the cash disbursements considered for determining compliance with this covenant shall exclude the Debtors' disbursements in respect of restructuring professional fees of Professional Persons (as defined below), the Prepetition Secured Parties on account of professional fees under paragraph 4(d) of this Interim Order, and professional fee payments to other creditors or creditor groups (such excluded cash disbursements, the "**Restructuring**

Professional Fees")); *provided*, that the Debtors may, within each Budget Period, offset any Actual Disbursements above the budgeted amounts set forth in the Approved Budget as of each Testing Date during an applicable Budget Period with any Actual Disbursements below above the budgeted amounts as set forth in the Approved Budget for such Budget Period (a "**Positive Variance**") (*provided*, that Positive Variances may be carried forward to subsequent Budget Periods).

(e) *Proposed Budget Reporting*. By no later than 5:00 p.m. (prevailing Central time) on the fifth Thursday following the Petition Date and on each Thursday four-weeks thereafter, the Debtors shall deliver to the Senior Secured Holder Advisors a rolling 13-week cash flow forecast of the Debtors in the form of the Initial Approved Budget (each, a "**Proposed Budget**"), which Proposed Budget (including any subsequent revisions, modifications, or supplements to any such Proposed Budget) shall become the Approved Budget only upon the affirmative consent of the Senior Secured Holders (the "**Approval Deadline**"); *provided*, that the Senior Secured Noteholders shall be deemed to have approved any subsequent Proposed Budget unless the Senior Secured Noteholders have objected to such Proposed Budget within five (5) business days after delivery of same. In the event the conditions for the most recently delivered Proposed Budget to constitute the Approved Budget are not met as set forth herein, the prior Approved Budget shall remain in full force and effect. When required under any terms of this Interim Order, the consent or approval of the Senior Secured Holders may be communicated via email to the Debtors or their professionals by the Senior Secured Holder Advisors.

(f) *Miscellaneous*. For the avoidance of doubt, except as otherwise set forth in the Approved Budget or agreed to by the Senior Secured Holders in the order approving the Debtors' Cash Management Motion, Cash Collateral may not be used pursuant to this Interim

Order by, or to pay the fees, costs, or expenses of, any of the Debtors' affiliated non-Debtor entities, if any.

4 ***Adequate Protection for the Prepetition Secured Parties***. Subject only to the Carve Out and the terms of this Interim Order, pursuant to sections 361, 362, and 363(e) of the Bankruptcy Code, and in consideration of the stipulations and consents set forth herein, as adequate protection of the interests of the Prepetition Secured Parties in the Prepetition Collateral (including Cash Collateral), in each case for and to the extent of the Diminution in Value, each Collateral Agent, for the benefit of itself and the Prepetition Secured Parties, is hereby granted the following:

(a) *Adequate Protection Liens*. Pursuant to Bankruptcy Code sections 361(2) and 363(c)(2), and subject in all cases to the Carve Out, effective as of the Petition Date and in each case perfected without the necessity of the execution by the Debtors (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or by possession or control by the Collateral Agents, or any other party, the Debtors are authorized to grant, and hereby are deemed to have granted, to each Collateral Agent, for the benefit of itself and the Prepetition Secured Parties, valid, binding, continuing, enforceable, fully perfected, nonavoidable, (i) first-priority senior with respect to the Prepetition Senior Secured Parties and (ii) second-priority senior with respect to the Prepetition Junior Secured Parties (in each case, except with respect to the Prepetition Permitted Liens and the Carve Out), additional, and replacement security interests in and liens on (all such liens and security interests, the "**Adequate Protection Liens**"): (i) the Prepetition Collateral; and (ii) all of the Debtors' now-owned and hereafter-acquired real and personal property, assets and rights, including all prepetition property and post-petition property of the Debtors of any kind or nature,

wherever located, whether encumbered or unencumbered, including, without limitation, any unencumbered assets of the Debtors, if any, and all prepetition property and post-petition property of the Debtors' estates, and the proceeds, products, rents and profits thereof, whether arising from section 552(b) of the Bankruptcy Code or otherwise, including, without limitation, all equipment, goods, accounts, cash, payment intangibles, bank accounts and other deposit or securities accounts of the Debtors (including any accounts opened prior to, on, or after the Petition Date), insurance policies and proceeds thereof, equity interests, instruments, intercompany claims, accounts receivable, other rights to payment, all general intangibles, all contracts and contract rights, securities, investment property, letters of credit and letter of credit rights, chattel paper, all interest rate hedging agreements, all owned real estate, real property leaseholds, fixtures, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, all commercial tort claims, and all claims and causes of action (including causes of action arising under section 549 of the Bankruptcy Code, claims arising on account of transfers of value from the Debtors to a non-Debtor affiliate incurred on or following the Petition Date), and any and all proceeds, products, rents, and profits of the foregoing (all property identified in this paragraph being collectively referred to as the "**Adequate Protection Collateral**"), subject only to the Prepetition Permitted Liens and the Carve Out, in which case the Adequate Protection Liens shall be immediately junior in priority to such Prepetition Permitted Liens and to the Carve Out. Notwithstanding the foregoing, the Adequate Protection Collateral shall exclude the Professional Fee Account (other than with respect to the residual interest therein as provided in paragraph 5(c) hereof) and all claims and causes of action arising under any section of chapter 5 of the Bankruptcy Code (other than claims and causes of action arising under section 549 of the Bankruptcy Code) (the "**Avoidance Actions**"), but, subject to entry of a Final Order, shall include any and all

proceeds of and other property that is recovered or becomes unencumbered as a result of (whether by judgment, settlement, or otherwise) any Avoidance Action (the "**Avoidance Proceeds**").

(b) *Adequate Protection Superpriority Claims*. As further adequate protection, and to the extent provided by sections 503(b) and 507(b) of the Bankruptcy Code, the Debtors are authorized to grant, and hereby are deemed to have granted effective as of the Petition Date, to the Collateral Agents, the Prepetition Senior Secured Parties, and the Prepetition Junior Secured Parties, allowed superpriority administrative expense claims in the Cases ahead of and senior to any and all other administrative expense claims in the Cases to the extent of any Diminution in Value (the "**Adequate Protection Superpriority Claims**"), junior only to the Carve Out. Subject to the Carve Out, the Adequate Protection Superpriority Claims shall not be junior or *pari passu* to any other administrative claims against the Debtors and shall have priority over all now or hereinafter incurred administrative expense claims against the Debtors, including, without limitation, administrative expense claims of the kinds specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113, and 1114 of the Bankruptcy Code; *provided*, that any recovery from or against Avoidance Proceeds shall be subject to entry of a Final Order.

(c) *Fees and Expenses*. As additional adequate protection in connection with the consensual use of Cash Collateral, the Debtors shall, and are authorized and directed to, pay in full in cash and in immediately available funds: (i) within five (5) business days after the Debtors' receipt of invoices therefor, the reasonable professional fees, expenses and disbursements (including, but not limited to, the reasonable professional fees, expenses and disbursements of counsel and other third-party consultants and/or experts, including financial advisors) incurred prior to the Petition Date by (A) the Senior Secured Holder Advisors, and (B) the Collateral

Agents; and (ii) subject to paragraph 25, the reasonable documented fees and expenses incurred on and after the Petition Date by the Senior Secured Holder Advisors or by or on behalf of the Collateral Agents (including, without limitation, reasonable professional fees, expenses, and disbursements of counsel), which shall be submitted on a monthly basis and paid within five (5) business days of the Debtors' receipt of invoices therefor, collectively, the "**Adequate Protection Payments**"). Notwithstanding the foregoing, the Senior Secured Holders may retain such other professionals as are reasonably necessary in connection with the Cases, and in such circumstance, such additional professionals shall be deemed to be Senior Secured Holder Advisors for purposes of this Interim Order. The Senior Secured Holders shall provide written notice to the Debtors (email being sufficient) of their intent to retain any such additional professionals. None of the foregoing fees, expenses, and disbursements shall be subject to separate approval by this Court or require compliance with 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.

(d) *Reporting Requirements.* As additional adequate protection to the Prepetition Secured Parties for the consensual use of Cash Collateral, the Debtors shall comply with the reporting requirements set forth in the Senior Notes Agreement and shall further provide, subject to any applicable limitations set forth below, to (i) the Senior Secured Holders, (ii) the Senior Secured Holder Advisors, and (iii) counsel to the Collateral Agents:

(i) at the times specified in paragraph 3(c) hereof, the Variance Report required by paragraph 3(c) hereof;

(ii) timely delivery of each Proposed Budget as set forth in this Interim Order;

(iii) within twenty-four hours of receipt of any sale or financing related proposal, including any expression of interest, bid, or additional documentation received from any third party, the Debtors will

provide the Senior Secured Holders and the Senior Secured Holder Advisors with copies of such documents; *provided*, however, that if the Senior Secured Holders intend to submit (or participate in) a bid for any of the Debtors' assets, then the Senior Secured Holders shall not receive copies of, or other non-public information regarding, any competing bids, proposals, or related documentation (except to the extent such information is publicly available or otherwise made available to all bidders on the same terms).

(iv) upon written request (including via email) by the Senior Secured Holder Advisors, the Debtors will provide the Senior Secured Holders and the Senior Secured Holder Advisors with reasonable access to any consultant, turnaround management, broker, or financial advisory firm retained by the Debtors in the Cases.

(e) *Other Covenants*. The Debtors shall maintain their cash management arrangements in a manner consistent with this Court's order(s) granting the Debtors' Cash Management Motion (as defined in the Motion). The Debtors shall not: (a) sell, lease (other than existing leases), or otherwise dispose of any assets outside the ordinary course of business, or seek authority of this Court to do any of the foregoing, or (b) reject any material contract, or seek authority of this Court to reject any material contract, in each case, without the prior written consent of the Senior Secured Holders (with email from the Senior Secured Holder Advisors to Debtors' counsel being sufficient). Prior to the Termination Date, the Debtors shall continue to comply in all respects with those covenants contained in the Prepetition Notes Documents as in effect on the Petition Date.

(f) *Miscellaneous*.

(i) The Adequate Protection Liens and the Adequate Protection Superpriority Claims shall have the same relative priorities as the liens and claims of the Prepetition Senior Secured Parties and Prepetition Junior Secured Parties as of the Petition Date.

(ii) Except for (i) the Carve Out and (ii) as otherwise provided in paragraph 4, the Adequate Protection Liens and Adequate Protection Superpriority Claims granted to the Prepetition Secured Parties pursuant to paragraph 4 of this Interim Order shall not be subject, junior, or *pari passu* to any lien or security interest that is

avoided and preserved for the benefit of the Debtors' estates under the Bankruptcy Code, including, without limitation, pursuant to section 551 or otherwise, and shall not be subordinated to or made *pari passu* with any lien, security interest, claim, or administrative expense under the Bankruptcy Code, including, without limitation, pursuant to section 364 or otherwise.

(iii) The Adequate Protection Liens are deemed automatically perfected as of the Petition Date without the necessity of recording same and without further notice or order. The Collateral Agents shall not be required to file any UCC financing statements or other instruments (or to take any other action) to perfect such Adequate Protection Liens.

(iv) The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified to the extent necessary to permit the Collateral Agents to perform any act authorized or permitted under or by virtue of this Interim Order, including, without limitation, to take any act to create, validate, evidence, attach or perfect any the Adequate Protection Liens and to receive any payments expressly authorized by this Interim Order with respect to the Prepetition Secured Indebtedness or adequate protection.

(g) *Right to Seek Additional Adequate Protection*. This Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, the rights of any of the Prepetition Secured Parties to request further or alternative forms of adequate protection at any time or the rights of the Debtors or any other party to contest such request. Subject to the Carve Out, nothing herein shall impair or modify the application of section 507(b) of the Bankruptcy Code in the event that the adequate protection provided to the Prepetition Secured Parties is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral during the Cases. Nothing contained herein shall be deemed a finding by the Court, or an acknowledgment by any of the Prepetition Secured Parties that the adequate protection granted herein does in fact adequately protect any of the Prepetition Secured Parties against any Diminution in Value of their respective interests in the Prepetition Collateral (including the Cash Collateral).

5 ***Carve Out***.

(a) *Priority of Carve Out*. Notwithstanding anything in this Interim Order or the Prepetition SSN Documents to the contrary, each of the Prepetition Liens, the Adequate Protection Liens, the Prepetition Secured Indebtedness, and the Adequate Protection Superpriority Claims (and any other claims arising under section 507(b) of the Bankruptcy Code) shall be subject and subordinate to the payment in full in cash of the Carve Out.

(b) *Definition of Carve Out*. As used in this Interim Order, the "**Carve Out**" means the collective sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee (the "**U.S. Trustee**") under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable and documented fees and expenses up to $75,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); (iii) to the extent allowed at any time, whether by interim order, procedural order, or otherwise, all accrued and unpaid fees, costs, and expenses (including any transaction fees or success fees then earned and payable prior to or after delivery of a Carve Out Trigger Notice (as defined below)) (the "**Allowed Professional Fees**") incurred or earned by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (the "**Debtor Professionals**") or the Committee (if any) pursuant to sections 328 or 1103 of the Bankruptcy Code (the "**Committee Professionals**" and, together with the Debtor Professionals, the "**Professional Persons**") at any time before the first day following delivery by the Senior Secured Holders of a Carve Out Trigger Notice, whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice (the amounts set forth in clauses (i) through (iii), the "**Pre-Carve Out Trigger Notice Cap**"), in each case without regard to whether such fees, costs, or expenses are

included or provided for in any Approved Budget or were invoiced on or after the Carve Out Trigger Date (as defined below); and (iv) Allowed Professional Fees of Debtor Professionals and Committee Professionals in an aggregate amount not to exceed $500,000 incurred after the first day following delivery by the Senior Secured Holders of the Carve Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise, less the amount of any prepetition retainers received by any such Debtor Professional and not previously returned or applied to its respective fees and expenses (the amount set forth in clause (iv), the "**Post-Carve Out Trigger Notice Cap**"). For purposes of the foregoing, "**Carve Out Trigger Notice**" shall mean a written notice delivered by email by the Senior Secured Holders or the Senior Secured Holder Advisors to the Debtors' restructuring counsel (Norton Rose Fulbright), the U.S. Trustee, and counsel to the Committee (if any), which notice (i) may be delivered only following the occurrence, and during the continuation of, a Termination Event (as defined below) and the termination of the Debtors' consensual use of Cash Collateral under this Interim Order and (ii) shall expressly state that the Post-Carve Out Trigger Notice Cap has been invoked.

(c) *Professional Fee Account*. As soon as reasonably practicable following entry of this Interim Order, the Debtors shall transfer cash, including Cash Collateral, in an amount equal to the total budgeted (or actual, if available) weekly fees and expenses incurred or to be incurred by Professional Persons (such fees and expenses of Professional Persons, the "**Professional Fees**") between the Petition Date and the first weekly period set forth in the Approved Budget into a segregated account not subject to control, liens, security interests, or claims of the Prepetition Secured Parties, other than each Collateral Agent's lien on and security interest in any residual cash balance following payment in full of all Allowed Professional Fees, subject to the Pre-Carve Out Trigger Notice Cap and the Post-Carve Out Trigger Notice Cap

(the "**Professional Fee Account**"). Thereafter, on a weekly basis, the Debtors shall transfer into the Professional Fee Account cash, including Cash Collateral, in an amount not less than the aggregate unpaid amount of Weekly Estimated Fees and Expenses (as defined below) included in all Weekly Statements (as defined below) received by the Debtors. The Professional Fee Account shall not be subject to the control of the Prepetition Secured Parties, and the funds transferred to the Professional Fee Account shall be used to pay Allowed Professional Fees, with the Collateral Agents having a lien on and security interest in any residual cash balance following payment in full of all Allowed Professional Fees, subject to the Pre-Carve Out Trigger Notice Cap and the Post-Carve Out Trigger Notice Cap.

(d) *Pre-Carve Out Trigger Notice*. Prior to the delivery of a Carve Out Trigger Notice, on the first business day following entry of this Interim Order and on the third business day of each week thereafter, each Professional Person shall deliver to the Debtors, the Senior Secured Holders, and their respective advisors a weekly statement (each, a "**Weekly Statement**") setting forth a good-faith estimate of the amount of fees and expenses (excluding, for the avoidance of doubt, any restructuring, sale, success or other transaction fee of any investment bankers or financial advisors) expected to be incurred by such Professional Person during the following week (the "**Weekly Estimated Fees and Expenses**"), and the Debtors shall, on a weekly basis, transfer cash into the Professional Fee Account in an amount equal to the aggregate amount of Weekly Estimated Fees and Expenses based on the Weekly Statements submitted by each Professional Person (and if no such estimate is provided in a given week, then the amount forecasted for such Professional Person in the Approved Budget) that remain unpaid (and that were not previously funded to the Professional Fee Account). In addition to the Weekly Statement, each Professional Person shall also provide a good-faith estimate of the amount of accrued but unpaid fees and

expenses incurred by such Professional Person during the preceding week (the "**Prior Week Estimate**"), and the amount of cash to be transferred to the Professional Fee Account shall be increased or reduced (as applicable) by the difference between such Prior Week Estimate and the Weekly Estimated Fees and Expenses funded for the prior week for such Professional Person. The Debtors shall use funds held in the Professional Fee Account exclusively to pay Allowed Professional Fees as they become allowed and payable pursuant to the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and in accordance with any orders of the Court; provided that the Debtors' obligations to pay Allowed Professional Fees shall not be limited or be deemed limited to funds held in the Professional Fee Account.

(e) *Post-Carve Out Trigger Notice*. Notwithstanding the occurrence of a Termination Event, upon delivery of a Carve Out Trigger Notice to the Debtors (the "**Carve Out Trigger Date**"), such Carve Out Trigger Notice shall (i) 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 the Professional Fee Account in an amount equal to (A) the Pre-Carve Out Trigger Notice Cap and (B) the Post-Carve Out Trigger Notice Cap ((A) and (B), each to the extent not previously funded into the Professional Fee Account, including after giving effect to the last sentence of this paragraph). Following delivery of a Carve Out Trigger Notice, each Professional Person shall promptly deliver one additional statement to the Debtors, the Senior Secured Holders, and the Senior Secured Holder Advisors setting forth a good-faith estimate of the amount of accrued but unpaid fees and expenses incurred by such Professional Person during the period immediately following the most recent Weekly Statement previously delivered by such Professional Person through and including the Carve Out Trigger Date, and the Debtors shall transfer such amounts to the Professional Fee Account.

(f) All funds in the Professional Fee Account shall be used first to pay Allowed Professional Fees, subject to the Pre-Carve Out Trigger Notice Cap and the Post-Carve Out Trigger Notice Cap, and then, to the extent the Professional Fee Account has not been reduced to zero, any such excess shall be paid to the Prepetition Secured Parties in accordance with the Prepetition SSN Documents. Notwithstanding anything to the contrary in the Prepetition SSN Documents or this Interim Order, (i) following delivery of a Carve Out Trigger Notice, the Collateral Agents, and any other Prepetition Secured Party shall not sweep or foreclose on cash (including cash received as a result of the sale or other disposition of any assets) of the Debtors until the Professional Fee Account has been fully funded in cash, but the Collateral Agents shall have a lien on and security interest in any residual interest in any residual cash balance remaining in the Professional Fee Account after all Allowed Professional Fees have been paid in full in cash, with any excess paid to the Collateral Agents for application in accordance with the Prepetition SSN Documents; (ii) (A) disbursements by the Debtors from the Professional Fee Account shall not increase or reduce the Prepetition Secured Indebtedness, (B) failure of the Professional Fee Account to satisfy in full in cash the Allowed Professional Fees shall not affect, alter, or impair the amount, scope, or priority of the Carve Out, (C) in no way shall any Approved Budget, Proposed Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Weekly Statement, Weekly Estimated Fees and Expenses, Prior Week Estimate, or any of the foregoing be construed as a cap or limitation on the amount of the Allowed Professional Fees due and payable by the Debtors; and (iii) the Carve Out shall be senior to (1) the Prepetition Secured Indebtedness, the Adequate Protection Superpriority Claims, and any claims arising under section 507(b) of the Bankruptcy Code and (2) all security interests and liens (as defined in section 101(37) of the Bankruptcy Code) securing any of the

claims or administrative expenses described in clause (1), including the Prepetition Liens and the Adequate Protection Liens.

(g) *No Direct Obligation to Pay Allowed Professional Fees*. The Prepetition Secured Parties reserve the right to object to the allowance of any fees and expenses. Except for permitting the funding of the Professional Fee Account as provided herein, none of the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional Person or any fees or expenses of the U.S. Trustee or Clerk of the Court incurred in connection with the Cases or any successor case(s) under any chapter of the Bankruptcy Code (a "**Successor Case**"). Nothing in this Interim Order or otherwise shall be construed to obligate the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional Person or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement.

(h) *Payment of Carve Out On or After the Termination Declaration Date*. Any payment or reimbursement made on or after the occurrence of the Carve Out Trigger Date in respect of any Allowed Professional Fees shall permanently reduce the Carve Out on a dollar-for-dollar basis.

6 ***Access and Information***. Upon written request (including via email), the Debtors shall provide the Senior Secured Holders and Senior Secured Holder Advisors with (a) reasonable access to the Debtors' books and records, including all records and files of the Debtors pertaining to the Prepetition Collateral and the Adequate Protection Collateral and other available information (including historical information) regarding the Debtors, their property, operations, or finances, (b) reasonable access to the Debtors' properties and (c) reasonable access to the Debtors' officers, counsel, and financial advisors to discuss the Debtors' affairs, finances, and condition; it being

understood that nothing in this paragraph shall require the Debtors (or any of their advisors) to take any action that would conflict with any applicable requirements of law or any binding agreement, or that would waive any attorney-client or similar privilege.

7 ***Termination***. Subject to the Remedies Notice Period (as defined below) and paragraphs 5 and 8 of this Interim Order, including if ordered by the Court in accordance with paragraph 8, the Debtors' right to consensual use of Cash Collateral pursuant to this Interim Order shall automatically cease without further court proceedings on the Termination Date (as defined herein). As used herein, "**Termination Event**" means any of the events set forth below, in each case, unless waived or modified with the consent of the Senior Secured Holders:

(a) A Final Order acceptable to the Debtors and the Senior Secured Holders is not entered by the Court by 11:59 p.m. on the date that is 30 days after the Petition Date;

(b) The violation of any material term of this Interim Order by the Debtors that is not cured within three (3) business days of receipt by the Debtors of written notice of such default from the Senior Secured Holders (*provided* that the terms and provisions with respect to adequate protection shall be deemed material);

(c) Entry of an order modifying, reversing, revoking, staying for a period in excess of five (5) business days, rescinding, vacating, or amending this Interim Order in a manner adverse to the rights, interest, priorities, or entitlements of the Prepetition Secured Parties without the express prior written consent of the Senior Secured Holders;

(d) Without the written consent of the Senior Secured Holders, the Cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code; a trustee under chapter 11 of the Bankruptcy Code, an examiner with expanded powers, or a responsible officer or similar person is appointed in the Cases; the Cases are transferred or there is a change of venue; the

Debtors file any motion, pleading, or proceeding (or solicit, support, or encourage any other party to file any motion, pleading, or proceeding) seeking or consenting to the granting of any of the foregoing relief; or any order is entered granted any of the foregoing relief;

(e) Except for the Carve Out and Prepetition Permitted Liens or as otherwise expressly permitted in advance and in writing by the Senior Secured Holders, the voluntary creation of any lien or other interest *pari passu* with or senior to any of the Prepetition Liens, Adequate Protection Liens, or Adequate Protection Superpriority Claims granted to the Prepetition Secured Parties under this Interim Order;

(f) Without the written consent of the Senior Secured Holders, the Debtors file any motion, pleading, or proceeding (or solicit, support, or encourage any other party to file any motion, pleading, or proceeding) seeking or consenting to, or an order is entered granting, (i) any lien, claim or other interest pari passu with or senior to any of the Prepetition Liens, Adequate Protection Liens, or Adequate Protection Superpriority Claims granted to the Prepetition Secured Parties under this Interim Order, (ii) the invalidation, subordination, or other challenge to the Prepetition Secured Indebtedness, the Prepetition Liens, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims, or (iii) any relief under sections 506(c) or 552 of the Bankruptcy Code with respect to any Prepetition Collateral or any Adequate Protection Collateral, including the Cash Collateral, or against any of the Prepetition Secured Parties, in each case other than the Carve Out or without the prior written consent of the Senior Secured Holders;

(g) The Debtors file any motion, pleading, or proceeding (or solicit, support, or encourage any other party to file any motion, pleading, or proceeding) seeking or consenting to the granting of, or an order is entered granting, relief that could reasonably be expected to result

in a material impairment of the rights or interests of the Prepetition Secured Parties (except any motion or other pleading otherwise permitted by this Interim Order);

(h) The entry of an order by this Court granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code to any entity other than the Prepetition Secured Parties (i) with respect to the Prepetition Collateral or the Adequate Protection Collateral in excess of $250,000 in value or (ii) authorizing any party to proceed against any asset of the Debtors that, in each case, would adversely affect in any material respect the Debtors' ability to operate their business in the ordinary course, in each case without the prior written consent of the Senior Secured Holders;

(i) The entry of a subsequent order of the Court (i) terminating the Debtors' use of Cash Collateral or (ii) authorizing the use of Cash Collateral by any non-Debtor affiliate of the Debtors, if any;

(j) Subject to the payment provisions of paragraph 25, the failure by the Debtors to make any payment pursuant to this Interim Order when due that is not cured within three (3) business days following the Debtors' receipt of written notice from the Senior Secured Holders (including, but not limited to, Adequate Protection Payments and interest payments described in paragraph 4);

(k) The failure by the Debtors to deliver to the Senior Secured Holders or the Senior Secured Holder Advisors any of the documents or other information required to be delivered to such applicable party pursuant to this Interim Order when due, or any such documents or other information shall contain a material misrepresentation, and in either case such failure or misrepresentation is not cured within three (3) business days after written notice thereof is delivered to the Debtors by the Senior Secured Holders;

(l) The failure by the Debtors to (i) comply with the Budget Provisions set forth in paragraph 3 hereof (subject to the Permitted Variances);

(m) The Debtors seek approval of any sale or bidding procedures or designate any stalking horse bidder or winning bidder without the prior written consent of the Senior Secured Holders

(n) Except as expressly approved by the Senior Secured Holders in writing, the failure by the Debtors to conduct their business and operations in the ordinary course and in compliance with applicable law, taking into account the Cases;

(o) The entry of any post-petition judgment against the Debtors in excess of $750,000 (not including amounts covered by insurance), the enforcement of which is not otherwise stayed by the Bankruptcy Code;

(p) Without the written consent of the Senior Secured Holders, the Debtors' Chief Restructuring Officer (the "**CRO**") is terminated for any reason, or this Court does not approve the Debtors' application to retain the CRO pursuant to section 363 of the Bankruptcy Code;

(q) The Debtors shall be enjoined from conducting any material portion of their business, any material disruption of the business operations of the Debtors shall occur (other than as a result of the Cases), or any material damage to or loss of material assets of the Debtors shall occur that is not otherwise covered by insurance;

(r) The Debtors file any motion, pleading, or proceeding (or solicit, support, or encourage any other party to file any motion, pleading, or proceeding) seeking or consenting to the granting of, or an order is entered granting, any termination and/or shortening, reduction of, or other modification to, the Debtors' exclusive period to file and/or solicit a chapter 11 plan pursuant

to the Bankruptcy Code (collectively, the "**Exclusive Periods**") or the Exclusive Periods otherwise terminate; or

(s) The failure of the Debtors to meet any of the deadlines (or such later dates as may be approved by the Senior Secured Holders) set forth on **Exhibit 2** (collectively, the "**Milestones**").

8 ***Remedies After a Termination Date***.

(a) Notwithstanding anything contained herein, the Debtors' authorization to use Cash Collateral on a consensual basis pursuant to this Interim Order shall automatically terminate on such date (the "**Termination Date**") that is the earliest of (i) the effective date of any chapter 11 plan with respect to the Debtors that is confirmed by the Court; and (ii) unless otherwise ordered by the Court, five (5) business days from the date (the "**Termination Declaration Date**") on which written notice of the occurrence of any Termination Event is given (which notice may be given by email or other electronic means) by the Senior Secured Holders or the Senior Secured Holder Advisors to the Debtors' counsel, counsel to a Committee (if appointed), and the U.S. Trustee (the "**Termination Declaration**" and such period commencing on the Termination Declaration Date and ending five (5) business days later, which period shall be automatically extended if the Debtors or the U.S. Trustee seek an emergency hearing as provided in clause (b) below prior to the expiration of such period to enable the Court to rule thereon, the "**Remedies Notice Period**"); *provided*, that until the expiration of the Remedies Notice Period, the Debtors may (a) continue to use Cash Collateral to make payments in respect of expenses necessary to keep the business of the Debtors operating in accordance with the Approved Budget, (b) contest or cure any alleged Termination Event, (c) pay professional fees and fund the Professional Fee Account

in accordance with paragraphs 4 and 5 of this Interim Order, and (d) seek other relief as provided for in this paragraph 8.

(b) If a Termination Declaration is delivered as provided above, the Debtors, the Committee (if appointed), and the Prepetition Secured Parties hereby consent to an emergency hearing being held before the Court on an expedited basis ("**Termination Event Hearing**") and related motions shall be filed with the Court on at least three (3) business days' notice (subject to the Court's availability) for the sole purpose (unless the Court orders otherwise) of considering whether a Termination Event has occurred or is continuing or for the contested use of Cash Collateral. Following a Termination Event and delivery of the Termination Declaration, but prior to exercising the remedies set forth in this sentence, the Prepetition Secured Parties shall be required to file a motion with the Court seeking emergency relief (the "**Stay Relief Motion**") on at least five (5) business days' written notice to the Debtors' counsel, counsel to a Committee (if appointed), and the U.S. Trustee for a further order of the Court fashioning any appropriate remedy, including modifying the automatic stay in the chapter 11 cases to permit the Prepetition Secured Parties to exercise any rights or remedies permitted under this Interim Order, the Prepetition Notes Documents or applicable law.

(c) For the avoidance of doubt, nothing in this Interim Order waives, limits, alters, or impairs the parties' rights to seek or object to the non-consensual use of Prepetition Collateral, Adequate Protection Collateral, or Cash Collateral after the occurrence of the Termination Declaration Date. Nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing to consider any relief related to the automatic stay under Bankruptcy Code section 362(a), use Cash Collateral, or to obtain any other injunctive relief. The occurrence of the Termination Date or a Termination Event shall not affect

the validity, priority, or enforceability of any and all rights, remedies, benefits, and protections provided to any of the Prepetition Secured Parties under this Interim Order, which rights, remedies, benefits, and protections shall survive the Termination Date or the delivery of Termination Declaration.

9 ***Payments Free and Clear***. Subject in all respects to paragraph 18, any and all payments or proceeds remitted to the Collateral Agents, for the benefit of the Prepetition Secured Parties, pursuant to the provisions of this Interim Order shall be irrevocable, received free and clear of any claim, charge, assessment, or other liability, including without limitation, any such claim or charge arising out of or based on, directly or indirectly, section 506(c) (whether asserted or assessed by, through or on behalf of the Debtor) or section 552(b) of the Bankruptcy Code.

10 ***Limitation on Charging Expenses Against Collateral***. Except to the extent of the Carve Out, no costs or expenses, including any costs or expenses of administration of the Cases or any Successor Cases or any future proceeding that may result therefrom, shall be charged against or recovered from the Adequate Protection Collateral (including Cash Collateral) or Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law; *provided* that the foregoing waiver shall be without prejudice to any provision of the Final Order with respect to costs or expenses incurred following the entry of the Final Order.

11 ***Reservation of Rights of the Prepetition Secured Parties***. This Interim Order and the transactions contemplated hereby shall be without prejudice to (a) the rights of any of the Prepetition Secured Parties to seek additional or different adequate protection, move to vacate the automatic stay, move for the appointment of a trustee or examiner, move to dismiss or convert the Cases, or to take any other action in the Cases and to appear and be heard in any matter raised in the Cases, or the right of any party in interest from contesting any of the foregoing, and (b) any

and all rights, remedies, claims, and causes of action which the Prepetition Secured Parties may have against any non-Debtor party. For adequate protection purposes, each of the Prepetition Secured Parties shall be deemed to have requested relief from the automatic stay and for adequate protection for any Diminution in Value from and after the Petition Date. For the avoidance of doubt, such request will survive termination of this Interim Order.

12 ***Modification of Automatic Stay***. The Debtors are authorized and directed to perform all acts and to make, execute, and deliver any and all instruments as may be necessary to implement the terms and conditions of this Interim Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code is hereby modified to permit the parties to accomplish the transactions contemplated by this Interim Order.

13 ***Survival of Interim Order***. The provisions of this Interim Order shall be binding upon any trustee appointed during the Cases or upon a conversion to cases under chapter 7 of the Bankruptcy Code, and any actions taken in reliance hereof shall survive entry of any order which may be entered converting the Cases to chapter 7 cases, dismissing the Cases under section 1112 of the Bankruptcy Code or otherwise, confirming or consummating any plan(s) of reorganization or liquidation or otherwise, or approving or consummating any sale of any Prepetition Collateral or Adequate Protection Collateral, whether pursuant to section 363 of the Bankruptcy Code or included as part of any plan. The terms and provisions of this Interim Order, as well as the priorities in payments, liens, and security interests granted pursuant to this Interim Order, shall continue notwithstanding any conversion of the Cases to chapter 7 cases under the Bankruptcy Code, dismissal of the Cases, confirmation or consummation of any plan(s) of reorganization or liquidation, approval or consummation of any sale, or otherwise. Subject to the provisions and limitations described in paragraph 18 of this Interim Order, the Adequate Protection Payments

made pursuant to this Interim Order shall not be subject to counterclaim, setoff, subordination, recharacterization, defense, or avoidance in the Cases or any subsequent chapter 7 case or other proceeding (other than a defense that the payment has actually been made).

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

15 ***Release***. Subject to the rights, provisions, and limitations set forth in paragraph 18 of this Interim Order, effective upon entry of this Interim Order, the Debtors hereby unconditionally, irrevocably, and fully forever release, remise, acquit, relinquish, irrevocably waive, and discharge each of the Prepetition Secured Parties (each in their respective roles as such), 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, agents, and predecessors in interest, each in their capacity as such, 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 Notes, the Prepetition Liens, the Prepetition Secured Indebtedness, the Prepetition Notes Documents, or this Interim Order, as applicable, and/or the transactions contemplated hereunder or thereunder, including, without limitation, (i) any so-called

"lender liability" or equitable subordination claims or defenses, (ii) any and all claims and causes of action arising under the Bankruptcy Code, and (iii) any and all claims and causes of action regarding the validity, priority, extent, enforceability, perfection, or avoidability of the liens or claims of the Prepetition Secured Parties.

16 ***Binding Effect***. The terms of this Interim Order shall be valid and binding upon the Debtors, all creditors of the Debtors, and all other parties in interest from and after the entry of this Interim Order by this Court.

17 ***Reversal, Stay, Modification or Vacatur***. In the event the provisions of this Interim Order are hereinafter reversed, stayed, modified, or vacated, such reversal, modification, stay, or vacatur shall not affect the rights and priorities of the Prepetition Secured Parties granted and in effect pursuant to this Interim Order immediately prior thereto. In other words, notwithstanding any such reversal, stay, modification, or vacatur, any indebtedness, obligation, or liability incurred by the Debtors pursuant to this Interim Order arising prior to the effective date of such reversal, stay, modification, or vacatur shall be governed in all respects by the original provisions of this Interim Order, including any payments made hereunder or security interests and liens granted herein.

18 ***Reservation of Certain Third-Party Rights and Bar of Challenge and Claims***.

(a) Without limiting the remainder of this Paragraph 18, the stipulations, admissions, waivers, and releases contained in this Interim Order, including the Debtors' Stipulations, shall be binding upon the Debtors in all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges (as defined below) as of the Petition Date. The stipulations, admissions, waivers, and releases contained in this Interim Order, including, the Debtors' Stipulations and the release in paragraph 15 (the "**Release**"),

shall be binding upon the Debtors' estates (and all successors of the Debtors) and all other parties in interest, including any Committee and any other person acting on behalf of the Debtors' estates, including a trustee, except to the extent a party in interest and, for purposes of such exception, solely to the extent such party in interest obtains proper standing and has timely and properly filed an adversary proceeding or contested matter under the Bankruptcy Rules asserting a Challenge (as defined below): (i) on or before the date that is 60 calendar days after entry of the Interim Order or such later date as agreed to by the Senior Secured Holders; *provided* that if a Committee is appointed prior to the expiration of such 60-day period, such Committee shall have until the date that is 60 calendar days after its appointment(in each case, a "**Challenge Period**", and the date of expiration of such Challenge Period, the "**Challenge Period Termination Date**"); *provided, however*, that if prior to the Challenge Period Termination Date, either the Cases convert to chapter 7 or a chapter 11 trustee is appointed, then in such case the Challenge Period Termination Date shall be extended solely with respect to the trustee until the later of the then Challenge Period Termination Date and the date that is 45 days following such conversion or appointment; (ii) seeking to avoid, object to, or otherwise challenge the Debtors' Stipulations or the Release regarding: (A) the validity, enforceability, extent, priority, or perfection of Prepetition Liens, including any mortgages or security interests in the Prepetition Collateral; or (B) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Secured Indebtedness (any such claim, a "**Challenge**"); and (iii) in which the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter.

(b) Upon the occurrence of the Challenge Period Termination Date without the filing of a Challenge (or if any Challenge is filed and overruled): (i) any and all Challenges by any

party (whether on behalf of the Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in the Cases, and any chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Cases (as defined below)) shall be deemed to be forever barred; (ii) the Prepetition Secured Indebtedness shall constitute allowed secured claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in the Cases and any Successor Cases; (iii) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected liens on the Prepetition Collateral, not subject to recharacterization, subordination, or avoidance; and (iv) all of the Debtors' stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, and all other waivers, releases, affirmations, and other stipulations as to the priority, extent, and validity as to the Prepetition Secured Parties' claims, liens, and interests contained in this Interim Order shall be in full force and effect and forever binding upon the Debtors, the Debtors' estates, and all creditors, interest holders, and other parties in interest in these Cases and any Successor Cases.

(c) If any such adversary proceeding or contested matter is timely and properly filed under the Bankruptcy Rules, the stipulations and admissions contained in this Interim Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive on any Committee and any other party-in-interest except to the extent that such stipulations and admissions were successfully and expressly challenged in such adversary proceeding or contested matter prior to the Challenge Period Termination Date. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including, without limitation, any Committee appointed in the Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any challenges (including a

Challenge) with respect to the Prepetition SSN Documents, the Prepetition Liens, and the Prepetition Secured Indebtedness, and a separate order entered by the Court on or before the Challenge Period Termination Date and conferring such standing on any Committee or other party-in-interest shall be a prerequisite for the prosecution of a Challenge by such Committee or such other party-in-interest.

19 ***Limitation on Use of Collateral and Cash Collateral***. Notwithstanding anything to the contrary set forth in this Interim Order, none of the Adequate Protection Collateral, the Prepetition Collateral, including Cash Collateral, or the Carve Out or proceeds of any of the foregoing may be used: (a) to investigate (including by way of examinations or discovery proceedings), initiate, assert, prosecute, join, commence, support, or finance the initiation or prosecution of any claim, counterclaim, action, suit, arbitration, proceeding, application, motion, objection, defense, adversary proceeding, or other litigation of any type (excluding any proceedings contemplated by paragraph 8 hereof) (i) against any of the Prepetition Secured Parties (in their capacities as such) or any of their respective affiliates, officers, directors, employees, agents, representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors in such capacity, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, any so-called "lender liability" claims and causes of action, or seeking relief against any of the Prepetition Secured Parties or that that would otherwise impair the rights and remedies of the Prepetition Secured Parties hereunder, under the Prepetition SSN Documents, including, without limitation, for the payment of any services rendered by the professionals retained by the Debtors or any Committee appointed (if any) in these Cases in connection with the assertion of or joinder in any such claim, counterclaim, action, suit, arbitration, proceeding, application, motion,

objection, defense, adversary proceeding, or other contested matter, the purpose of which is to seek, or the result of which would be to obtain, any order, judgment, determination, declaration, or similar relief that would impair the ability of any of the Prepetition Secured Parties to recover on the Prepetition Collateral or the Adequate Protection Collateral or seeking affirmative relief against any of the Prepetition Secured Parties related to the Prepetition Secured Indebtedness; (ii) invalidating, setting aside, avoiding, or subordinating, in whole or in part, the Prepetition Secured Indebtedness or the Prepetition Secured Parties' Prepetition Liens or security interests in the Prepetition Collateral or the Adequate Protection Collateral, as applicable; or (iii) for monetary, injunctive, or other affirmative relief against any of the Prepetition Secured Parties, or with respect to the Prepetition Secured Parties' respective liens on or security interests in the Prepetition Collateral or the Adequate Protection Collateral that would impair the ability of any of the Prepetition Secured Parties to assert or enforce any lien, claim, right, or security interest or to realize or recover on the Prepetition Secured Indebtedness, to the extent applicable; (b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including, without limitation, the Prepetition Liens) held by or on behalf of each of the Prepetition Secured Parties related to the Prepetition Secured Indebtedness; (c) for asserting, commencing, or prosecuting any claims or causes of action whatsoever, including, without limitation, any Avoidance Actions related to or in connection with the Prepetition Secured Indebtedness or the Prepetition Liens, including any cause of action seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the Prepetition Secured Indebtedness, the Prepetition Liens, or Adequate Protection Liens; (d) for prosecuting an objection to, contesting in any manner, or raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of any of the Prepetition Liens or any other rights or interests of any of

the Prepetition Secured Parties related to the Prepetition Secured Indebtedness or the Prepetition Liens; or (e) for monetary, injunctive, or other affirmative relief against any of the Prepetition Secured Parties relating in any way to the Prepetition Secured Indebtedness; *provided* that no more than $50,000 of the proceeds of the Adequate Protection Collateral, or the Prepetition Collateral, including the Cash Collateral, in the aggregate, may be used solely by any Committee appointed in these Cases solely to investigate, prior to the Challenge Period Termination Date, any potential Challenge, including claims, causes of action, adversary proceedings, or other litigation against the Prepetition Secured Parties solely concerning the legality, validity, priority, perfection, enforceability, or extent of the Prepetition Secured Indebtedness and/or the Prepetition Liens.

20 ***Enforceability; Waiver of Any Applicable Stay***. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rule 6004(h), 6006(d), 7062, 9014, or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

21 ***No Waiver for Failure to Seek Relief***. The failure or delay of any of the Collateral Agents or the Prepetition Secured Parties to seek relief or otherwise exercise any of its rights and remedies under this Interim Order, the Prepetition SSN Documents or applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise, by the Collateral Agents or the Prepetition Secured Parties, as applicable.

22 ***Proofs of Claim***. Notwithstanding anything to the contrary contained in any prior or subsequent order of the Court, including, without limitation, any order establishing a deadline for the filing of proofs of claim or requests for payment of administrative expenses under

section 503(b) of the Bankruptcy Code, if any, the Prepetition Secured Parties shall not be required to file any proof of claim or request for payment of administrative expenses with respect to any of the Prepetition Secured Indebtedness, the Prepetition Liens, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims; and the failure to file any such proof of claim or request for payment of administrative expenses shall not affect the validity, priority, or enforceability of any of the Prepetition SSN Documents, Prepetition Secured Indebtedness, the Prepetition Liens, the Adequate Protection Liens, or the Adequate Protection Superpriority Claims or prejudice or otherwise adversely affect the Prepetition Secured Parties' rights, remedies, powers, or privileges under any of the Prepetition SSN Documents, this Interim Order, or applicable law. The Debtors' Stipulations shall be deemed to constitute a timely filed proof of claim on behalf of each of the Prepetition Secured Parties with respect to the Prepetition Secured Indebtedness and all related obligations in these Cases or any Successor Cases (as defined herein). Notwithstanding the foregoing, the Collateral Agents, on behalf of themselves and the Prepetition Secured Parties, are authorized and entitled, but not required, to file (and amend and/or supplement, as each sees fit) a proof of claim and/or master proof of claim for any claim described herein or otherwise related to any Prepetition Secured Indebtedness. The provisions set forth in this paragraph are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party-in-interest or their respective successors-in-interest.

23 ***Section 552(b) of the Bankruptcy Code***. The Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition Secured Parties with respect to proceeds, products, offspring, or profits of

any of the Prepetition Collateral or the Adequate Protection Collateral; provided that the foregoing waiver shall be without prejudice to any provisions of the Final Order.

24 ***No Marshaling***. The Prepetition Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Prepetition Collateral or the Adequate Protection Collateral; *provided* that the foregoing waiver shall be without prejudice to any provisions of the Final Order.

25 ***Expense Invoices; Disputes; Indemnification***.

(a) The Debtors' obligation to pay the professional fees and expenses of the Collateral Agents, and the Senior Secured Holders as provided in paragraph 4 of this Interim Order shall not require further Court approval, except as otherwise provided for below.

(b) The professional fees and expenses covered by paragraph 4 of this Interim Order shall be payable without the necessity of filing formal fee applications or complying with the U.S. Trustee Guidelines; *provided* that copies of statements or invoices for such professional fees, expenses, and disbursements (the "**Invoiced Fees**") shall be served by email on counsel to the Debtors, the U.S. Trustee, and counsel to any Committee (if appointed), who shall have 10 calendar days (the "**Review Period**") to review and assert any objections thereto. Invoiced Fees shall be in the form of an invoice summary for professional fees and categorized expenses incurred during the pendency of the Cases, and such invoice summary shall not be required to contain time entries, but shall include a general, brief description of the nature of the matters for which services were performed and the number of hours performed by each professional and which may be redacted or modified to the extent necessary to delete any information subject to the attorney-client privilege, any work product doctrine, privilege or protection, common interest doctrine privilege or protection, any other evidentiary privilege or protection recognized under applicable law, or any

other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege, work product doctrine, privilege or protection, common interest doctrine privilege or protection, or any other evidentiary privilege or protection recognized under applicable law. The Debtors, any Committee, or the U.S. Trustee may dispute the payment of any portion of the Invoiced Fees (the "**Disputed Invoiced Fees**") if, within the Review Period, the Debtors, any Committee, or the U.S. Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees. If the parties are unable to reach resolution with respect to the Disputed Invoiced Fees, then the Court may resolve any such issues upon prior notice and a hearing. For the avoidance of doubt, following the Review Period, the Debtors shall promptly pay in full all Invoiced Fees other than the Disputed Invoiced Fees.

(c) The Prepetition Secured Parties have acted in good faith and without negligence, misconduct, or violation of public policy or law, in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the use of Cash Collateral, including in respect of the granting of Adequate Protection Liens, any challenges or objections to the use of Cash Collateral, and all other documents related to and all transactions contemplated by the foregoing. Accordingly, without abrogating or limiting the indemnification provisions set forth in any of the Prepetition SSN Documents, the Debtors shall indemnify each of the Prepetition Secured Parties and 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, procedures, and/or relief contemplated by this Interim Order,

except to the extent such Indemnified Person has been found in a final non-appealable judgment by a court of competent jurisdiction to have acted with fraud, with willful misconduct, or in bad faith. 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, procedures, and/or relief contemplated by this Interim Order, 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 fraud, bad faith, 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.

26 ***Credit Bidding and Sale Provisions***. Subject to paragraph 18 hereof and the provisions of section 363(k) of the Bankruptcy Code, each Collateral Agent shall have the right to credit bid (either directly or through one or more acquisition vehicles) up to the full amount of, as applicable, (i) the Prepetition Senior Secured Parties' Prepetition Senior Secured Indebtedness, and (ii) subject to the terms of the Subordination Agreement, the Prepetition Junior Secured Parties' Prepetition Junior Secured Indebtedness, in each case including the Adequate Protection Superpriority Claims, if any, in any sale of all or any portion of the Prepetition Collateral or the Adequate Protection Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan. The Debtors shall not object to, or solicit, support, or encourage any objection to, any rights set forth in this paragraph 26.

27 ***Marketing Process for Sale and/or Financing***. On or before the Petition Date, the Debtors shall commence a marketing process for the sale of their assets and/or financing pursuant to procedures that are acceptable to the Senior Secured Holders.

28 ***Headings***. The headings in this Interim Order are for purposes of reference only and shall not limit or otherwise affect the meaning of this Interim Order.

29 ***Retention of Jurisdiction***. The Court has and will retain jurisdiction to enforce this Interim Order and with respect to all matters arising from or related to the implementation of this Interim Order.

30 ***Final Hearing***. A Final Hearing to consider the relief requested in the Motion on a final basis shall be held on May 7, 2026, at 2:00 p.m. (prevailing Central time). Within three (3) business days after entry of this Interim Order, the Debtors shall serve, or cause to be served, notice of the Final Hearing, along with a copy of the Motion (to the extent the Motion was not previously served on a party) and this Interim Order, by first class mail, electronic transmission, or other appropriate method of service on (a) the Notice Parties, (b) counsel to any Committee, and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002. Any responses or objections to approval of the Motion on a final basis shall be made in writing, conform to the applicable Bankruptcy Rules, be filed with this Court and served so as to be actually received no later than May 1, 2026, at 5:00 p.m. (prevailing Central time) by the following parties: (a) proposed counsel to the Debtors, Norton Rose Fulbright, US LLP, 1550 Lamar Street, Suite 2000, Houston, Texas 77010, Attn: Ryan Manns (ryan.manns@nortonrosefulbright.com), Jason Blanchard (jason.blanchard@nortonrosefulbright.com), and Maria Mokrzycka (maria.mokrzycka@nortonrosefulbright.com); (b) the Office of the United States Trustee for Southern District of Texas; (c) counsel to the Collateral Agents, (d) counsel to the Senior Secured Holders Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Sunny Singh (sunny.singh@weil.com), Weil, Gotshal & Manges LLP, 700 Louisiana Street, Suite 3700, Houston, TX 77002-2755, Attn: Stephanie Morrison (stephanie.morrison@weil.com) and Emma

Wheeler (emma.wheeler@weil.com), Goodwin Procter LLP, 620 Eighth Avenue, New York, NY 10018, Attn: Robert Lemons (rlemons@goodwinlaw.com) and Debora Hoehne (dhoehne@goodwinlaw.com), and Gray Reed & McGraw, 1300 Post Oak Blvd., Suite 2000, Houston, Texas 77056; and (e) proposed counsel to any Committee. If no objections are filed to the Motion, this Court may enter a Final Order without further notice or hearing.

Signed: April 13, 2026

Christopher Lopez
United States Bankruptcy Judge

Exhibit 1

Initial Approved Budget

Exhibit 2

Milestones

The Debtors' consensual use of Cash Collateral shall be subject to the timely satisfaction of the following Milestones, which may be extended with the prior written consent (email shall suffice, including from respective counsel) of the Debtors and the Senior Secured Holders.

1. Commencement of Marketing Process. On the Petition Date, the Debtors shall have commenced a marketing process for the sale of their assets and/or financing.

2. First Day Hearing. On the date that is two (2) calendar days after the Petition Date, the First Day Hearing shall have occurred.

3. Cash Collateral Order. At or prior to 11:59 p.m. Central Time on the date that is two (2) calendar days after the Petition Date, the Court shall have entered this Interim Order. At or prior to 11:59 p.m. Central Time on the date that is thirty (30) days after the Petition Date, the Court shall have entered the Final Order.

4. Filing of Bidding Procedures Motion. At or prior to 11:59 p.m. Central Time on the date that is two (2) calendar days following the Petition Date, the Debtors shall have filed the Bidding Procedures Motion. The Bidding Procedures Motion shall seek approval of the Debtors' proposed marketing and sale process, including an Indication of Interest deadline of May 1, 2026 and a Bid Deadline of May 9, 2026.

5. Bidding Procedures Order. At or prior to 11:59 p.m. Central Time on April 16, 2026, the Court shall have entered the Bidding Procedures Order.

6. Sale Order. At or prior to 11:59 p.m. Central Time on May 17, 2026, the Court shall have entered the Sale Order.

United States Bankruptcy Court
Southern District of Texas

In re:
Ascend Elements, Inc.
Debtor

Case No. 26-90440-cml
Chapter 11

CERTIFICATE OF NOTICE

District/off: 0541-4 User: ADIuser
Date Rcvd: Apr 13, 2026 Form ID: pdf002 Total Noticed: 2

The following symbols are used throughout this certificate:

Symbol	Definition
+	Addresses marked '+' were corrected by inserting the ZIP, adding the last four digits to complete the zip +4, or replacing an incorrect ZIP. USPS regulations require that automation-compatible mail display the correct ZIP.

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on Apr 15, 2026:

Recip ID		Recipient Name and Address
db	+	Ascend Elements, Inc., 133 Flanders Road, Westborough, MA 01581-1031
op		Verita Global dba Kurtzman Carson Consultants, LLC, 222 N PCH, Suite 300, El Segundo, CA 90245, US

TOTAL: 2

Notice by electronic transmission was sent to the following persons/entities by the Bankruptcy Noticing Center.
Electronic transmission includes sending notices via email (Email/text and Email/PDF), and electronic data interchange (EDI).

NONE

BYPASSED RECIPIENTS

The following addresses were not sent this bankruptcy notice due to an undeliverable address, *duplicate of an address listed above, *P duplicate of a preferred address, or ## out of date forwarding orders with USPS.

Recip ID	Bypass Reason	Name and Address
intp		Certain CLN Holders
cr		Fifth Wall Accelerate (Late Stage), L.P.
cr		Fifth Wall Early Stage Climate Technology Fund, L.
cr		Fifth Wall Ventures SPV XXXIX, L.P.
cr		SKS Private Equity Co., Ltd.
cr		Turner-Kokosing Joint Venture

TOTAL: 6 Undeliverable, 0 Duplicate, 0 Out of date forwarding address

NOTICE CERTIFICATION

I, Gustava Winters, declare under the penalty of perjury that I have sent the attached document to the above listed entities in the manner shown, and prepared the Certificate of Notice and that it is true and correct to the best of my information and belief.

Meeting of Creditor Notices only (Official Form 309): Pursuant to Fed .R. Bank. P.2002(a)(1), a notice containing the complete Social Security Number (SSN) of the debtor(s) was furnished to all parties listed. This official court copy contains the redacted SSN as required by the bankruptcy rules and the Judiciary's privacy policies.

Date: Apr 15, 2026 Signature: /s/Gustava Winters

CM/ECF NOTICE OF ELECTRONIC FILING

The following persons/entities were sent notice through the court's CM/ECF electronic mail (Email) system on April 13, 2026 at the address(es) listed below:

Name	Email Address
Courtney E. Giles	on behalf of Creditor SKS Private Equity Co. Ltd. courtney.giles@bakermckenzie.com, jessica.harris@bakermckenzie.com
Evan Gershbein	on behalf of Other Prof. Verita Global dba Kurtzman Carson Consultants LLC ECFpleadings@kccllc.com, ECFpleadings@kccllc.com

Jason S Brookner
on behalf of Creditor Fifth Wall Ventures SPV XXXIX L.P. jbrookner@grayreed.com, lwebb@grayreed.com

Jason S Brookner
on behalf of Creditor Fifth Wall Accelerate (Late Stage) L.P. jbrookner@grayreed.com, lwebb@grayreed.com

Jason S Brookner
on behalf of Creditor Fifth Wall Early Stage Climate Technology Fund L.P. jbrookner@grayreed.com, lwebb@grayreed.com

John Laurens Wilkes
on behalf of Creditor Turner-Kokosing Joint Venture jlwilkes@winston.com ecf_houston@winston.com;laurens-wilkes-7996@ecf.pacerpro.com

Maria Barbara Mokrzycka
on behalf of Debtor Ascend Elements Inc. maria.mokrzycka@nortonrosefulbright.com

Ryan E Manns
on behalf of Debtor Ascend Elements US LLC ryan.manns@nortonrosefulbright.com

Ryan E Manns
on behalf of Debtor Ascend Elements Inc. ryan.manns@nortonrosefulbright.com

Stephanie Nicole Morrison
on behalf of Interested Party Certain CLN Holders stephanie.morrison@weil.com rene.olvera@weil.com;christopher.jalomo@weil.com;rene-olvera-0535@ecf.pacerpro.com

US Trustee
USTPRegion07.HU.ECF@USDOJ.GOV

TOTAL: 11