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Proposed Co-Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

INVITAE CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11362 (MBK)

(Joint Administration Requested)

¹ The last four digits of Debtor Invitae Corporation’s tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ proposed claims and noticing agent at www.kccllc.net/invitae. The Debtors’ service address in these chapter 11 cases is 1400 16th Street, San Francisco, California, 94103.



**DEBTORS’ MOTION FOR ENTRY OF INTERIM AND
FINAL ORDERS PURSUANT TO SECTIONS 105, 361,
362, 363, 503, AND 507 OF THE BANKRUPTCY CODE AND
RULES 2002, 4001, AND 9014 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE: (I) AUTHORIZING 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**

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state the following in support of this motion (this “Motion”):²

Preliminary Statement

1. As described more fully in the First Day Declaration, following several weeks of arm’s-length, good faith negotiations with their key creditors and stakeholders, on February 13, 2024, the Invitae Corporation (together with the Debtors and their non-Debtor affiliates, “Invitae”) entered into a transaction support agreement (the “TSA”) with 79 percent of the holders of the 2028 Senior Secured Notes that contemplates an in-court sale transaction funded through the consensual use of Cash Collateral (as defined below).

2. The TSA contemplates a sale transaction of substantially all the Debtors’ assets and/or equity upon the conclusion of a robust marketing process to generate the highest and best possible bids. The Debtors intend to use the court-overseen sale and auction process to maximize value for the Debtors’ businesses and to allocate proceeds of such sale pursuant to a plan confirmation process on the terms set forth in the TSA. The TSA includes certain transaction

² A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Ana Schrank, Chief Financial Officer of Invitae Corporation, in Support of Chapter 11 Filing, First Day Motions, and Access to Cash Collateral* (the “First Day Declaration”), filed contemporaneously herewith. Capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration, contemporaneously filed herewith, the Cash Collateral Orders, and the TSA (as defined herein), as applicable.

milestones for the Debtors to continue their marketing process and work to reach a sale transaction that results in the highest and otherwise best recoveries for the Debtors and their stakeholders as quickly and efficiently as possible.

3. The Debtors' cash on hand is sufficient to maintain operations through the roughly five-month sale and plan confirmation process contemplated by the milestones in the TSA. The Debtors have reached an agreement for the consensual use of Cash Collateral, and the Cash Collateral Orders and Initial Budget negotiated with the Senior Secured Noteholders are consistent with the TSA milestones. The Debtors will need access to cash on hand and cash flow from operations to fund their working capital needs, capital expenditures, and for other general corporate purposes during the pendency of these chapter 11 cases, including administrative costs, such as professional fees and expenses. The ability to satisfy these expenses as and when due is necessary for the Debtors' continued operation of their businesses during the pendency of these chapter 11 cases and successful implementation of a sale transaction as contemplated by the TSA. *See* First Day Decl. at ¶ 82. Without access to these funds throughout the chapter 11 cases, the Debtors' business operations would cease, cause value destruction, and irreparably harm the Debtors' relationships—threatening the Debtors' opportunity at consummating a transaction with the highest and best possible purchase price that will maximize value for all stakeholders. *Id.* The Debtors will therefore be unable to proceed with the transaction's expedited timeline, operate their businesses in the near term, or otherwise fund these chapter 11 cases without access to "Cash Collateral," as defined in section 363(a) of the Bankruptcy Code. *Id.*

4. Recognizing this, the Debtors engaged with the Prepetition Secured Parties on the consensual use of Cash Collateral as part of the discussions on a comprehensive restructuring transaction. *Id.* at ¶ 83. As part of these negotiations, the Debtors and the Prepetition Secured Parties discussed, among other things, a form of budget for the duration of the chapter 11 cases,

an adequate protection package, and a timeline that would allow the Debtors to continue to access Cash Collateral while they work expeditiously to implement the transactions contemplated under the TSA. The Debtors and the Prepetition Secured Parties ultimately reached agreement on the terms of the consensual use of Cash Collateral and such agreement is reflected in the Interim Order, which will enable the Debtors to use their cash to continue to operate their businesses as they proceed toward a value-maximizing transaction that results in the highest and otherwise best recoveries for all parties in interest.

5. As of the Petition Date, the Debtors estimate that they have approximately \$142 million of cash on hand. *See Id.* at ¶ 83. Prior to the Petition Date, the Debtors, in consultation with FTI, reviewed and analyzed their projected cash receipts and disbursements to determine their liquidity needs. *Id.* Using that information, the Debtors, with FTI's assistance, prepared a budget outlining the Debtors' postpetition cash flow forecast over the first thirteen weeks of these chapter 11 cases. *Id.* The initial approved budget, a copy of which is attached to the proposed Interim Order as Exhibit 1 (the "Initial Budget") contains line items for cash flows anticipated to be received and disbursed during such thirteen-week period, and includes all reasonable, necessary, and foreseeable expenses that the Debtors expect to incur as a result of the operation of their business during such time, as well as the projected costs of these chapter 11 cases. *See First Day Decl.* at ¶ 84. Based on the Initial Budget, the Debtors project that their remaining cash balance at the end of the first four weeks of these chapter 11 cases will be approximately \$133.5 million and their remaining cash balance at the end of the 13-week period will be approximately \$82.3 million. *Id.* at ¶ 86. Accordingly, the Debtors believe that they will have sufficient liquidity to continue operating their business in the ordinary course, provided they are granted access to Cash Collateral. *Id.*

6. Access to the Cash Collateral on the terms set forth herein will provide the Debtors the best opportunity to maintain their current operations and implement a successful restructuring. For the reasons detailed herein and in the First Day Declaration, the Debtors believe that the relief proposed in the Cash Collateral Orders will give the Debtors the necessary liquidity to continue the day-to-day operations of their business, maintain the value of their enterprise, implement the restructuring transactions embodied in the TSA, and ultimately maximize the value of the Debtors' estates and reflects a sound exercise of the Debtors' business judgment. *See Id.* at ¶ 88. Accordingly, the Debtors respectfully request that the Court approve the relief requested herein and enter an interim order substantially in the form attached hereto as **Exhibit A** and a final order.

Relief Requested

7. The Debtors seek entry of interim order, substantially in the form attached hereto as **Exhibit A**, and a final order (respectively, the "Interim Order" and "Final Order", and together, the "Cash Collateral Orders"), (a) authorizing the Debtors to use the Cash Collateral of the Prepetition Secured Parties, (b) granting adequate protection, solely to the extent provided in the Cash Collateral Orders, to the Prepetition Secured Parties, and (c) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms of the Cash Collateral Orders. In addition, the Debtors request that the Court schedule a final hearing within approximately thirty (30) days after the commencement of these chapter 11 cases to consider entry of the Final Order.

Jurisdiction and Venue

8. The United States Bankruptcy Court for the District of New Jersey (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a

final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

9. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

10. The bases for the relief requested herein are sections 105, 361, 362, 363, 503, 506, 507, and 552 of the United States Code (the “Bankruptcy Code”), rules 2002, 4001, 6003, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 4001-3 and 9013-5 of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

Background

11. On February 13, 2024 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrent with the filing of this Motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

The Debtors Have an Immediate Need for Use of Cash Collateral

12. The Debtors require immediate access to liquidity to ensure that they are able to continue operating their business during these chapter 11 cases, preserve the value of their estates for the benefit of all parties in interest, and pursue the value-maximizing transactions contemplated by the TSA. Without prompt access to Cash Collateral, the Debtors would be unable to satisfy employee compensation obligations, satisfy trade payables incurred in the ordinary course of business, preserve and maximize the value of their estates, or fund the administration of these

chapter 11 cases, which would cause immediate and irreparable harm to the value of the Debtors’ estates to the detriment of all stakeholders.

Concise Statement of Material Terms of the Interim Order

13. The below chart contains a summary of the material terms of the proposed use of Cash Collateral, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rule 4001(b) and Local Rule 4001-3.³

Summary of Material Terms⁴		Location
<p>Parties with an Interest in Cash Collateral</p> <p>Bankruptcy Rule 4001(b)(1)(B)(i)</p> <p>Local Rule 4001-3</p>	<p>All parties set forth below shall collectively be referred to as the “<u>Prepetition Secured Parties</u>.”</p> <ul style="list-style-type: none"> • Prepetition Secured Noteholders. • Prepetition Secured Agent. U.S. Bank Trust Company, National Association as indenture trustee and collateral agent. 	<p>Preamble</p> <p>¶ E</p>
<p>Amount of Cash Collateral and Purposes for Use of Cash Collateral</p> <p>Bankruptcy Rule 4001(b)(1)(B)(ii); 4001(b)(2)</p> <p>Local Rule 4001-3(a)(2)(A)</p>	<p>The Debtors have \$142 million of cash on hand that constitutes Cash Collateral. The Debtors have an immediate need to obtain use of the Prepetition Collateral, including the Cash Collateral (subject to and in compliance with the Approved Budget), to (i) conduct a sale of all or some of the Debtors’ assets and/or equity in accordance with the TSA, (ii) continue their operations, for working capital purposes, other general corporate purposes of the Debtors, and (iii) to satisfy in full the costs and expenses of administering the Cases and preserving the value of their estates during the Cases. The ability of the Debtors to obtain liquidity through the use of the Cash Collateral is vital to the Debtors and their efforts to maximize the value of their estates. Absent entry of the Interim Order, the Debtors’ estates and reorganization efforts will be immediately and irreparably harmed.</p> <p>The Interim Order authorizes the use of Cash Collateral during the period beginning with the Petition Date and ending on the Termination Date, in each case, solely and exclusively in a manner consistent with the Interim Order and the Approved Budget, and for no other purposes, subject to the Carve Out.</p>	<p>Preamble</p> <p>¶ G</p> <p>¶ 3(a)</p>
<p>Provisions that Provide for the Funding of Non-Debtor Affiliates</p>	<p>Except as otherwise set forth in the Approved Budget, Cash Collateral may not be used (i) by any non-Debtor entity, or (ii) to pay any expense of any non-Debtor entity, in each case, except as necessary to satisfy trade claims against non-Debtor entities in the ordinary course of the</p>	<p>¶ 3(e)</p>

³ The summaries contained in this Motion are qualified in their entirety by the provisions of the Interim Order. To the extent anything in this Motion is inconsistent with the Interim Order, the terms of the Interim Order shall control.

Summary of Material Terms⁴		Location
Local Rule 4001-3(c)(12)	Debtors’ and non-Debtors’ business and consistent with the historical practices of such entities and the Approved Budget.	
Budget and Variance Reporting Bankruptcy Rule 4001(b)(1)(B)(ii) Local Rule 4001-3(a)(1)	<p>Except as otherwise provided in the Interim Order, the Debtors may only use Cash Collateral in accordance the Initial Budget as may be amended, replaced, extended, supplemented, or otherwise modified in accordance with the terms of the Interim Order or by the Required Holders subject to permitted variances as set forth below. On the Friday of the first full calendar week after the Petition Date, and each two weeks thereafter, the Debtors shall deliver an updated budget to the Notice Parties, in form and substance satisfactory to the Required Holders in their sole discretion.</p> <p>On the Friday of the first full calendar week after the Petition Date, and each week thereafter, the Debtors shall deliver a budget variance report/reconciliation (the “<u>Variance Report</u>”) to the Notice Parties, in form and substance reasonably satisfactory to the Notice Parties, showing for the prior two-week period ending on the Friday immediately prior (each such period, a “<u>Test Period</u>”) (except that no such reporting shall be required for the week ending February 16, 2024, such that the first Test Period for the Variance Report delivered on March 1, 2024, will consist of a one week ending on February 23, 2024). For the avoidance of doubt, the reporting schedule is detailed in <u>Exhibit 2</u> – “Testing Cadence”, attached to the Interim Order. The Variance Report will include (i) the variance (as compared to the applicable Approved Budget) of actual cash receipts (on a line item by line item basis) of the Debtors for the applicable Test Period, (ii) the variance (as compared to the applicable Approved Budget) of the disbursements (on a line item by line item basis) made by the Debtors set forth in the Approved Budget for the applicable Test Period, and (iii) an explanation, in reasonable detail, for any material variances (on a line item basis) set forth in such Variance Report, certified by an authorized officer of the Debtors. Commencing with the first full calendar week after the Petition Date, the Debtors shall not permit (i) a total receipts variance for any Test Period to have a negative variance in excess of 12.5% (with negative variance meaning, for the avoidance of doubt, that actual receipts are less than projected receipts) or (ii) a total disbursements variance for any Test Period to have a negative variance in excess of 12.5% (with negative variance meaning, for the avoidance of doubt, that actual disbursements are greater than the projected disbursements on a line-item basis); <i>provided</i> that, (1) any positive receipts variance may be used to offset any negative disbursements variance for such Test Period or carried over to the immediately subsequent (but not any other) Test Period, and (2) any positive disbursements variance may be used to offset any negative receipts variance for such Test Period or carried over to the immediately subsequent (but not any other) Test Period. 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. Debtors shall provide notice of the occurrence of the Debtors’ unrestricted cash and cash equivalents</p>	¶ 3 (b)-(d)

Summary of Material Terms ⁴	Location
<p>falling below \$56,700,000 at the end of any week and the amount of such Liquidity as of such time during the Initial Budget Period.</p> <p>On or before the second (2nd) day before the end of each Test Period, the Debtors shall deliver to the Notice Parties a rolling 13-week cash flow forecast of the Debtors substantially in the format of the initial Approved Budget (each, a “<u>Proposed Budget</u>”), which Proposed Budget (including any subsequent revisions to any such Proposed Budget), shall become the Approved Budget effective the subsequent Test Period <i>unless</i> the Required Holders notify the Debtors of any reasonable objection to the Proposed Budget within four (4) business days after receipt of the Proposed Budget (the “<u>Approval Deadline</u>”). For the avoidance of doubt, the Debtors’ use of Cash Collateral shall be governed by the then-existing Approved Budget (x) at all times prior to the earlier of (i) the Required Holders’ approval of the Proposed Budget in accordance with the foregoing and (ii) the Approval Deadline; and (y) during the pendency of any unresolved objection by the Required Holders to the Proposed Budget.</p>	
<p>Carve Out</p> <p>Bankruptcy Rule 4001(b)(1)(B)(iii)</p> <p>Local Rule 4001-3(c)(9)</p>	<p>¶ 5</p>
<p>Provisions that Provide for Postpetition Liens on Unencumbered Assets</p> <p>Local Rule 4001-3(c)(2)</p>	<p>¶ 4(a)</p>
<p>Adequate Protection</p> <p>Bankruptcy Rule 4001(b)(1)(B)(iv)</p> <p>Local Rule 4001-3(a)(2)(B), 4001-3(c)(2)</p>	<p>¶ 4</p> <p>The adequate protection provided to the Prepetition Secured Parties includes:</p> <ul style="list-style-type: none"> • Adequate Protection Superpriority Claims. Solely the extent of any diminution in value, the Debtors will grant the Prepetition Secured Parties allowed superpriority administrative claims pursuant to section 507(b) of the Bankruptcy Code, which superpriority claims shall have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, subject only to the Carve Out. • Adequate Protection Liens. The Debtors will provide adequate protection liens to the Prepetition Secured Parties on substantially all of their assets, solely to the extent of any diminution in value of their interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, subject to the Carve Out. • Additional Adequate Protection. <ul style="list-style-type: none"> ○ Fees and Expenses. The Debtors will pay postpetition monthly interest payments in cash to the Prepetition Secured Agent, on behalf of the Prepetition Secured Noteholders, in an amount equal to the accrued and unpaid interest at the non-default interest rate and as otherwise provided under the Secured Notes Indenture

Summary of Material Terms ⁴	Location
	<p>(including payment of all prepetition accrued and unpaid interest under the Secured Notes Indenture). The Debtors will pay the reasonable and documented professional fees of the Prepetition Secured Agent (including reasonable and documented fees, expenses and disbursements incurred by the Prepetition Secured Agent Advisors), the Required Holders (including reasonable and documented fees, expenses and disbursements incurred by the Required Holders Advisors and Hogan Lovells US LLP, as counsel to the Required Holders) in accordance with paragraph 4(e) of the Interim Order. Any payments made pursuant to paragraph 4(e) of the Interim Order shall be without prejudice to whether any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest or otherwise.</p> <ul style="list-style-type: none"> ○ Reporting. The Debtors shall comply with the reporting requirements set forth in paragraph 3(c) of the Interim Order. ○ Access and Information. In addition to, and without limiting, whatever rights to access the Prepetition Secured Parties have under the Secured Notes Indenture, upon reasonable prior written notice (including via acknowledged electronic mail) during normal business hours, the Debtors shall permit the Prepetition Secured Agent Advisors, the Required Holders, and the Required Holders Advisors (each of which is bound by obligations of confidentiality pursuant to a separate confidentiality agreement entered into with the Debtors) to have access to such information regarding the operations, business affairs and financial condition of the Borrower or any of its subsidiaries, or compliance with the terms of any Secured Notes Document as the Prepetition Secured Agent (acting on behalf of itself or any applicable Prepetition Secured Party), the Required Holders, or the Required Holders Advisors may reasonably request, and it being understood that nothing in paragraph 6 of the Interim Order 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.
<p>Termination Date/Remedies</p> <p>Bankruptcy Rule 4001(b)(1)(B)(iii)</p>	<p>The Debtors are authorized to use Cash Collateral in accordance with the Budget for the period from the Petition Date through the date which is the earliest to occur of (i) the Termination Date, (ii) the effective date of any chapter 11 plan with respect to the Debtors confirmed by the Court, (iii) the occurrence of a Termination Event under paragraph 7(a), (c), or (d) of the Interim Order, or, (iv) five (5) business days from the Termination Declaration Date (the “Remedies Notice Period”); <i>provided</i> that, until expiration of the Remedies Notice Period, the Debtors may continue to use Cash Collateral to make payments in respect of expenses critical to keep the business of the Debtors operating</p>

Summary of Material Terms ⁴	Location
	<p>in accordance with the Approved Budget; <i>provided, further</i>, that the Debtors may continue to use Cash Collateral during or after expiration of the Remedies Notice Period solely to the extent necessary to fund the Carve Out Reserves subject to paragraph 5 of the Interim Order.</p> <p>During the Remedies Notice Period, if applicable, the Debtors, the Committee (if any), and/or any party in interest shall be entitled to seek an emergency hearing with the Court to (i) contest the existence of a Termination Event, and/or (ii) seek non-consensual use of Cash Collateral and continue the automatic stay; <i>provided</i> that if a hearing to consider the foregoing is requested to be heard before the end of the Remedies Notice Period but is scheduled for a later date by the Court, the Remedies Notice Period shall be automatically extended to the date of such hearing, but in no event later than eight (8) business days after delivery of the Termination Declaration. Upon expiration of the Remedies Notice Period, if applicable, the Required Holders shall be permitted, to exercise all remedies set forth in the Interim Order, in the Secured Notes Documents, and as otherwise available at law or in equity without further order of or application or motion to this Court consistent with the Interim Order, subject and subordinate to the Carve Out.</p>
<p>Termination Events/ Events of Default</p> <p>Bankruptcy Rule 4001(b)(1)(B)(iii)</p> <p>Local Rule 4001-3(c)(3)</p>	<p>The Interim Order provides for certain events of default (collectively, the “<u>Termination Events</u>”) that are usual and customary for consensual use of cash collateral in chapter 11 proceedings. Occurrence of a Termination Event shall terminate the Debtors’ right to use Cash Collateral, subject to certain limitations set forth in the Interim Order. Notable Termination Events include:</p> <ul style="list-style-type: none"> • a Final Order reasonably acceptable to the Debtors and Required Holders is not entered by the Court by 11:59 p.m. on thirty (30) days after the Petition Date and otherwise consistent with the Milestones in the TSA; • the violation of any term of the Interim Order by the Debtors that is not cured within five (5) business days of receipt by the Debtors, counsel to the Committee (if any), and the U.S. Trustee of notice of such default, violation or breach (which may be provided to the Debtors, counsel to the Committee (if any), and the U.S. Trustee by e-mail); • entry of any order modifying, reversing, revoking, staying for a period in excess of five (5) business days, rescinding, vacating, or amending the Interim Order without the express written consent of the Required Holders; • any of the chapter 11 cases is dismissed (other than following the effective date of a chapter 11 plan) or converted to a case under chapter 7 of the Bankruptcy Code, without the express written consent of the Required Holders, or a trustee under chapter 11 of the Bankruptcy Code or an examiner is appointed in any of the chapter 11 cases, or any of the Debtors seeks entry of an order accomplishing any of the foregoing; • an order is entered granting another claim or lien (except for the Permitted Prior Liens) <i>pari passu</i> with or senior to except as provided under the Interim Order, the Prepetition Liens, Adequate

	Summary of Material Terms ⁴	Location
	<p>Protection Liens or the Adequate Protection Superpriority Claims granted to the Prepetition Secured Parties under the Interim Order;</p> <ul style="list-style-type: none"> • any motion, pleading, or proceeding is filed or is commenced by any Debtor seeking, or otherwise consenting or supporting to, (i) the invalidation, subordination, or other challenge to the Prepetition Secured Indebtedness, the Prepetition Liens, the Adequate Protection Liens, or Adequate Protection Superpriority Claims, or (ii) any relief under section 506(c) of the Bankruptcy Code with respect to any Prepetition Collateral or any Collateral, including the Cash Collateral, or against any of the Prepetition Secured Parties; <i>provided</i> that if the Debtors provide any response to any third-party discovery request or may make a witness available for deposition, such action shall not be a violation of clause (f) of paragraph 7 of the Interim Order; • any Debtor files a motion, pleading, or proceeding that would, if the relief sought therein were granted, result in a Termination Event (other than a Termination Event under paragraph 7(g) of the Interim Order), and such motion, pleading, or proceeding is not dismissed or withdrawn (as applicable) within five (5) business days after receipt by the Debtors, counsel to the Committee (if any), and the U.S. Trustee of notice (which may be by e-mail) that the Required Holders have determined that such motion, pleading, or proceeding, if the relief sought therein were granted, would give rise to such a Termination Event; <i>provided</i> that if the Debtors receive the written consent of the Required Holders to file such motion, pleading, or proceeding than such action shall not be a violation of clause (g) of paragraph 7 of the Interim Order; • an order is entered granting relief from or modifying the automatic stay to any entities other than the Prepetition Secured Parties with respect to the Prepetition Collateral or the Collateral (except for Permitted Liens) with a value in excess of \$500,000 without the written consent of the Required Holders; • the failure by the Debtors to make any payment required pursuant to the Interim Order when due; <i>provided</i> that such failure remains uncured for at least five (5) business days following a written notice from the Required Holders (which may be by e-mail); • the failure by the Debtors to deliver to any of the Notice Parties any of the documents or other information reasonably required to be delivered to such applicable party pursuant to the Interim Order within five (5) business days following a request therefor from any of the Notice Parties pursuant to the terms of the Interim Order; or any such documents or other information shall contain a material misrepresentation; <i>provided</i> that, such misrepresentation remains uncured for at least five (5) business days following written notice thereof from any of the Prepetition Secured Agents; • the Debtors' failure to comply with an Approved Budget except with respect to Permitted Variances or the Debtors' failure at the end of any week to maintain Liquidity in an amount equal to or greater than the Minimum Liquidity Amount; 	

	Summary of Material Terms⁴	Location
	<ul style="list-style-type: none"> the failure of the Debtors to observe or perform any of the material terms or material provisions contained herein, provided that such failure remains uncured for at least five (5) business days following written notice thereof from any of the Prepetition Secured Agents; an order is entered granting relief from the automatic stay authorizing any party to exercise remedies against any asset of the Debtors without which the Debtors’ ability to operate their business in the ordinary course would be materially and adversely affected; and the occurrence of a Consenting Stakeholder Termination Event under the TSA. 	
<p>Validity, Perfection, and Amount of Obligations Securing Prepetition Liens, Binding Effect of Stipulations on Third Parties, and Challenge Period</p> <p>Bankruptcy Rule 4001(b)(1)(B)(iii); Local Rule 4001-3(c)(7)</p>	<p>All of the Debtors’ stipulations, admissions, waivers, and releases contained in the Interim Order, including, without limitation, as set forth in paragraph E thereof, shall be binding upon the Debtors, their estates, and any of their respective successors, including, without limitation, any chapter 7 or chapter 11 trustee (a “Trustee”) appointed in any Successor Cases, responsible person, examiner with expanded powers, or other estate representative, and the Debtors are deemed to have irrevocably waived and relinquished all Challenges as of the Petition Date.</p> <p>Parties in interest have until sixty (60) days from the entry of the Interim Order to object or bring a challenge to (i) the validity, enforceability, extent, priority, or perfection of the mortgages, security interests, and liens of any of the Prepetition Secured Parties, or (ii) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Secured Indebtedness by commencing an adversary proceeding or contested matter, as required under the Bankruptcy Rules.</p>	<p>¶ 19</p>
<p>Liens on Avoidance Actions, Section 506(c) and Section 552(b)(1) Rights, and Provisions on “Marshalling”</p> <p>Local Rule 3(c)(6)</p>	<p>Subject to entry of the Final Order:</p> <ul style="list-style-type: none"> The Adequate Protection Liens shall not attach to any avoidance actions, but shall attach to proceeds or property recovered in respect of such avoidance actions; The proposed section 506(c) waiver will be effective; The “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, product, offspring or profits of any of the Prepetition Collateral or the Collateral; and The Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshalling” or any other similar doctrine with respect to any of the Prepetition Collateral or the Collateral, as the case may be. 	<p>¶ 4(a) ¶ 9 ¶ 23 ¶ 24</p>
<p>Waiver/Modification of Automatic Stay</p> <p>Bankruptcy Rule 4001(b)(1)(B)(iii)</p>	<p>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 reasonably necessary to implement the terms and conditions of the Interim Order and the transactions contemplated hereby. The stay of section 362 of the Bankruptcy Code is hereby</p>	<p>¶ 13 ¶ 17</p>

Summary of Material Terms⁴		Location
<p>Local Rule 4001-3(c)(3)(B); Local Rule 4001-3(c)(7)</p>	<p>modified to permit the parties to accomplish the transactions contemplated by the Interim Order.</p> <p>Binding Effect. The terms of the 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 the Interim Order by the Court.</p>	
<p>Binding Effect of the Debtors’ Stipulation on Third Parties</p> <p>Bankruptcy Rule 4001(b)(1)(B)(iii)</p>	<p>The Interim Order contains certain stipulations by the Debtors, including stipulations regarding:</p> <ul style="list-style-type: none"> • the aggregate amount of the claims held by the Prepetition Secured Parties under the Senior Notes Documents; • the validity, perfection, enforceability, and priority of the Prepetition Liens on the Prepetition Collateral; • the extent of control the Prepetition Secured Parties exercise over the Debtors and their properties; • the acknowledgment that the Debtors have neither opened nor maintains any bank accounts other than the accounts listed in the exhibit attached to any order authorizing the Debtors to continue to use the Debtors’ existing cash management system; • the definition of what constitutes Cash Collateral; and subject to the Secured Notes Documents and to entry of a Final Order, the First Lien Notes Agents (at the direction of the Prepetition First Lien Noteholders) and the Administrative Agent (at the direction of the Second Lien Lenders) shall have the rights granted pursuant to and consistent with section 363(k) of the Bankruptcy Code with respect to any credit bidding of the Prepetition Secured • Indebtedness on which they have Prepetition Liens or Adequate Protection Liens. <p>The stipulations contained in the Interim Order are subject to the provisions relating to the Challenge Period.</p>	<p>Preamble</p> <p>¶ E</p>

The Debtors’ Prepetition Indebtedness and Need to Use Cash Collateral

14. As of the Petition Date, the Debtors have an aggregate principal amount of approximately \$1.428 billion in debt obligations, consisting of (a) 2028 Convertible Senior Secured Notes and (b) Convertible Senior Unsecured Notes (each as defined herein).

<i>Facility</i>	<i>Maturity</i>	<i>Approximate Outstanding Principal Amount</i>
<u>Secured</u>		
2028 Convertible Senior Secured Notes	March 15, 2028	\$305.3 million
<u>Unsecured</u>		
2024 Convertible Senior Unsecured Notes	September 1, 2024	\$27.1 million
2028 Convertible Senior Unsecured Notes	April 1, 2028	\$1,150 million
Total Debt Obligations		\$1,482.4 million

A. Secured Notes.

15. 2028 Convertible Senior Secured Notes. In March 2023, Invitae entered into that certain Indenture, dated as of March 7, 2023, by and among: (a) Invitae Corporation, as issuer; (b) certain of its subsidiaries pursuant to the Senior Secured Indenture (as defined below), as Guarantors; and (c) U.S. Bank Trust Company, National Association, as trustee and collateral agent (and as may be further amended, restated, supplemented, or otherwise modified from time to time, the “Senior Secured Indenture”). The Senior Secured Indenture provided for the issuance of \$275,257,000 initial aggregate principal amount of the 4.5% Series A Convertible Senior Secured Notes due 2028 (the “Series A Notes”) and an initial aggregate principal amount of \$30 million of the 4.5% Series B Convertible Senior Secured Notes due 2028 (the “Series B Notes”) and, together with the Series A Notes, the “2028 Convertible Senior Secured Notes”) by

Invitae. In August 2023, pursuant to an amendment to the Senior Secured Indenture, the Company issued additional Series A Notes in an aggregate principal amount of \$100,000.

16. The 2028 Convertible Senior Secured Notes are senior secured obligations of Invitae Corp. and certain of its subsidiaries and will mature on March 15, 2028, unless earlier converted, redeemed, or repurchased. Holders of the 2028 Convertible Senior Secured Notes may elect to convert all or any portion of their 2028 Convertible Senior Secured Notes into fully paid and nonassessable shares of Common Stock (subject to certain limitations as set forth in the Senior Secured Indenture). The 2028 Convertible Senior Secured Notes bear cash interest at a rate of 4.50% per year, payable quarterly in arrears on March 15, June 15, September 15, and December 15 of each year, beginning on June 15, 2023. The 2028 Convertible Senior Secured Notes are guaranteed by material subsidiaries and secured by (i) a security interest in substantially all the assets of Invitae and its domestic material subsidiaries, and (ii) a pledge of the equity interests of Invitae's direct and indirect subsidiaries, subject to certain customary exceptions. As of the Petition Date, the 2028 Convertible Senior Secured Notes have an aggregate outstanding principal amount of \$305.3 million.

B. Unsecured Notes

17. 2024 Convertible Senior Unsecured Notes. In September of 2019, Invitae entered into that certain Indenture, dated as of September 10, 2019, by and among (a) Invitae, as issuer, and (b) U.S. National Bank Association, as trustee (and as may be further amended, restated, supplemented, or otherwise modified from time to time, the "2024 Unsecured Notes Indenture"). The 2024 Unsecured Notes Indenture provided for the issuance of \$350 million aggregate principal amount of the 2024 Convertible Unsecured Notes by Invitae.

18. The 2024 Convertible Senior Unsecured Notes are senior unsecured obligations of Invitae and will mature on September 1, 2024, unless earlier converted, redeemed, or repurchased.

The 2024 Convertible Senior Unsecured Notes bear cash interest at a rate of 2.00% per year, payable semi-annually in arrears on March 1 and September 1 of each year, beginning on March 1, 2020. Upon conversion, the 2024 Convertible Senior Unsecured Notes will be convertible into cash, shares of Common Stock, or a combination of cash and shares of Common Stock, at Invitae's election. As of the Petition Date, the 2024 Convertible Senior Unsecured Notes have an aggregate outstanding principal amount of \$27.1 million.

19. 2028 Convertible Senior Unsecured Notes. In April of 2021, Invitae entered into that certain Indenture, dated as of April 8, 2021, by and among (a) Invitae, as issuer and (b) U.S. National Bank Association, as trustee (and as may be further amended, restated, supplemented, or otherwise modified from time to time, the "2028 Unsecured Notes Indenture"). The 2028 Unsecured Notes Indenture provided for the issuance of \$1,150,000,000 aggregate principal amount of 1.50% Convertible Notes due 2028 (the "2028 Convertible Senior Unsecured Notes").

20. The 2028 Convertible Senior Unsecured Notes are senior unsecured obligations of Invitae Corp. and will mature on April 1, 2028, unless earlier converted, redeemed, or repurchased. The 2028 Convertible Unsecured Notes bear cash interest at a rate of 1.50% per year, payable semi-annually in arrears on April 1 and October 1 of each year, beginning on October 1, 2021. Upon conversion, the 2028 Convertible Senior Unsecured Notes would be convertible into cash, shares of Common Stock, or a combination of cash and shares of Common Stock, at Invitae's election. As of the Petition Date, the 2028 Convertible Senior Unsecured Notes have an outstanding principal balance of \$1.15 billion.

Basis for Relief

I. The Debtors' Request to Use Cash Collateral and Proposed Adequate Protection Is Appropriate.

21. Section 363 of the Bankruptcy Code governs the Debtors' use of property of their estates, including Cash Collateral.⁵ Pursuant to section 363(c)(2) of the Bankruptcy Code, a debtor may use cash collateral as long as "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). The Prepetition Secured Parties consented to the Debtors' use of Cash Collateral in exchange for the proposed customary adequate protection package set forth in the Interim Order.

22. Section 363(e) of the Bankruptcy Code provides for adequate protection of interests in property when a debtor uses cash collateral. Furthermore, section 362(d)(1) of the Bankruptcy Code provides for adequate protection of interests in property due to the imposition of the automatic stay. *See In re Cont'l Airlines*, 91 F.3d 553, 556 (3d Cir. 1996). While section 361 of the Bankruptcy Code provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994); *In re N.J. Affordable Homes Corp.*, 2006 WL 2128624, at *14 (Bankr. D.N.J. June 29, 2006); *In re Satcon Tech. Corp.*, 2012 WL 6091160, at *6 (Bankr. D. Del. Dec. 7, 2012);

⁵ The Bankruptcy Code defines "cash collateral" as follows:

Cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring rents, or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a).

In re Columbia Gas Sys., Inc., 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier on Bankruptcy ¶ 361.01 [1] at 361-66 (15th ed. 1993) (explaining that adequate protection can take many forms and “must be determined based upon equitable considerations arising from the particular facts of each proceeding”)).

23. The concept of adequate protection is designed to shield a secured creditor from diminution in the value of its interest in collateral during the period of a debtor’s use. *See In re Carbone Cos.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) (“The test is whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash collateral.”); *see also In re Cont’l Airlines, Inc.*, 154 B.R. 176, 180–81 (Bankr. D. Del. 1993) (holding that adequate protection for use of collateral under section 363 of the Bankruptcy Code is limited to use-based decline in value).

24. As set forth above, the Debtors propose to provide the Prepetition Secured Parties with three primary forms of adequate protection (collectively, the “Adequate Protection”):

1. **Adequate Protection Superpriority Claims.** Solely the extent of any diminution in value, the Debtors will grant the Prepetition Secured Parties allowed superpriority administrative claims pursuant to section 507(b) of the Bankruptcy Code, which superpriority claims shall have priority over all administrative expenses of the kind specified in, or ordered pursuant to, any provision of the Bankruptcy Code, subject only to the Carve Out.
2. **Adequate Protection Liens.** The Debtors will provide adequate protection liens to the Prepetition Secured Parties on substantially all of their assets, solely to the extent of any diminution in value of their interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, subject to the Carve Out.
3. **Additional Adequate Protection.**
 - a. **Fees and Expenses.** The Debtors will pay postpetition monthly interest payments in cash to the Prepetition Secured Agent, on behalf of the Prepetition Secured Noteholders, in an amount equal to the accrued and unpaid interest at the non-default interest rate and as otherwise provided under the Secured Notes Indenture (including

payment of all prepetition accrued and unpaid interest under the Secured Notes Indenture). The Debtors will pay the reasonable and documented professional fees of the Prepetition Secured Agent (including reasonable and documented fees, expenses and disbursements incurred by the Prepetition Secured Agent Advisors), the Required Holders (including reasonable and documented fees, expenses and disbursements incurred by the Required Holders Advisors and Hogan Lovells US LLP, as counsel to the Required Holders) in accordance with paragraph 4(e) of the Interim Order. Any payments made pursuant to this paragraph 4(e) shall be without prejudice to whether any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest or otherwise.

- b. **Reporting.** The Debtors shall comply with the reporting requirements set forth in paragraph 3(c) of the Interim Order.
- c. **Access and Information.** In addition to, and without limiting, whatever rights to access the Prepetition Secured Parties have under the Secured Notes Indenture, upon reasonable prior written notice (including via acknowledged electronic mail) during normal business hours, the Debtors shall permit the Prepetition Secured Agent Advisors, the Required Holders, and the Required Holders Advisors (each of which is bound by obligations of confidentiality pursuant to a separate confidentiality agreement entered into with the Debtors) to have access to such information regarding the operations, business affairs and financial condition of the Borrower or any of its subsidiaries, or compliance with the terms of any Secured Notes Document as the Prepetition Secured Agent (acting on behalf of itself or any applicable Prepetition Secured Party), the Required Holders, or the Required Holders Advisors may reasonably request, and it being understood that nothing in paragraph 6 of the Interim Order 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.

25. The proposed Adequate Protection is sufficient to protect the Prepetition Secured Parties from any diminution in value to the Prepetition Collateral during the Interim Period. *See In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (evaluating “whether the value of the debtor’s property will increase as a result of the” use of collateral in determining sufficiency of adequate protection); *In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that debtor’s use of cash collateral to pay operating expenses,

thereby “preserv[ing] the base that generates the income stream,” provided adequate protection to the secured creditor). In light of the foregoing, the proposed Adequate Protection to be provided for the benefit of the Prepetition Secured Parties is appropriate. The Debtors’ proposed Adequate Protection is not only necessary to protect the Prepetition Secured Parties against any diminution in value, but is also fair and appropriate on an interim basis under the circumstances of these chapter 11 cases to ensure the Debtors are able to continue using the Cash Collateral in the near term for the benefit of all parties in interest and their estates.

26. The importance and appropriateness of allowing debtors to use cash collateral and granting adequate protection to prepetition secured parties in large chapter 11 cases has been repeatedly recognized by courts in this district, and such courts have granted relief similar to the relief requested herein. *See, e.g., In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D. N.J. Dec. 11, 2023) (authorizing debtors to use cash collateral and granting adequate protection in the form of, among other things, replacement liens on prepetition collateral, superpriority administrative claims pursuant to section 507(b), and fees and expenses); *In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D. N.J. Oct. 16, 2023) (same); *In re Cyxtera Techs., Inc.*, No. 23-14854 (JKS) (Bankr. D.N.J. Jun. 7, 2023) (same); *Bed Bath & Beyond, Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. Apr. 24, 2023) (same); *In re David’s Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. Apr. 17, 2023) (same).

27. In light of the foregoing, the Debtors submit that the proposed adequate protection they are providing to the Prepetition Secured Parties is appropriate. First, it is necessary to protect the Prepetition Secured Parties against any diminution in value. Second, it is fair and appropriate under the circumstances of these chapter 11 cases to ensure the Debtors are able to continue using the Cash Collateral in the near term for the benefit of all parties in interest and their estates.

II. Failure to Obtain the Immediate Interim Use of Cash Collateral Would Cause Immediate and Irreparable Harm.

28. Bankruptcy Rule 4001(b) provides that a final hearing on a motion to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than fourteen days after the service of such motion. Upon request, however, the Court is authorized to conduct a preliminary expedited hearing on this Motion and authorize the Debtors' proposed use of Cash Collateral to the extent necessary to avoid immediate and irreparable harm to the Debtors' estates. *See* Bankruptcy Rule 4001(b)(2) and Local Rule 4001-3(a)(1). Section 363(c)(3) of the Bankruptcy Code authorizes the court to conduct a preliminary hearing and to authorize the use of cash collateral "if there is a reasonable likelihood that the [debtor] will prevail at the final hearing under [section 363(e) of the Bankruptcy Code]." 11 U.S.C. § 363(c)(3).

29. The Debtors have an immediate postpetition need to use Cash Collateral. The Debtors cannot maintain the value of their estates during the pendency of these chapter 11 cases without access to cash. The Debtors will use cash to, among other things, implement and confirm a chapter 11 plan as contemplated by the TSA, continue to operate their business in the ordinary course of business, procure goods and services from vendors of their businesses, pay their employees, and satisfy other working capital needs during these chapter 11 cases. The Debtors believe that substantially all of their available cash constitutes the Prepetition Secured Parties' cash collateral, as that term is used by section 363(c) of the Bankruptcy Code. As of the Petition Date, the Debtors have approximately \$142 million of cash on hand. Absent Cash Collateral, the Debtors will be unable to continue to operate their business in the near term, or otherwise fund these chapter 11 cases. If that were to occur, the Debtors would suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest.

See First Day Decl. at ¶ 88. In short, the Debtors' use of Cash Collateral is vital to preserve and maximize the value of their estates. *Id.*

30. The Debtors therefore seek immediate authority to use the Cash Collateral on an interim basis and as set forth in this Motion and in the Interim Order to prevent immediate and irreparable harm to their estates pending the Final Hearing pursuant to Bankruptcy Rule 4001(b) and Local Rule 4001-3(a)(1). Accordingly, to the extent that the Debtors require the use of Cash Collateral, the Debtors have satisfied the requirements of Bankruptcy Rule 4001 and Local Rule 4001-3 to support an expedited preliminary hearing and immediate Cash Collateral availability on an interim basis.

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

31. The relief requested herein contemplates a modification of the automatic stay to: (a) permit the Debtors to grant the Adequate Protection Liens and the Adequate Protection Superpriority Claims; (b) permit the Debtors to perform such acts as the Prepetition Secured Agent may request in their reasonable discretion to assure the perfection and priority of the liens granted herein; (c) permit the Debtors to incur all liabilities and obligations to the Prepetition Secured Parties under the Interim Order; and (d) subject to the Carve Out, authorize the Debtors to pay, and the Prepetition Secured Parties to retain and apply, payments made in accordance with the terms of the Interim Order.

32. The Debtors have determined, in an exercise of their business judgment, that such stay modification is appropriate under the circumstances in the context of a negotiated, consensual cash collateral order. Further, stay modifications of this kind are ordinary and reasonable and fair under the circumstances of these chapter 11 cases. Courts in this district and others have granted similar relief in other recent chapter 11 cases. *See, e.g., In re WeWork, Inc.*, No. 23-19865 (JKS) (Bankr. D. N.J. Dec. 11, 2023) (modifying the automatic stay as necessary to effectuate the terms

of the order); *In re Rite Aid Corp.*, No. 23-18993 (MBK) (Bankr. D. N.J. Oct. 16, 2023) (same); *In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. June 6, 2023) (same); *In re David's Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. May 24, 2023) (same); *In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. Apr. 24, 2023) (same).

The Requirements of Bankruptcy Rule 6003(b) Are Satisfied

33. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one (21) days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. As set forth in this Motion, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors’ operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first twenty-one (21) days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. The relief requested is vital to a smooth transition into chapter 11. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support the relief requested herein.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

34. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Waiver of Memorandum of Law

35. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3) because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

Reservation of Rights

36. Nothing contained in this Motion or any order granting the relief requested in this Motion, and no action taken pursuant to the relief requested or granted (including any payment made in accordance with any such order), is intended as or shall be construed or deemed to be: (a) an admission as to the amount of, basis for, priority of, or validity of any claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion, except as otherwise provided in this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of any claims, causes of action or other rights of the Debtors or any other party in interest against any person or entity under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

No Prior Request

37. No prior request for the relief sought in this Motion has been made to this or any other court.

Notice

38. The Debtors will provide notice of this Motion to the following parties and/or their respective counsel, as applicable: (a) the office of the United States Trustee for the District of New Jersey; (b) the Debtors' thirty (30) largest unsecured creditors (on a consolidated basis); (c) counsel to the agent to the Secured Notes; (d) the indenture trustee to the 2024 Convertible Notes; (e) the indenture trustee to the 2028 Convertible Notes; (f) Sullivan & Cromwell LLP, as counsel to a certain holder of the Majority Senior Secured Noteholder; (g) Wollmuth Maher & Deutsch LLP, as counsel to the Required Holder; (h) counsel to the 2028 Convertible Noteholders; (i) the U.S. Securities and Exchange Commission; (j) the United States Attorney's Office for the District of New Jersey; (k) the attorneys general in the states where the Debtors conduct their business operations; (l) the Internal Revenue Service; (m) counsel to the Prepetition Secured Parties; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request entry of the Interim Order, substantially in the form attached hereto as **Exhibit A**, the Final Order, and granting the relief requested herein.

Dated: February 14, 2024

/s/ Michael D. Sirota

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*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Proposed Interim Order

Caption in Compliance with D.N.J. LBR 9004-1(b)

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY
In re: INVITAE CORPORATION, <i>et al.</i> , Debtors. ¹

Chapter 11
Case No. 24-11362 (MBK)
(Joint Administration Requested)

**INTERIM ORDER
PURSUANT TO SECTIONS
105, 361, 362, 363, 503, AND 507
OF THE BANKRUPTCY CODE AND RULES
2002, 4001, AND 9014 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE: (I) AUTHORIZING 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**

The relief set forth on the following pages, numbered (3) through (51), is **ORDERED**.

¹ The last four digits of Debtor Invitae Corporation's tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at www.kccllc.net/invitae. The Debtors' service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Proposed Co-Counsel for Debtors and Debtors in Possession

(Page | 3)

Debtors: INVITAE CORPORATION, *et al.*
Case No. 24-11362 (MBK)
Caption of Order: INTERIM ORDER PURSUANT TO SECTIONS 105, 361, 362, 363, 503, AND 507 OF THE BANKRUPTCY CODE AND RULES 2002, 4001, AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE: (I) AUTHORIZING 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 and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Cases”), for entry of an order pursuant to sections 105, 361, 362, 363, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001-1, 4001-3, 9013-1, 9013-2, 9013-4 and 9013-5 of the Local Rules of the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”), 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 (the “Cash Collateral”), and all other Prepetition Collateral (as defined below) in which the Prepetition Secured Parties (as defined below) have an interest, solely in accordance with the terms of this interim order (together with all annexes and exhibits hereto, the “Interim Order”), and (ii) grant adequate protection to the Prepetition Secured Parties to the extent of any Diminution in Value (as defined below) of their interests in the Prepetition Collateral (including Cash Collateral);
- (b) modification of the automatic stay imposed by section 362 of the Bankruptcy Code and any other applicable stay to the extent necessary to implement and effectuate the terms and provisions of this Interim Order;
- (c) subject to entry of the Final Order (as defined below), and subject and subordinate to the Carve Out (as defined below), the waiver of all rights to surcharge any Prepetition Collateral or Collateral (as defined below) under section 506(c) of the Bankruptcy Code or any other applicable principle of equity or law;
- (d) subject to entry of the Final Order and to the extent set forth herein, for the “equities of the case” exception under Bankruptcy Code section 552(b) to not apply to any of the Prepetition Secured Parties with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral under section 552(b) of the Bankruptcy Code or any other applicable principle of equity or law;
- (e) subject to entry of the Final Order, to the extent set forth herein, the equitable doctrine of “marshalling” or any other similar doctrine, to not apply with respect to any Prepetition Collateral or Collateral;

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: INTERIM ORDER PURSUANT TO SECTIONS 105, 361, 362, 363, 503, AND 507 OF THE BANKRUPTCY CODE AND RULES 2002, 4001, AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE: (I) AUTHORIZING 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

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- (f) approval of certain stipulations by the Debtors with respect to the Secured Notes Documents (as defined below), the Prepetition Liens (as defined below), the Prepetition Collateral, and Collateral as set forth herein;
 - (g) that this Court hold an interim hearing (the “Interim Hearing”) to consider the relief sought in the Motion and entry of the proposed Interim Order;
 - (h) 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”);
 - (i) waiver of any applicable stay with respect to the effectiveness and enforceability of this Interim Order; and
 - (j) granting related relief.

Upon consideration of (i) the Motion and the exhibits attached thereto, the Approved Budget (as defined below) filed and served by the Debtors, offers of proof, evidence adduced, and the statements of counsel at the Interim Hearing, (ii) the evidentiary record made at the Interim Hearing having been held by the Court on February 15, 2024, and (iii) the *Declaration of Ana Schrank, Chief Financial Officer of Invitae Corporation, in Support of Chapter 11 Filing, First Day Motions, and Access to Cash Collateral* (the “First Day Declaration”); and in accordance with Bankruptcy Rules 2002, 4001(b), (c), and (d), 9014, and all applicable Local Rules, and notice of the Motion and the Interim Hearing having been given in accordance therewith; and it appearing that approval of the interim relief requested in the Motion on the terms and conditions herein is necessary to avoid immediate and irreparable harm to the Debtors pending the Final Hearing and is otherwise fair and reasonable and in the best interests of the Debtors, their creditors and their estates, and essential for the continued operation of the Debtors’ businesses; and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved or overruled by the Court;

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and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

IT IS HEREBY FOUND AND DETERMINED THAT:²

A. ***Petition Date.*** On February 13, 2024 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of New Jersey (the “Court”).

B. ***Debtors in Possession.*** The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107(a) 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. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11 of the United States District Court for the District of New Jersey*, dated July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for these Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Court may enter a final order consistent with Article III of the United States Constitution.

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”).

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.

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E. ***Debtors' Stipulations.*** Without limiting the rights of any other parties in interest specifically set forth in paragraph 19 of this Interim Order (and subject to the limitations thereon contained in such paragraph), the Debtors admit, stipulate and agree that (collectively, paragraphs E(a) through E(e) below are referred to herein as the "Debtors' Stipulations"):

(a) *Secured Notes.*

(i) That certain Indenture, dated as of March 7, 2023 (as amended, amended and restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the "Secured Notes Indenture" and, together with the other "Notes Documents" (as defined in the Secured Notes Indenture), the "Secured Notes Documents"), for the 4.5% Series A Convertible Senior Secured Notes due 2028 (the "Series A Notes") and the 4.5% Series B Convertible Senior Secured Notes due 2028 (the "Series B Notes"; together with the Series A Notes, the "Secured Notes"), by and among Invitae Corporation, as issuer (the "Secured Notes Issuer"), the guarantors party thereto from time to time (the "Secured Notes Guarantors"; together with the Secured Notes Issuer, the "Prepetition Secured Notes Parties"), U.S. Bank Trust Company, National Association, as indenture trustee and collateral agent (including any successors thereto, the "Prepetition Secured Agent").

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(ii) *Prepetition Secured Indebtedness.* As of the Petition Date, the Prepetition Secured Notes Parties were jointly and severally indebted to the holders of the notes issued under the Secured Notes Indenture (the “Prepetition Secured Noteholders”) and the Prepetition Secured Agent (together with the Prepetition Secured Noteholders, the “Prepetition Secured Parties”) pursuant to the Secured Notes Documents, without objection, defense, counterclaim, or offset of any kind, in the aggregate principal amount of approximately \$305.3 million *plus* accrued and unpaid interest with respect thereto and any additional fees, premiums, costs, expenses (including any attorneys’, accountants’, consultants’, appraisers’, financial advisors’, and other professionals’ fees and expenses), reimbursement obligations, indemnification obligations, guarantee obligations, other contingent obligations, and other charges of whatever nature, whether or not contingent, whenever arising, due, or owing, in each case to the extent reimbursable pursuant to the terms of the Secured Notes Documents and all other Obligations (as defined in Secured Notes Indenture) owing under or in connection with the Secured Notes Documents (collectively, “Prepetition Secured Indebtedness”).

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INTERIM ORDER PURSUANT TO SECTIONS 105, 361, 362, 363, 503, AND 507 OF THE BANKRUPTCY CODE AND RULES 2002, 4001, AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE: (I) AUTHORIZING 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

(iii) *Secured Notes Collateral.* In connection with the Secured Notes Indenture, certain of the Debtors entered into the Collateral Documents (as defined in the Secured Notes Indenture). Pursuant to the Collateral Documents and the other Secured Notes Documents and subject to any Permitted Prior Liens, the Prepetition Secured Indebtedness is secured by first-priority security interests in and liens on all of the Collateral (as defined in the Collateral Documents) (the “Prepetition Collateral”) consisting of substantially all of each Prepetition Secured Notes Party’s assets (the “Prepetition Liens”).

(iv) *Validity, Perfection, and Priority of Prepetition Liens and Prepetition Secured Indebtedness.* Each of the Debtors acknowledges and agrees that, in each case as of the Petition Date: (i) the Prepetition Liens encumber all of the Prepetition Collateral, including that held by the Prepetition Secured Notes Parties, as the same existed on the Petition Date; (ii) the Prepetition Liens are valid, binding, enforceable, non-avoidable, and properly perfected liens on and security interests in the Prepetition Collateral held by the Prepetition Secured Notes Parties; (iii) the Prepetition Liens are subject and subordinate only to those valid, enforceable, and non-avoidable liens that are (1) in existence on the Petition Date, (2) either perfected as of the Petition Date or perfected

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INTERIM ORDER PURSUANT TO SECTIONS 105, 361, 362, 363, 503, AND 507 OF THE BANKRUPTCY CODE AND RULES 2002, 4001, AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE: (I) AUTHORIZING 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

subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code, and (3) permitted under the Secured Notes Documents and senior in priority to the Prepetition Liens granted to the Prepetition Secured Parties under and in connection with the Secured Notes Documents in accordance with applicable law (such liens, the “Permitted Prior Liens”); (iv) the Prepetition Liens were granted to or for the benefit of the Prepetition Secured Agent and the other 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 loans and/or commitments and other financial accommodations secured thereby; (v) the Prepetition Secured Indebtedness constitutes legal, valid, binding and non-avoidable obligations of the Debtors, enforceable against them in accordance with their respective terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code); (vi) 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

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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 or regulation including in any cases under Chapter 7 of the Bankruptcy Code upon the conversion of any of these Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the “Successor Cases”); and (vii) the Debtors and their estates have no claims, objections, challenges, causes of action, 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 or applicable state law equivalents, 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 arising out of, based upon, or related to their

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obligations under the Secured Notes Documents, the Prepetition Secured Indebtedness, or the Prepetition Liens.

(b) *Cash Collateral.* Any and all of the Prepetition Secured Notes Parties' cash, including all amounts on deposit or maintained in any banking, checking, or other deposit accounts by the Prepetition Secured Notes Parties, any amounts generated by the collection of accounts receivable or other disposition of the Prepetition Collateral or deposited into the Prepetition Secured Notes Parties' banking, checking, or other deposit accounts, in each case as of or after the Petition Date, and any of the proceeds of any of the foregoing is the Prepetition Secured Parties' Cash Collateral.

(c) *Bank Accounts.* The Debtors acknowledge and agree that, as of the Petition Date, none of the Debtors has either opened or maintains any bank accounts other than the accounts listed in the exhibit attached to any order authorizing the Debtors to continue to use the Debtors' existing cash management system.

(d) *Credit Bids.* Subject to the Secured Notes Documents and to entry of a Final Order, the Prepetition Secured Agent (at the direction of the Prepetition Secured Noteholders constituting Required Holders as defined in the Secured Notes Indenture) shall have the rights granted pursuant to and consistent with section 363(k) of the Bankruptcy Code with respect to any credit bidding of the Prepetition Secured Indebtedness on which they have Prepetition Liens or Adequate Protection Liens (as defined below). No Debtor or Debtor's affiliate shall object to any Prepetition Secured Agent's or Prepetition Secured Party's right to

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credit bid up to the full amount of Prepetition Secured Indebtedness, in each case including, without limitation, any accrued interest and expenses, in any sale, as applicable, whether such sale is effectuated through Bankruptcy Code section 363, in a chapter 11 or chapter 7 proceeding, under Bankruptcy Code section 1129, by a chapter 7 or chapter 11 trustee, or otherwise, subject to applicable law.

(e) *No Control.* None of the Prepetition Secured Parties (including in connection with the Transaction Support Agreement) controls the Debtors or their properties or operations, has authority to determine the manner in which any Debtors' operations are conducted, or is a control person or insider of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to or arising from this Interim Order, the Secured Notes Indenture or the Secured Notes Documents.

F. ***Adequate Protection.*** The Prepetition Secured Noteholders and the Debtors have negotiated in good faith regarding the Debtors' use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtors' estates and continued operation of their businesses in accordance with the terms hereof. The Prepetition Secured Parties are entitled, pursuant to sections 105, 361, 362 and 363(e) of the Bankruptcy Code, as a condition for the use of their Prepetition Collateral, including the Cash 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 as of the Petition Date resulting from the Debtors' use, sale, or lease of the Prepetition Collateral (including

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Cash Collateral), the grant of a lien under section 364 of the Bankruptcy Code, and/or the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code (“Diminution in Value”). The foregoing shall not, nor shall any other provision of this Interim Order be construed as, a determination or finding that there has been or will be any Diminution in Value of Prepetition Collateral (including Cash Collateral) and the rights of all parties as to such issues are hereby preserved.

G. ***Need to Use Cash Collateral.*** The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-3 and have an immediate need to obtain use of the Prepetition Collateral, including the Cash Collateral (subject to and in compliance with the Approved Budget (as defined below)), in order to, among other things, (i) conduct a sale of all or some of the Debtors’ assets and/or equity in accordance with that certain Transaction Support Agreement, dated as of February 13, 2024 (the “Transaction Support Agreement”), by and among, *inter alios*, the Debtors and the Prepetition Secured Noteholders party thereto, (ii) continue their operations, for working capital purposes, other general corporate purposes of the Debtors, and (iii) to satisfy in full the costs and expenses of administering the Cases and preserving the value of their estates during the Cases. The ability of the Debtors to obtain liquidity through the use of the Cash Collateral 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. Sufficient cause exists for

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immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-3(a).

H. **Notice.** Notice of the Motion and the hearing thereon was provided pursuant to Bankruptcy Rules 2002, 4001(b) and (d), and 9006 and Local Rule 4001-3, as required by sections 361 and 363 of the Bankruptcy Code and the Local Rules. Except as provided herein with respect to notice of the Final Hearing and Final Order, no further notice of, or hearing on, the relief sought in the Motion is necessary or required. The Debtors have represented that notice of the Interim Hearing and the relief requested in the Motion has been provided by the Debtors, by email, overnight courier and/or hand delivery, to: (a) the office of the U.S. Trustee for the District of New Jersey (the “U.S. Trustee”); (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Prepetition Secured Agent; (d) Sullivan & Cromwell LLP, as counsel to a certain holder of a majority of the Secured Notes constituting the Required Holders (under and as defined in the Secured Notes Indenture) (the “Required Holders”); (e) Wollmuth Maher & Deutsch LLP, as counsel to the Required Holders; (f) the office of the attorney general for each of the states in which the Debtors operate; (g) the United States Attorney’s Office for the District of New Jersey; (h) the Internal Revenue Service; (i) the Prepetition Secured Parties; and (j) all other parties entitled to notice pursuant to Local Rule 9013-5(c).

I. **Consent.** The Required Holders constitute “Required Holders” as defined in the Secured Notes Indenture. To the extent required, the Required Holders have consented to the

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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) and Local Rule 4001-3. 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' businesses 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.

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 Required Holders. The Required Holders have acted without negligence or violation of public policy or law in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the use of Cash Collateral, including in respect of the granting of the Adequate Protection Liens and all documents related to and all transactions contemplated by the foregoing.

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,

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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, settled or otherwise resolved and all reservations of rights included therein, are hereby denied and overruled with prejudice.

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' use of Cash Collateral during the period beginning with the Petition Date and ending on a Termination Date (as defined below), in each case, solely and exclusively in a manner consistent with this Interim Order and the Approved Budget, and for no other purposes. Notwithstanding anything herein to the contrary, subject only to the Debtors' rights under paragraph 8(a) hereof and the Carve Out, the Debtors' right to use Cash Collateral shall terminate on the Termination Date.

(b) ***Approved Budget; Budget Period.*** Except as otherwise provided herein, the Debtors may only use Cash Collateral in accordance with the budget prepared by the Debtors attached hereto as **Exhibit 1** (the "Initial Budget") as may be amended, replaced, extended, supplemented, or otherwise modified in accordance with the terms of this Interim

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Order or by the Required Holders (such budget, including the Initial Budget, the “Approved Budget”) subject to permitted variances as set forth below. On the Friday of the first full calendar week after the Petition Date, and each two weeks thereafter, the Debtors shall deliver an updated budget to the Prepetition Secured Agent, counsel to the Prepetition Secured Agent, as advisors to the Prepetition Secured Agent (the “Prepetition Secured Agent Advisors”), the Required Holders, Sullivan & Cromwell, LLP, Wollmuth Maher & Deutsch LLP, Perella Weinberg Partners L.P., as advisors to the Required Holders (the “Required Holders Advisors”) and, together with the Prepetition Secured Agent, the Prepetition Secured Agent Advisors, the Required Holders, and counsel to any statutory committees appointed in these Cases, the “Notice Parties”), in form and substance satisfactory to the Required Holders in their sole discretion.

(c) *Budget Testing.* On the Friday of the first full calendar week after the Petition Date, and each week thereafter, the Debtors shall deliver a budget variance report/reconciliation (the “Variance Report”) to the Notice Parties, in form and substance reasonably satisfactory to the Notice Parties, showing for the prior two-week period ending on the Friday immediately prior (each such period, a “Test Period”) (except that no such reporting shall be required for the week ending February 16, 2024, such that the first Test Period for the Variance Report delivered on March 1, 2024 will cover the period from the week ending February 16, 2024 through February 23, 2024). For the avoidance of doubt, the reporting schedule is detailed in Exhibit 2 – “Testing Cadence”, attached herein. The Variance Report

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will include (i) the variance (as compared to the applicable Approved Budget) of actual cash receipts (on a line item by line item basis) of the Debtors for the applicable Test Period, (ii) the variance (as compared to the applicable Approved Budget) of the disbursements (on a line item by line item basis) made by the Debtors set forth in the Approved Budget for the applicable Test Period, and (iii) an explanation, in reasonable detail, for any material variances (on a line item basis) set forth in such Variance Report, certified by an authorized officer of the Debtors. Commencing with the first full calendar week after the Petition Date, the Debtors shall not permit (i) a total receipts variance for any Test Period to have a negative variance in excess of 12.5% (with negative variance meaning, for the avoidance of doubt, that actual receipts are less than projected receipts) or (ii) a total disbursements variance for any Test Period to have a negative variance in excess of 12.5% (with negative variance meaning, for the avoidance of doubt, that actual disbursements are greater than the projected disbursements on a line-item basis); *provided* that, (1) any positive receipts variance may be used to offset any negative disbursements variance for such Test Period or carried over to the immediately subsequent (but not any other) Test Period, and (2) any positive disbursements variance may be used to offset any negative receipts variance for such Test Period or carried over to the immediately subsequent (but not any other) Test Period. 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 (such excluded cash disbursements, the "Restructuring Professional Fees"). Debtors shall provide notice of the occurrence of the

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Debtors' unrestricted cash and cash equivalents ("Liquidity") falling below \$56,700,000 (the "Minimum Liquidity Amount") at the end of any week and the amount of such Liquidity as of such time.

(d) *Proposed Budget Updates.* On or before the second (2nd) day before the end of each Test Period, the Debtors shall deliver to the Notice Parties and the U.S. Trustee a rolling 13-week cash flow forecast of the Debtors substantially in the format of the initial Approved Budget (each, a "Proposed Budget"), which Proposed Budget (including any subsequent revisions to any such Proposed Budget), shall become the Approved Budget effective the subsequent Test Period *unless* the Required Holders notify the Debtors of any reasonable objection to the Proposed Budget within four (4) business days after receipt of the Proposed Budget (the "Approval Deadline"). For the avoidance of doubt, the Debtors' use of Cash Collateral shall be governed by the then-existing Approved Budget (x) at all times prior to the earlier of (i) the Required Holders' approval of the Proposed Budget in accordance with this paragraph and (ii) the Approval Deadline; and (y) during the pendency of any unresolved objection by the Required Holders to the Proposed Budget.

(e) *Miscellaneous.* For the avoidance of doubt, except as otherwise set forth in the Approved Budget, Cash Collateral may not be used (i) by any non-Debtor entity, or (ii) to pay any expense of any non-Debtor entity, in each case, except as necessary to satisfy trade claims against non-Debtor entities in the ordinary course of the Debtors' and non-Debtors' business and consistent with the historical practices of such entities and the

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Approved Budget.

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, solely for and equal in amount to the Diminution in Value of the Prepetition Collateral (including Cash Collateral), the Prepetition Secured Agent, for its benefit and the other Prepetition Secured Parties, is hereby granted the following:

(a) ***Adequate Protection Liens.*** Pursuant to sections 361(2) and 363(c)(2) of the Bankruptcy Code, solely to the extent of any Diminution in Value of the Prepetition Secured Parties' interests in the Prepetition Collateral and subject in all cases to the Carve Out, effective upon entry of this Interim Order 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, the Debtors are authorized to grant, and hereby deemed to have granted, to the Prepetition Secured Agent, for the benefit of itself and the other Prepetition Secured Parties, valid, binding, continuing, enforceable, fully-perfected, nonavoidable, first-priority senior (except as otherwise provided in this paragraph 4(a) below with respect to the Permitted Prior Liens), additional and replacement security interests in and liens on (all such liens and security interests, the "Adequate Protection Liens") (i) the Prepetition Collateral and

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(ii) all of the Debtors' other now-owned and hereafter-acquired real and personal property, assets and rights of any kind or nature, wherever located, whether encumbered or unencumbered, including, without limitation, all prepetition property and postpetition 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, all goods, all 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, equity interests, intercompany claims, accounts receivable, other rights to payment, all general intangibles, contracts, securities, 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, claims and causes of action, and any and all proceeds, products, rents, and profits of the foregoing (all property identified in this paragraph 4(a) being collectively referred to as the "Collateral"), subject only to the Carve Out and any Permitted Prior Liens, in which case the Adequate Protection Liens shall be immediately junior in priority to any such Permitted Prior Liens and to the Carve Out; notwithstanding the foregoing, the Collateral shall exclude all claims and causes of action arising under any section of chapter 5 of the Bankruptcy Code or applicable state law equivalents (the "Avoidance Actions"), but, subject to entry of a Final Order, shall include proceeds of and other property that is recovered or becomes unencumbered as a result of (whether by judgment, settlement, or otherwise) any Avoidance Actions.

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(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, including subject to the priorities set forth therein, the Debtors are authorized to grant, and hereby deemed to have granted effective upon entry of this Interim Order, to the Prepetition Secured Agent, for the benefit of itself and the other Prepetition Secured Parties, allowed superpriority administrative expense claims in each of the Cases ahead of and senior to any and all other administrative expense claims in such Cases to the extent of, and in an aggregate amount equal to, any Diminution in Value (the “Adequate Protection Superpriority Claims”), but junior to the Carve Out. Subject to the Carve Out, the Adequate Protection Superpriority Claims will not be junior to any claims and shall have priority over all administrative expense claims and other claims against each of the Debtors, now existing or hereafter arising, of any kind or nature whatsoever, 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) (subject to entry of the Final Order), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code to the extent of, and in an aggregate amount equal to, any Diminution in Value.

(c) *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.

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(d) *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 [Docket No. 10].

(e) *Fees and Expenses.* As additional adequate protection, the Debtors shall, and are directed to, pay (i) postpetition monthly interest payments in cash to the Prepetition Secured Agent, on behalf of the Prepetition Secured Parties, in an amount equal to the accrued and unpaid interest at the non-default interest rate and as otherwise provided under the Secured Notes Indenture (including, for the avoidance of doubt, payment of all prepetition accrued and unpaid interest under the Secured Notes Indenture); (ii) within ten (10) days after the Debtors' receipt of invoices therefor, the reasonable and documented professional fees, expenses and disbursements (including, but not limited to, the expenses and disbursements of counsel and other third-party consultants, including financial advisors), arising prior to the Petition Date, incurred by the Prepetition Secured Agent (including reasonable and documented fees, expenses and disbursements incurred by the Prepetition Secured Agent Advisors) and the Required Holders (including reasonable and documented fees, expenses and disbursements incurred by the Required Holders Advisors and Hogan Lovells US LLP, as counsel to the Required Holders); and (iii) subject to paragraph 25, on a monthly basis, within ten (10) days of the Debtors' receipt of invoices therefor, which may be sent by email to Debtors' counsel, the reasonable and documented fees, expenses and disbursements (including, but not limited to, the reasonable and documented fees, expenses and disbursements

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of the Prepetition Secured Agent, the Prepetition Secured Agent Advisors, the Required Holders Advisors, Hogan Lovells US LLP, and any conflicts counsel or other legal counsels necessary to represent the interests of the Prepetition Secured Parties (collectively, the “Prepetition Secured Party Professionals”) incurred by the Prepetition Secured Parties), arising subsequent to the Petition Date through the date on which the Debtors’ authority to use Cash Collateral terminates in accordance with this Interim Order. None of the foregoing reasonable and documented 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. Any payments made pursuant to this paragraph 4(e) shall be without prejudice to whether any such payments should be recharacterized or reallocated pursuant to section 506(b) of the Bankruptcy Code as payments of principal, interest or otherwise.

(f) *Miscellaneous.* Except for (i) the Carve Out and (ii) as otherwise provided in this paragraph 4, the Adequate Protection Liens and Adequate Protection Superpriority Claims granted to the Prepetition Secured Parties pursuant to this paragraph 4 of this Interim Order shall not be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors’ estates under section 551 of the Bankruptcy Code and shall not be subordinated to or made *pari passu* with any lien, security interest or administrative claim under section 364 of the Bankruptcy Code or otherwise.

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5. ***Carve Out.***

(a) Carve Out. As used in this Interim Order, the “Carve Out” means the sum of (i) all fees required to be paid to the Clerk of the Court and to the U.S. Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (iii) below); (ii) all reasonable fees and expenses up to \$50,000 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 unpaid fees and expenses (the “Allowed Professional Fees”) incurred by persons or firms retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (the “Debtor Professionals”) and the Committee pursuant to section 328 or 1103 of the Bankruptcy Code (the “Committee Professionals” and, together with the Debtor Professionals, the “Professional Persons”) at any time before the date of delivery of the Carve Out Trigger Notice (as defined below) by the Required Holders or the Prepetition Secured Agent (at the direction of the Required Holders), whether allowed by the Court prior to or after delivery of a Carve Out Trigger Notice; and (iv) Allowed Professional Fees of Professional Persons in an aggregate amount not to exceed \$2,500,000 incurred on or after the date of delivery of the Carve Out Trigger Notice by the Required Holders or the Prepetition Secured Agent (at the direction of the Required Holders), to the extent allowed at any time, whether by interim order, procedural order, or otherwise (the amounts set forth in this clause (iv) being the “Post-Carve Out Trigger Notice Cap”). For purposes of the foregoing, “Carve Out Trigger Notice” shall mean a written notice

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delivered by email (or other electronic means) by the Required Holders or the Prepetition Secured Agent (at the direction of the Required Holders) to the Debtors, their lead restructuring counsel, the U.S. Trustee, and counsel to the Committee (if any), which notice may be delivered following the occurrence and during the continuation of a Termination Event and upon termination of the Debtors' right to use Cash Collateral by the Prepetition Secured Noteholders, stating that the Post-Carve Out Trigger Notice Cap has been invoked.

(b) Carve Out Reserves. On the day on which a Carve Out Trigger Notice is given by the Required Holders or the Prepetition Secured Agent (at the direction of the Required Holders) to the Debtors with a copy to counsel to the Committee (if any) and the U.S. Trustee (the "Termination Declaration Date"), the Carve Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the then unpaid amounts of the Allowed Professional Fees. The Debtors shall deposit and hold such amounts in a segregated account in trust to pay such then unpaid Allowed Professional Fees (the "Pre-Carve Out Trigger Notice Reserve") prior to any and all other claims. On the Termination Declaration Date, after funding the Pre-Carve Out Trigger Notice Reserve, the Debtors shall utilize all remaining cash on hand as of such date and any available cash thereafter held by any Debtor to fund a reserve in an amount equal to the Post-Carve Out Trigger Notice Cap (the "Post-Carve Out Trigger Notice Reserve") and, together with the Pre-Carve Out Trigger Notice Reserve, the "Carve Out Reserves") prior to any and all other claims. All funds in the Pre-Carve Out Trigger Notice Reserve shall be used first

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to pay the obligations set forth in clauses (i) through (iii) of the definition of Carve Out set forth above (the “Pre-Carve Out Amounts”), but not, for the avoidance of doubt, the Post-Carve Out Trigger Notice Cap, until paid in full, and then, to the extent the Pre-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition Secured Agent for the benefit of the Prepetition Secured Noteholders, unless the Secured Notes has been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Debtors’ creditors in accordance with their rights and priorities as of the Petition Date. All funds in the Post-Carve Out Trigger Notice Reserve shall be used first to pay the obligations set forth in clause (iv) of the definition of Carve Out set forth above (the “Post-Carve Out Amounts”), and then, to the extent the Post-Carve Out Trigger Notice Reserve has not been reduced to zero, to pay the Prepetition Secured Agent for the benefit of the Prepetition Secured Noteholders, unless the Secured Notes has been indefeasibly paid in full, in cash, in which case any such excess shall be paid to the Debtors’ creditors in accordance with their rights and priorities as of the Petition Date. Notwithstanding anything to the contrary in the Secured Notes Documents, or this Interim Order, if either of the Carve Out Reserves is not funded in full in the amounts set forth in this paragraph 5, then, any excess funds in one of the Carve Out Reserves following the payment of the Pre-Carve Out Amounts and Post-Carve Out Amounts, respectively, shall be used to fund the other Carve Out Reserve, up to the applicable amount set forth in this paragraph 5, prior to making any payments to the Prepetition Secured Agent or any of the Debtors’ creditors, as applicable. Notwithstanding anything to the contrary in the Secured Notes Documents or this Interim Order, following delivery of a Carve Out Trigger

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Notice, the Prepetition Secured Agent 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 Carve Out Reserves have been fully funded, but shall have a security interest in any residual interest in the Carve Out Reserves, with any excess paid to the Prepetition Secured Agent for application in accordance with the Secured Notes Documents. Further, notwithstanding anything to the contrary in this Interim Order, (i) disbursements by the Debtors from the Carve Out Reserves shall not constitute Secured Notes (as defined in the Prepetition Notes Documents) or increase or reduce the Secured Notes, (ii) the failure of the Carve Out Reserves to satisfy in full the Allowed Professional Fees shall not affect the priority of the Carve Out, and (iii) in no way shall the Initial Budget, Budget, Carve Out, Post-Carve Out Trigger Notice Cap, Carve Out Reserves, 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. For the avoidance of doubt and notwithstanding anything to the contrary in this Interim Order or in any Secured Notes Documents, the Carve Out shall be senior to all liens and claims securing the Prepetition Collateral, the Adequate Protection Liens, and the 507(b) Claim, and any and all other forms of adequate protection, liens, or claims securing the Secured Notes.

(c) Payment of Allowed Professional Fees Prior to the Termination Declaration Date. Any payment or reimbursement made prior to the occurrence of the Termination Declaration Date in respect of any Allowed Professional Fees shall not reduce the Carve Out.

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(d) *No Direct Obligation To Pay Allowed Professional Fees.* Subject to the terms of the Transaction Support Agreement, the Prepetition Secured Agent and the other Prepetition Secured Parties reserve the right to object to the allowance of any fees and expenses, whether or not such fees and expenses were incurred in accordance with the Approved Budget. Except for permitting the funding of the Carve Out Reserves as provided herein, none of the Prepetition Secured Noteholders 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 these Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the Prepetition Secured Noteholders, 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.

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

6. ***Access and Information.*** In addition to, and without limiting, whatever rights to access the Prepetition Secured Parties have under the Secured Notes Indenture, upon reasonable prior written notice (including via acknowledged electronic mail) during normal business hours, the Debtors shall permit the Prepetition Secured Agent Advisors, the Required Holders, and the

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Required Holders Advisors (each of which is bound by obligations of confidentiality pursuant to a separate confidentiality agreement entered into with the Debtors) to have access to such information regarding the operations, business affairs and financial condition of the Borrower or any of its subsidiaries, or compliance with the terms of any Secured Notes Document as the Prepetition Secured Agent (acting on behalf of itself or any applicable Prepetition Secured Party), the Required Holders, or the Required Holders Advisors may reasonably request, and it being understood that nothing in this paragraph 6 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 herein) and paragraph 5, the Debtors' right to use the 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 Events" means any of the events set forth in clauses (a) through **Error! Reference source not found.** below (each such events a "Termination Event"):

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

(b) The violation of any term of this Interim Order by the Debtors that is not cured within five (5) business days of receipt by the Debtors, counsel for the Committee, and the U.S. Trustee of notice of such default, violation or breach (which may be provided to the Debtors, counsel for the Committee, and the U.S. Trustee by email);

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(c) Entry of any order modifying, reversing, revoking, staying for a period in excess of five (5) business days, rescinding, vacating, or amending this Interim Order without the express written consent of the Required Holders;

(d) Any of the Cases is dismissed (other than following the effective date of a chapter 11 plan) or converted to a case under chapter 7 of the Bankruptcy Code, without the express written consent of the Required Holders, or a trustee under chapter 11 of the Bankruptcy Code or an examiner is appointed in any of the Cases, or any of the Debtors seeks entry of an order accomplishing any of the foregoing;

(e) An order is entered granting another claim or lien (except for the Permitted Prior Liens) *pari passu* with or senior to except as provided under this Interim Order, the Prepetition Liens, Adequate Protection Liens or the Adequate Protection Superpriority Claims granted to the Prepetition Secured Parties under this Interim Order;

(f) Any motion, pleading, or proceeding is filed or is commenced by any Debtor seeking, or otherwise consenting to or supporting, (i) 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 (ii) any relief under section 506(c) of the Bankruptcy Code with respect to any Prepetition Collateral or any Collateral, including the Cash Collateral, or against any of the Prepetition Secured Parties; *provided* that if the Debtors provide any response to any third-party discovery request or may make a witness available for deposition, such action shall not be a violation of this clause (f);

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(g) Any Debtor files a motion, pleading, or proceeding that would, if the relief sought therein were granted, result in a Termination Event (other than a Termination Event under this paragraph 7(g)), and such motion, pleading, or proceeding is not dismissed or withdrawn (as applicable) within five (5) business days after receipt by the Debtors, counsel to the Committee (if any), and the U.S. Trustee of notice (which may be by email) that the Required Holders have determined that such motion, pleading, or proceeding, if the relief sought therein were granted, would give rise to such a Termination Event; *provided* that if the Debtors receive the written consent of the Required Holders to file such motion, pleading, or proceeding than such action shall not be a violation of this clause (g);

(h) The entry by this Court of an order granting relief from or modifying the automatic stay imposed by section 362 of the Bankruptcy Code to any entities other than the Prepetition Secured Parties with respect to the Prepetition Collateral or the Collateral (except for the Permitted Liens) with a value in excess of \$500,000 without the written consent of the Required Holders;

(i) The failure by the Debtors to make any payment required pursuant to this Interim Order when due; *provided* that such failure remains uncured for at least five (5) business days following a written notice from the Required Holders (which may be by email);

(j) The failure by the Debtors to deliver to any of the Notice Parties any of the documents or other information reasonably required to be delivered to such applicable party pursuant to this Interim Order within five (5) days following a request therefor from any of

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the Notice Parties pursuant to the terms of this Interim Order; or any such documents or other information shall contain a material misrepresentation; *provided* that, such misrepresentation remains uncured for at least five (5) business days following written notice thereof from any of the Prepetition Secured Agent;

(k) The Debtors' failure to comply with an Approved Budget except with respect to Permitted Variances or the Debtors' failure at the end of any week to maintain Liquidity in an amount equal to or greater than the Minimum Liquidity Amount;

(l) The failure of the Debtors to observe or perform any of the material terms or material provisions contained herein, *provided* that such failure remains uncured for at least five (5) business days following written notice thereof from any of the Prepetition Secured Agent;

(m) The entry of an order granting relief from the automatic stay imposed by section 362 of the Bankruptcy Code authorizing any party to exercise remedies against any asset of the Debtors without which the Debtors' ability to operate their business in the ordinary course would be materially and adversely affected; and

(n) The occurrence of a "Consenting Stakeholder Termination Event" under the Transaction Support Agreement, unless waived by the Required Holders.

8. ***Remedies after the Termination Date.***

(a) Notwithstanding anything contained herein, the Debtors' authorization to use Cash Collateral hereunder shall automatically terminate (except for purposes of funding

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the Carve Out, as provided in paragraph 5) on the date (such date, the “Termination Date”) that is the earlier of (i) 5:00 p.m. on the date that is 145 days from the Petition Date, (ii) the effective date of any chapter 11 plan with respect to the Debtors confirmed by the Court, (iii) the occurrence of a Termination Event under paragraph 7(a), (c) or (d) of this Interim Order, or (iv) five (5) business days from the Termination Declaration Date (which notice may be given by electronic mail (or other electronic means)) by the Required Holders to counsel to the Debtors, counsel to the Committee (if any), and the U.S. Trustee (the “Termination Declaration,” and such period commencing on the Termination Declaration Date and ending five (5) business days later, the “Remedies Notice Period”); *provided* that, until expiration of the Remedies Notice Period, the Debtors may continue to use Cash Collateral to make payments in respect of expenses critical to keep the business of the Debtors operating in accordance with the Approved Budget; and *provided, further*, that the Debtors may continue to use Cash Collateral during or after expiration of the Remedies Notice Period solely to the extent necessary to fund the Carve Out Reserves subject to paragraph 5 hereof. The automatic stay in the Cases otherwise applicable to the Prepetition Secured Parties is hereby modified so that upon the occurrence of the Termination Date, the Prepetition Secured Agent shall, subject to the Remedies Notice Period, be entitled to exercise their rights and remedies in accordance with the Secured Notes Documents and this Interim Order with respect to the Debtors’ use of Cash Collateral, subject and subordinate to the Carve Out. For the avoidance of doubt, during

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the Remedies Notice Period, unless otherwise ordered by the Court, the automatic stay under section 362 of the Bankruptcy Code shall remain in effect.

(b) During the Remedies Notice Period, if applicable, the Debtors, the Committee (if any), and/or any party in interest shall be entitled to seek an emergency hearing with the Court with respect to any relevant matters as determined by the Court; *provided, however,* that nothing herein limits the Court's ability to hear other matters it deems appropriate at such hearing; *provided, further,* that if a hearing to consider the foregoing is requested to be heard before the end of the Remedies Notice Period but is scheduled for a later date by the Court, the Remedies Notice Period shall be automatically extended to the date of such hearing, but in no event later than eight (8) business days after delivery of the Termination Declaration unless a further extension is agreed to consensually. Upon expiration of the Remedies Notice Period, if applicable, the Required Holders shall be permitted to exercise all remedies set forth herein, in the Secured Notes Documents, and as otherwise available at law or in equity without further order of or application or motion to this Court consistent with this Interim Order, subject and subordinate to the Carve Out.

(c) Nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing on any request by the Debtors or other party in interest to re-impose or continue the automatic stay under Bankruptcy Code section 362(a), use Cash Collateral, or to obtain any other injunctive relief. Any delay or failure of the Required Holders to exercise rights under the Secured Notes Documents or this Interim Order

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shall not constitute a waiver of their respective rights hereunder, thereunder or otherwise. 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 a Termination Declaration.

9. ***Payments Free and Clear.*** Pursuant to the provisions of this Interim Order (including the Carve Out), any and all payments or proceeds remitted to the Prepetition Secured Agent for the benefit of itself and the other Prepetition Secured Parties, pursuant to the provisions of this Interim Order or any subsequent order of this Court shall be irrevocable (subject to paragraphs 4(d) and 19 of this Interim Order), received free and clear of any claim, charge, assessment or other liability, including without limitation, subject to entry of the Final Order, any such claim or charge arising out of or based on, directly or indirectly, Bankruptcy Code section 506(c) (whether asserted or assessed by, through or on behalf of the Debtor) or 552(b).

10. ***Limitation on Charging Expenses Against Collateral.*** Subject to entry of the Final Order, all rights to surcharge the interests of the Prepetition Secured Parties in any Prepetition Collateral or any Collateral under section 506(c) of the Bankruptcy Code or any other applicable principle or equity or law shall be and are hereby finally and irrevocably waived, and such waiver shall be binding upon the Debtors and all parties in interest in the Cases.

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11. ***Section 507(b) Reservation.*** 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 Agent or the other Prepetition Secured Parties hereunder is insufficient to compensate for any Diminution in Value of their respective interests in the Prepetition Collateral (including Cash Collateral) during the Cases or any Successor Case.

12. ***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, or to appear and be heard in any matter raised in the Cases to the extent consistent with the Transaction Support Agreement, and (b) any and all rights, remedies, claims and causes of action which the Prepetition Secured Parties may have against any non-Debtor party liable for the Prepetition Secured Indebtedness. For all adequate protection purposes throughout the Cases, each of the Prepetition Secured Parties shall be deemed to have requested relief from the automatic stay and 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.

13. ***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 reasonably 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.

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14. ***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 pursuant hereto 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. The terms and provisions of and the priorities in payments, liens, and security interests granted pursuant to, this Interim Order, shall continue notwithstanding any conversion of any of the Cases to a case under chapter 7 of the Bankruptcy Code, or the dismissal of any of the Cases. Subject to the limitations described in paragraphs 4(d) and 19 of this Interim Order, payments made pursuant to this Interim Order shall not be subject to counterclaim, setoff, subordination, recharacterization, defense or avoidance in any of the Cases or any Successor Case.

15. ***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.

16. ***Release.*** Subject to the rights and limitations set forth in paragraph 19 of this Interim Order, and subject to entry of the Final Order, each of the Debtors and the Debtors' estates, on its own behalf and on behalf of each of their predecessors, their successors, and assigns, shall, to the maximum extent permitted by applicable law, 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,

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former, current, or future officers, employees, directors, agents, representatives, owners, members, partners, financial and other advisors and consultants, legal advisors, shareholders, managers, consultants, accountants, attorneys, affiliates and assigns, and predecessors and successors 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 Secured Notes, the Prepetition Liens, the Prepetition Secured Indebtedness, the Secured 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.

17. ***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.

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18. ***Reversal, Stay, Modification or Vacatur.*** In the event the provisions of this Interim Order are reversed, stayed, modified or vacated by court order following notice and any further hearing, such reversals, modifications, stays or vacatur shall not affect the rights and priorities of the Prepetition Secured Parties granted pursuant to this Interim Order. Notwithstanding any such reversal, stay, modification or vacatur by court order, any indebtedness, obligation or liability incurred by the Debtors pursuant to this Interim Order arising prior to the Required Holders' receipt of notice of the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Interim Order, and the Prepetition Secured Parties shall continue to be entitled to all of the rights, remedies, privileges and benefits, including any payments authorized herein and the security interests and liens granted herein, with respect to all such indebtedness, obligation or liability, and the validity of any payments made or obligations owed or credit extended or lien or security interest granted pursuant to this Interim Order is and shall remain subject to the protection afforded under the Bankruptcy Code.

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

(a) Subject to the Challenge Period (as defined below), the stipulations, admissions, waivers, and releases contained in this Interim Order, including the Debtors' Stipulations, shall be binding upon the Debtors, their estates, and any of their respective successors, including, without limitation, any chapter 7 or chapter 11 trustee (a "Trustee") appointed in any Successor Cases, responsible person, examiner with expanded powers, or other estate representative, and the Debtors are deemed to have irrevocably waived and

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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, shall be binding upon all other parties in interest, including the Committee (if any) and any other person acting on behalf of the Debtors' estates, unless and to the extent that (i) a party in interest (other than any Debtor or successor thereto, but including any Trustee) with proper standing to do so, has timely and properly (A) objects to or challenges the findings or Debtors' Stipulations regarding (I) the validity, enforceability, extent, priority, or perfection of the mortgages, security interests, and liens of any of the Prepetition Secured Parties, or (II) the validity, enforceability, allowability, priority, secured status, or amount of the Prepetition Secured Indebtedness (any such claim, a "Challenge") by commencing an adversary proceeding or contested matter, as required under the Bankruptcy Rules (subject in either case to the limitations contained herein, including, *inter alia*, in this paragraph), and setting forth with particularity the basis for such Challenge, by the date that is sixty (60) days from the date of entry of this Interim Order; *provided* that if a Committee is appointed prior to the expiration of such sixty (60) day period, such Committee shall have until the date that is sixty (60) calendar days after its appointment, except in no event shall the deadline described above extend beyond the first day of any hearing held in these Cases to consider confirmation of a chapter 11 plan for the Debtors (a "Challenge Period" and, the date of expiration of each Challenge Period, a "Challenge Period Termination Date"); and (ii) the Court enters a final order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary

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proceeding or contested matter, which is no longer subject to appeal; *provided*, that the timely filing of a motion seeking standing to file a Challenge before the expiration of the Challenge Period, which attaches a draft complaint setting forth the legal and factual bases of the proposed Challenge, shall toll the Challenge Period only as to the party that timely filed such standing motion until such standing motion is resolved or adjudicated by the Court. If a chapter 7 trustee or a chapter 11 trustee is appointed or elected during the Challenge Period, then the Challenge Period Termination Date with respect to such trustee only, shall be the later of (i) the last day of the Challenge Period and (ii) the date that is fifteen (15) calendar days after the date on which such trustee is appointed or elected.

(b) To the extent the stipulations, admissions, waivers and releases contained in this Interim Order, including the Debtors' Stipulations, are (x) not subject to a Challenge timely and properly commenced prior to the expiration of the Challenge Period Termination Date or (y) subject to a Challenge timely and properly commenced prior to the expiration of the Challenge Period Termination Date, but such Challenge does not result in a final and nonappealable judgment or order of the Court that is inconsistent with the stipulations, admissions, waivers and releases contained in this Interim Order, including the Debtors' Stipulations, then, without further notice, motion, or application to, or order of, or hearing before, this Court and without the need or requirement to file any proof of claim: (i) any and all such Challenges by any party (including the Committee, any chapter 11 trustee, and/or any examiner or other estate representative appointed or elected in these Cases, and any

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chapter 7 trustee and/or examiner or other estate representative appointed or elected in any Successor Case) shall be deemed to be forever, waived, released, and barred; (ii) the Prepetition Secured Indebtedness shall constitute allowed claims, not subject to counterclaim, setoff, recoupment, reduction, subordination, recharacterization, defense, or avoidance for all purposes in the Debtors' Cases and any Successor Case; (iii) the Prepetition Liens shall be deemed to have been, as of the Petition Date, legal, valid, binding, and perfected secured claims, not subject to recharacterization, subordination, or avoidance; and (iv) all of the Debtors' stipulations, admissions, waivers and releases 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 Case.

(c) If a Challenge is timely and properly filed under the Bankruptcy Rules and remains pending and the Cases are converted to chapter 7, the chapter 7 trustee may continue to prosecute such Challenge on behalf of the Debtors' estates, as applicable. Furthermore, if any such Challenge is timely and properly filed under the Bankruptcy Rules, the stipulations, admissions, waivers and releases contained in this Interim Order, including the Debtors' Stipulations, shall nonetheless remain binding and preclusive on any Committee, Trustee, and any other person or entity except to the extent that such stipulations and

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admissions were expressly challenged in such timely and properly filed Challenge prior to the Challenge Period Termination Date and determined by final order of the Court to be disallowed. 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 Secured Notes Documents, the Prepetition Liens, and the Prepetition Secured Indebtedness, and a separate order of the Court 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.

20. ***Limitation on Use of Collateral and Cash Collateral.*** Notwithstanding anything to the contrary set forth in this Interim Order, but subject to the proviso below in this paragraph 20, none of the Collateral, the Prepetition Collateral, including Cash Collateral, or the Carve Out or proceeds thereof may be used for the payment of professional fees, disbursements, costs, or expenses incurred by any person: (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 (i) against any of the Prepetition Secured Parties (in their capacities as such), and each of their respective affiliates, officers, directors, employees, members, managers, partners, agents,

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representatives, attorneys, consultants, financial advisors, affiliates, assigns, or successors, 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 that would impair the rights and remedies of the Prepetition Secured Parties under the Secured Notes Documents or this Interim Order, 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 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 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’ respective Prepetition Liens or security interests in the Collateral or Prepetition Collateral, as applicable; or (iii) for monetary, injunctive, or other affirmative relief against any of the Prepetition Secured Parties, or the Prepetition Secured Parties’ respective liens on or security interests in the Collateral or the Prepetition 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;

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(b) for objecting to or challenging in any way the legality, validity, priority, perfection, or enforceability of the claims, liens, or interests (including 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 the Prepetition Secured Indebtedness or the Prepetition Liens; or (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; *provided*, that notwithstanding the foregoing, an aggregate of \$50,000 of Cash Collateral may be used for the payment of professional fees, disbursements, costs, or expenses incurred by any Committee to investigate potential Challenges.

21. ***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 effective as of the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rule 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.

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

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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

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for the filing of proofs of claim or requests for payment of administrative expenses under section 503(b) of the Bankruptcy Code, neither the Prepetition Secured Agent nor any Prepetition Secured Party shall be required to file any proof of claim or request for payment of administrative expenses with respect to any of the Prepetition Secured Indebtedness or any claims (including, without limitation, Adequate Protection Superpriority Claims) arising under this Interim Order. The failure of the Prepetition Secured Agent or any Prepetition Secured Party 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 Secured Notes Documents or of any indebtedness, liabilities, or obligations arising at any time thereunder or prejudice or otherwise adversely affect the Prepetition Secured Agent's or any Prepetition Secured Party's respective rights, remedies, powers, or privileges under any of the Secured Notes Documents, this Interim Order or applicable law (as applicable). 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.*** Subject to entry of the Final Order, the Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to the entry of the Final Order, the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, products, offspring or profits of any of the Prepetition Collateral or the Collateral.

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24. ***No Marshaling.*** Subject to entry of the Final Order, the Prepetition Secured Parties shall not be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral or the Collateral, as the case may be.

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

(a) Any of the Debtors’ obligations to pay, in accordance with this Interim Order, the principal, interest, fees, payments, expenses, or any other amounts described in the Secured Notes Documents or this Interim Order as such amounts become due, shall not require the Prepetition Secured Parties or any party to obtain further Court approval. For the avoidance of doubt, such payments include, without limitation, the reasonable and documented fees and disbursements of the Prepetition Secured Party Professionals, in each case to the extent set forth in paragraph 4 of this Interim Order, whether or not such fees arose before or after the Petition Date, all to the extent provided in this Interim Order or the Secured Notes Documents.

(b) The Debtors shall be jointly and severally obligated to pay all reasonable and documented fees and expenses described above, which obligations shall constitute Prepetition Secured Indebtedness. The Debtors shall pay the reasonable and documented fees and professional fees, expenses, and disbursements to the extent provided for in paragraph 4(e)(ii) and (iii) of this Interim Order no later than ten business days (the “Review Period”) after the receipt by counsel for the Debtors, any Committee appointed in these Cases, or the U.S. Trustee of each of the invoices therefor (the “Invoiced Fees”) and without the necessity of filing formal fee applications or complying with the U.S. Trustee Guidelines, including such

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amounts arising before the Petition Date. 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, 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 (such information, collectively, “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; *provided*, that at any time a Professional seeks payment of Invoiced Fees from the Debtors, the Debtors, the Committee, and the U.S. Trustee reserve their rights to request additional detail regarding the services rendered and expenses incurred by such Professional, subject to any 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.

(c) 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, a Debtor, any Committee that may be appointed in these Cases, or the U.S.

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Trustee notifies the submitting party in writing setting forth the specific objections to the Disputed Invoiced Fees (to be followed by the filing with the Court, if necessary, of a motion or other pleading, with at least ten days' prior written notice to the submitting party of any hearing on such motion or other pleading). Any hearing to consider such an objection to the payment of any fees, costs, or expenses set forth in a professional fee invoice hereunder shall be limited to the reasonableness of the fees, costs and expenses that are the subject of the objection. For the avoidance of doubt, the Debtors shall promptly pay in full all Invoiced Fees other than the Disputed Invoiced Fees.

(d) In addition, the Debtors hereby indemnify each of the Prepetition Secured Noteholders, the Prepetition Secured Agent, and each of their respective affiliates, successors, and assigns and the officers, directors, employees, agents, attorneys, advisors, controlling persons, and members of each of the foregoing (each, an "Indemnified Person") and hold them harmless from and against all costs, expenses (including reasonable and documented postpetition legal fees and expenses), and liabilities arising out of or relating to the transactions contemplated hereby and any actual or proposed use of the Cash Collateral. No Indemnified Person shall have any liability (whether direct or indirect, in contract, tort, or otherwise) to the Debtors or any shareholders or creditors of the Debtors for or in connection with the transactions contemplated hereby, except to the extent such liability is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted solely from such Indemnified Person's gross negligence, fraud, or willful misconduct. In no event shall any

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Indemnified Person or any Debtor be liable on any theory of liability for any special, indirect, consequential, or punitive damages; *provided*, that this shall not affect the Debtors' indemnification obligations pursuant to the immediately preceding sentence.

26. ***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.

27. ***Retention of Jurisdiction.*** The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

28. ***Controlling Effect of Interim Order.*** To the extent any provision of this Interim Order conflicts or is inconsistent with any provision of the Motion or any other order of this Court, the provisions of this Interim Order shall control.

29. ***Final Hearing.*** A final hearing on the relief requested in the Motion shall be held on [●], 2024, at __: __.m. (prevailing Eastern time). Any party in interest objecting to the relief sought at the Final Hearing shall file written objections no later than [●], 2024, at []:[] p.m.

Exhibit 1

Initial Budget

Detailed 13 Week Liquidity Outlook

(\$ in 000s)

Projected Weekly Liquidity (\$ in 000s)	Fcst. Week 1 ⁽¹⁾	Fcst. Week 2	Fcst. Week 3	Fcst. Week 4	Fcst. Week 5	Fcst. Week 6	Fcst. Week 7	Fcst. Week 8	Fcst. Week 9	Fcst. Week 10	Fcst. Week 11	Fcst. Week 12	Fcst. Week 13	Fcst.
	2/16/24	2/23/24	3/1/24	3/8/24	3/15/24	3/22/24	3/29/24	4/5/24	4/12/24	4/19/24	4/26/24	5/3/24	5/10/24	Total
Operating Receipts:														
Test/Collaboration Receipts	\$5,252	\$5,957	\$8,093	\$6,169	\$6,244	\$6,728	\$7,012	\$9,073	\$7,184	\$7,109	\$7,392	\$8,268	\$7,112	\$91,594
Other Receipts	-	-	189	-	-	-	-	189	-	-	-	117	-	496
Total Receipts	\$5,252	\$5,957	\$8,282	\$6,169	\$6,244	\$6,728	\$7,012	\$9,263	\$7,184	\$7,109	\$7,392	\$8,386	\$7,112	\$92,090
Operating Disbursements:														
Payroll, Bonus & Benefits	-	(\$7,374)	(\$1,147)	(\$7,251)	(\$12,451)	(\$7,374)	(\$1,147)	(\$6,495)	(\$933)	(\$6,593)	(\$4,182)	(\$11,944)	(\$933)	(\$67,822)
Lab Materials	-	(653)	(826)	(959)	(1,915)	(2,173)	(1,374)	(1,374)	(1,374)	(1,374)	(1,374)	(1,505)	(1,505)	(16,404)
Collection Kits	-	(1,122)	(234)	(3)	(507)	(546)	(236)	(371)	(236)	(236)	(236)	(246)	(246)	(4,219)
Shipping Costs	-	(1,571)	(400)	(345)	(473)	(345)	(345)	(345)	(360)	(360)	(360)	(360)	(360)	(5,623)
Real Property Lease Payments	-	-	(784)	-	-	-	-	(784)	-	-	-	(784)	-	(2,352)
Other Disbursements	-	(2,819)	(2,902)	(1,700)	(3,068)	(2,699)	(2,908)	(2,603)	(2,665)	(2,551)	(2,868)	(2,519)	(2,680)	(31,981)
Total Disbursements	-	(\$13,539)	(\$6,292)	(\$10,258)	(\$18,414)	(\$13,137)	(\$6,009)	(\$11,972)	(\$5,567)	(\$11,113)	(\$9,019)	(\$17,357)	(\$5,723)	(\$128,401)
Restructuring Related / One-Time:														
Debt Service	-	-	-	-	(\$1,143)	-	-	-	(\$1,143)	-	-	-	(\$1,143)	(\$3,430)
Capex	-	(505)	-	(767)	-	(505)	(767)	-	(505)	(767)	-	-	-	(3,815)
Non-Insider Severance	-	-	-	-	(192)	(1,505)	-	-	-	(111)	-	-	-	(1,807)
Non-Insider Retention	-	-	-	(321)	(1,178)	(321)	-	-	(94)	-	-	(522)	-	(2,436)
Professional Fees	-	-	-	-	(750)	-	(450)	(3,071)	-	(750)	(450)	-	(3,131)	(8,601)
Other One-Time	-	-	(3,300)	(462)	-	-	-	-	(462)	-	-	-	(358)	(4,582)
Total Restructuring Related / One-Time	-	(\$505)	(\$3,300)	(\$1,550)	(\$3,264)	(\$2,330)	(\$1,217)	(\$3,071)	(\$2,204)	(\$1,627)	(\$450)	(\$522)	(\$4,632)	(\$24,672)
Change in Cash	\$5,252	(\$8,087)	(\$1,310)	(\$5,638)	(\$15,434)	(\$8,739)	(\$214)	(\$5,780)	(\$587)	(\$5,632)	(\$2,077)	(\$9,494)	(\$3,244)	(\$60,982)
Total Liquidity:														
Ending Cash Balance ⁽²⁾	147,199	139,112	137,803	132,165	116,731	107,992	107,778	101,998	101,411	95,779	93,702	84,208	80,964	80,964
Ending Securities Balance	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Liquidity	\$147,199	\$139,112	\$137,803	\$132,165	\$116,731	\$107,992	\$107,778	\$101,998	\$101,411	\$95,779	\$93,702	\$84,208	\$80,964	\$80,964

Footnotes:

(1) Forecast for Week 1 ending 2/16/24 represents post-petition period only.

(2) Excludes \$10.1M of restricted cash.

Exhibit 2

Testing Cadence

Test Periods

		<u>Test Period</u>		
<u>Budget Delivered</u>		<u>Start</u>	<u>End</u>	<u>Variance Report Sent</u>
[1]	Friday, February 9, 2024	WE 2/16	WE 2/23	Friday, March 1, 2024
	Wednesday, February 28, 2024	WE 3/1	WE 3/8	Friday, March 15, 2024
	Wednesday, March 13, 2024	WE 3/15	WE 3/22	Friday, March 29, 2024
	Wednesday, March 27, 2024	WE 3/29	WE 4/5	Friday, April 12, 2024
	Wednesday, April 10, 2024	WE 4/12	WE 4/19	Friday, April 26, 2024
	Wednesday, April 24, 2024	WE 4/26	WE 5/3	Friday, May 10, 2024
	Wednesday, May 8, 2024	WE 5/10	WE 5/17	Friday, May 24, 2024
	Wednesday, May 22, 2024	WE 5/24	WE 5/31	Friday, June 7, 2024
	Wednesday, June 5, 2024	WE 6/7	WE 6/14	Friday, June 21, 2024
	Wednesday, June 19, 2024	WE 6/21	WE 6/28	Friday, July 5, 2024
	Wednesday, July 3, 2024	WE 7/5	WE 7/12	Friday, July 19, 2024
	Wednesday, July 17, 2024	WE 7/19	WE 7/26	Friday, August 2, 2024
	Wednesday, July 31, 2024	WE 8/2	WE 8/9	Friday, August 16, 2024
	Wednesday, August 14, 2024	WE 8/16	WE 8/23	Friday, August 30, 2024
	Wednesday, August 28, 2024	WE 8/30	WE 9/6	Friday, September 13, 2024

[1]: test period for the week ending February 16, 2024 through February 23, 2024.