Docket #0009 Date Filed: 7/9/2020

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

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,	§	
	§	
Appellant	§	
	§	
v.	§	**CIVIL ACTION NO: 4:20-cv-01970**
	§	
SPEEDCAST INTERNATIONAL LIMITED, et al.,	§	
	§	
Appellees.	§	

APPELLEES' MOTION TO DISMISS APPEAL AS MOOT

TO THE HONORABLE LEE H. ROSENTHAL, UNITED STATES DISTRICT JUDGE:

SpeedCast International Limited and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors-in-possession (collectively, the "**Debtors**" and/or "**Appellees**"), respectfully submit this *Motion to Dismiss Appeal as Moot* (the "**Motion**").

SUMMARY OF RELIEF REQUESTED

1. Credit Agricole Corporate and Investment Bank ("**CACIB**" or "**Appellant**") appeals an order of the Bankruptcy Court approving, *inter alia*, debtor-in-possession financing. In the DIP Finance Order (defined below), the DIP

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Secured Parties[1] were granted various rights and protections. Included among those protections was the Roll-Up, by which a portion of prepetition senior secured debt held by the DIP Secured Parties was "rolled up" and became a part of the DIP Loans. Importantly, the Bankruptcy Court found and determined—without any opposition or contest by CACIB or any other party—that (1) all relevant parties, including the DIP Secured Parties (consisting of the DIP Lenders and DIP Agent), acted in good faith in connection with all aspects of the DIP Financing, and (2) the parties and the DIP Finance Order were entitled to the "full protection of section 364(e) of the Bankruptcy Code."

2. CACIB has neither sought nor obtained a stay pending this appeal of the DIP Finance Order. The law in this Circuit is clear that where the postpetition lender parties acted in good faith in extending postpetition credit and the appellant fails to obtain a stay pending appeal, any appeal that seeks to modify any of the panoply of protections granted in the finance order is moot and must be dismissed. The Debtors respectfully seek the dismissal of the CACIB appeal of the DIP Finance Order.

NATURE AND STAGE OF PROCEEDINGS

3. This is an appeal by CACIB from the Bankruptcy Court's entry of the DIP Finance Order. CACIB filed its notice of appeal to this court on June 3, 2020.

[1] Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the DIP Finance Order.

D. Dkt. No. 1. The appellate record was transmitted on June 30, 2020, and CACIB filed its Appellant's Brief on July 2, 2020. D. Dkt. No. 2. Debtors now file this Motion to dismiss CACIB's appeal as moot.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

4. The issue raised by this Motion to be ruled on by the Court is whether CACIB's appeal should be dismissed as moot pursuant to 11 U.S.C. § 364(e), where CACIB failed to seek or obtain a stay pending appeal and the Bankruptcy Court found (without challenge or dispute) that the DIP Secured Parties acted in good faith.

5. The standard of review for factual determinations by a bankruptcy court is clear error. *Waldron v. Adams & Reese, L.L.P. (In re Am. Int'l Refinery, Inc.)*, 676 F.3d 455, 461 (5th Cir. 2012). "[A bankruptcy court's] findings of fact may be reversed only if the reviewing court has the definite and firm conviction that a mistake has been made." *Id*.

FACTS

6. On April 23, 2020 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**")[2] in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the

[2] All statutory references herein are to the Bankruptcy Code unless otherwise indicated.

"**Bankruptcy Court**"). Bankr. Dkt. No. 1; Bankr. R. on Appeal ("**AR**") 72. The chapter 11 cases are being jointly-administered. Bankr. Dkt. No. 18.

7. The Debtors continue in the management and operation of their businesses and properties as debtors-in-possession pursuant to sections 1107 and 1108.

8. On the Petition Date, the Debtors filed their *Emergency Motion of Debtors For Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims With Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing and (VI) Granting Related Relief* (the "**DIP Finance Motion**"). Bankr. Dkt. No. 27; AR 152. The Bankruptcy Court held an interim hearing on the DIP Finance Motion on April 23, 2020. CACIB appeared at the interim hearing and objected on limited grounds to entry of an interim approval order. That opposition was overruled, and thus the Bankruptcy Court entered (i) an initial interim order on April 23, 2020 [Bankr. Dkt. No. 49; AR 434], and (ii) a corrected interim order on April 24, 2020 [Bankr. Dkt. No. 77; AR 655] (the "**Interim Order**").

9. In the Interim Order, the Bankruptcy Court, *inter alia*, (i) approved the interim relief sought by the DIP Finance Motion, including the Initial Roll-Up

in the amount of $35 million [Bankr. Dkt. No. 77 at 2, 23-26; AR 656, 677-80], (ii) found and determined that the Debtors and all relevant parties had acted in good faith and were thus entitled to the protections of section 364(e) [Bankr. Dkt. No. 77 at 14-15; AR 668-69], and (iii) established a final hearing setting for the DIP Finance Motion [Bankr. Dkt. No. 77 at 64; AR 718].

10. On May 11, 2020, CACIB filed an objection to the entry of a final order on the DIP Finance Motion. Bankr. Dkt. No. 167; AR 991. In its objection, CACIB requested that the Bankruptcy Court deny the Debtors final approval of the DIP Finance Motion, specifically arguing that the Roll-Up: (i) violated the prepetition secured financing agreement (defined as the "**SFA**"), (ii) violated section 510(a) as contrary to the terms of an alleged subordination agreement, and (iii) failed to provide CACIB adequate protection as required by section 364(d)(1)(B). Bankr. Dkt. No. 167 at 7-12; AR 997-1002. CACIB did not raise, assert or argue that the Roll-Up should be rejected as violative of, or generally impermissible under, the Bankruptcy Code.

11. Responses in support of final approval of the DIP Finance Motion were filed by the Debtors [Bankr. Dkt. No. 223; AR 2669], the DIP Agent [Bankr. Dkt. No. 233; AR 2697] and an *ad hoc* group of DIP Lenders [Bankr. Dkt. No. 229; AR 2685].

12. On May 20, 2020, the Bankruptcy Court conducted a hearing to

consider final approval of the DIP Finance Motion. Bankr. Dkt. No. 229; AR 2931. At the conclusion of the evidence and arguments of counsel, the Bankruptcy Court announced its final approval of the DIP Finance Motion. Subsequently on May 20, 2020, the Bankruptcy Court entered its *Final Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims With Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* (the "**DIP Finance Order**", attached hereto as **Exhibit A**). Bankr. Dkt. No. 239; AR 2860.

13. To be clear, at the final hearing, CACIB never once asserted or argued that (i) roll-up postpetition financings are generally impermissible under, or violative of, the Bankruptcy Code, or (ii) the Bankruptcy Court lacks authority to approve a roll-up as part of a postpetition financing. CACIB's statements, arguments and positions at the final hearing were consistent with CACIB's filed objection which also raised none of these arguments or positions.

14. On June 3, 2020, CACIB filed its Notice of Appeal as to the DIP Finance Order, ultimately resulting in the present bankruptcy appeal. Bankr. Dkt. No. 276; AR 3051.

15. On July 2, 2020, CACIB filed its Brief of Appellant in this matter (the "**CACIB Brief**"). D. Dkt. No. 4.

16. On July 6, 2020, CACIB filed its Motion to Expedite Appeal in this matter (the "**Motion to Expedite**"). D. Dkt. No. 6. The Debtors oppose the relief requested in the Motion to Expedite.

17. CACIB has never sought, and has not obtained, a stay of the DIP Finance Order pending the present appeal process.

ARGUMENT

18. The appeal by CACIB of the DIP Finance Order must be dismissed as statutorily moot given the protections afforded by section 364(e).

19. Section 364 is a broad and flexible grant of authority for chapter 11 debtors to obtain postpetition credit and incur secured debt as part of their reorganization efforts. Congress included an important protection in favor of those who extend postpetition credit in good faith to debtors in section 364(e), which states as follows:

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

11 U.S.C. § 364(e).

20. The Fifth Circuit has stated that "the purpose of § 364(e) is 'to overcome a good faith lender's reluctance to extend financing in a bankruptcy

context by permitting reliance on a bankruptcy judge's authorization.'" *TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 521 (5th Cir. 2014) (quoting *Burchinal v. Central Washington Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1488 (9th Cir. 1987)).

21. In such cases, the parties have an interest in finality. *See Matter of EDC Holding Co.*, 676 F.2d 945, 947 (7th Cir. 1982) (noting that section 364(e) "seek[s] to overcome people's natural reluctance to deal with a bankrupt firm . . . by assuring them that so long as they are relying in good faith on a bankruptcy judge's approval of the transaction they need not worry about their priority merely because some creditor is objecting to the transaction and is trying to get the district court or the court of appeals to reverse the bankruptcy judge."). Accordingly, the "failure to obtain a stay of an authorization under [section 364(e)] moots an appeal of that authorization where the . . . lender acted in good faith." *TMT Procurement*, 764 F.3d at 519 (citing *Adams Apple, Inc.*, 829 F.2d at 1489); *see also EDC Holding*, 676 F.2d at 947 ("The proper recourse for the objecting creditor is to get the transaction stayed pending appeal.").[3]

[3] Given the similarities in structure and underlying policy of the statutes, the Fifth Circuit has applied this same *per se* mootness approach to appeals of sale orders under section 363(m). *See TMT Procurement*, 764 F.3d at 519; *Ginther v. Ginther Trs. (In re Ginther Trs.)*, 238 F.3d 686, 689 (5th Cir. 2001) ("Because Appellants failed to obtain a stay of the sale . . . , the district court correctly dismissed Appellants' appeal as moot."); *In re Gilchrist*, 891 F.2d 559 (5th Cir. 1990) (affirming dismissal of appeal where the appellant failed to obtain a stay of the sale and "never contested good faith in the bankruptcy court"); *see also Rai v. Henderson (In re VCR I, LLC)*, 789 Fed. App'x 992, 995 (5th Cir. 2019) ("A bankruptcy appeal is moot under section 363(m)—and must be dismissed—if the

22. The Fifth Circuit's *per se* approach to section 364(e) mootness has been followed by a multitude of other circuit, district, and bankruptcy appellate panels. *See e.g.*, *Weinstein, Eisen & Weiss, L.L.P. v. Gill (In re Cooper Commons, LLC*), 430 F.3d 1215, 1219 (9th Cir. 2005) (holding that "[s]ince the [objecting] firm . . . failed to secure a stay" and "[t]he bankruptcy court's finding that [postpetition lender] acted in good faith for the purposes of § 364(e) was not clearly erroneous," section 364(e) mooted the objecting firm's claims); *Keltic Fin. Partners, LP v. Foreside Mgmt Co., LLC (In re Foreside Mgmt. Co., LLC)*, 402 B.R. 446, 451-52 (B.A.P. 1st Cir. 2009) (holding that under section 364(e), "an aggrieved creditor's failure to obtain a stay pending appeal requires dismissal of the appeal as moot."); *A&K Endowment, Inc. v. Gen. Growth Props., Inc. (In re General Growth Properties, Inc.)*, 423 B.R. 716, 721 (S.D.N.Y. 2010) ("This Court should dismiss an appeal from the Bankruptcy Court as moot '[w]here a lender extended credit in good faith under Section 364, and the authorization appealed from has not been stayed.'" (quoting *White Rose Food v. Gen. Trading Co. (In re Clinton St. Food Corp.)*, 170 B.R. 216, 220 (S.D.N.Y. 1994)); *In re Clinton St. Food Corp.*, 170 B.R. 216, 220 (S.D.N.Y. 1994) ("Where a lender extended credit in good faith under Section 364, and the authorization appealed from has not been stayed, the proper course is to dismiss an appeal as moot.").

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challenging party failed to obtain a stay of a sale order and the purchaser bought the debtor's assets in good faith.").

23. CACIB has not sought, nor has it obtained, a stay of the DIP Finance Order pending this appeal.

24. Following each of the hearings to consider the DIP Finance Motion (both interim and final), the Bankruptcy Court specifically found that the DIP Secured Parties had acted in good faith. In the DIP Finance Order, the Bankruptcy Court found that:

> [t]he DIP Financing (including the Roll-Up) . . . have been negotiated in good faith and at arm's length among [the parties], and . . . all loans made to and guarantees issued by the Debtor DIP Loan Parties pursuant to the DIP Documents and any DIP Obligations shall be deemed to have been extended by the DIP Agent and the DIP Secured Parties and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Agent and the DIP Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order, this Final Order or any provision hereof or thereof is vacated, reversed or modified, on appeal or otherwise.

Bankr. Dkt. No. 239 at 15; AR 2874; *see also* Bankr. Dkt. No. 239 at 50-51; AR 2909-10 ("[T]he DIP Agent, the DIP Secured Parties, the Prepetition Agent, and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in sections 364(e)").[4]

25. At no time—whether prior to the Bankruptcy Court hearing, during

[4] The DIP Finance Order additionally contains a finding that the appellate protections afforded under section 363(m) apply to the adequate protection granted to the Prepetition Agent and Prepetition Secured Parties on account of the cash collateral authority granted in the DIP Finance Order. *See* Bankr. Dkt. No. 239 at 15-16, 50-51; AR 2874-75, AR 2909-10.

the hearing, or subsequently as a stated issue in this appeal—has CACIB (i) challenged the Bankruptcy Court's good faith findings, or (ii) asserted that any of the Debtors or the DIP Secured Parties have proceeded in a manner lacking in good faith.

26. Given the Bankruptcy Court's findings as to good faith, and the Appellant's failure to obtain a stay pending appeal, section 364(e) compels dismissal of this appeal as statutorily moot.

27. The sweep of section 364(e) is broad and is designed to protect all of the various rights, protections, and bargains included within an approved postpetition financing order. *See Cooper Commons*, 430 F.3d at 1219 (holding that section 364(e) "broadly protects any requirement or obligation that was part of a post-petition creditor's agreement to finance." (citing *Adams Apple, Inc.*, 829 F.2d 1484)). This provision prevents a piecemeal challenge to, or reversal of, rights granted to a postpetition lender as part of an overall financing package. *See id.*; *see also In re Revco D.S., Inc.*, 901 F.2d 1359, 1364 (6th Cir. 1990) ("Courts . . . reviewing financing orders subject to section 364(e) have been reluctant to sever individual provisions, whether legal or not, in the absence of a stay pending appeal."); *Boullioun Aircraft Holding Co. v. Smith Mgmt. (In re W. Pac. Airlines, Inc.)*, 181 F.3d 1191, 1195 (10th Cir.1999) ("§ 364(e) prohibits not only outright invalidation of a lien or priority where the challenging party has failed to seek a

stay, but also modification of the terms of a post-petition lender's bargained-for collateral."). Simply, therefore, this Court on appeal cannot strip away or diminish in any manner the Roll-Up protections bargained for by the DIP Secured Parties and granted by the Bankruptcy Court.

28. Yet stripping away the Roll-Up is precisely what the Appellant seeks through its appeal. In the CACIB Brief's prayer for relief, CACIB explicitly requests that the Court "eliminate the roll-up from the final postpetition financing order" or, alternatively, grant CACIB the same priority as the DIP Secured Parties. *See* D. Dkt. No. 4 at 28-29.

29. CACIB's intent to "revisit" the Roll-Up that was agreed to between the Debtors and the DIP Secured Parties and approved by the Bankruptcy Court is made further plain and obvious in its Motion to Expedite, where it requests that oral argument be expedited "so that ***the validity of the rollup*** can be determined before the parties proceed further down the current road." D. Dkt. No. 6 at 4 (emphasis added).[5] CACIB does not even attempt to disguise its goal to upset the Roll-Up. In fact, it has become evident during the objection and appeal process that CACIB wants to benefit from, or participate in, the Roll-Up even though it intentionally chose not to participate in the DIP Financing as a DIP Lender.

[5] The arguments made in the Motion to Expedite are frankly incomprehensible given that CACIB has wholly avoided seeking a stay pending appeal—the appropriate mechanism to avoid proceeding "further the down the current road." D. Dkt. No. 6 at 4. In short order the Debtors intend to file an opposition to the Motion to Expedite.

CACIB demands that its disputed alleged hedge termination claim be afforded *pari passu* "Roll-Up treatment" or a share in the benefit of the Roll-Up. Any such grant in favor of CACIB, in addition to being unprecedented, would undeniably reduce the Roll-Up benefit accruing to each of the DIP Secured Parties. Again, this is exactly what section 364(e) proscribes. Protections have been granted to the DIP Secured Parties, including in the form of the Roll-Up, in order to induce the provision of postpetition financing to the Debtors. The *per se* application of section 364(e)—lender good faith coupled with no stay pending appeal equals mootness and dismissal—compels the dismissal of this appeal.

30. In the event that the Court determines not to dismiss CACIB's appeal as moot, the Appellees alternatively request that the Court grant partial dismissal of the appeal to the extent it raises and asserts new arguments not asserted below. Fifth Circuit precedent is clear that when considering a bankruptcy appeal, a district court cannot address issues and arguments that were not initially presented to the bankruptcy court. *See Ginther*, 238 F.3d at 689 ("It is well established that we do not consider arguments or claims not presented to the bankruptcy court." (quoting *Gilchrist*, 891 F.2d at 561)); *In re Fairchild Aircraft Corp.*, 6 F.3d 1119, 1128 (5th Cir. 1993); *see also XL Specialty Ins. Co. v. Kiewit Offshore Servs., Ltd.*, 513 F.3d 146, 153 (5th Cir. 2008) ("To preserve an argument, it 'must be raised to such a degree that the trial court may rule on it.'" (quoting *In re Fairchild Aircraft*

Corp., Butler Aviation Int'l v. Whyte (In re Fairchild Aircraft Corp.), 6 F.3d 1119, 1128 (5th Cir. 1993)).

31. Despite being aware of the Roll-Up contemplated by the Third Amendment prior to the Petition, attending and objecting at the interim hearing, filing a formal objection to final approval of the DIP Financing Order, and presenting evidence and oral argument at the final hearing held 27 days after the Petition, CACIB has never once raised in the Bankruptcy Court its present argument that roll-ups are generally impermissible under section 364 of the Bankruptcy Code and/or may not be approved by a bankruptcy court. *See* D. Dkt. No. 6 at 15-20. Yet today, CACIB recklessly seeks to make this the primary issue in the appeal. By failing to raise this argument with the Bankruptcy Court below, CACIB has waived its right to raise it on appeal. *See Ginther*, 238 F.3d at 689. For this reason, to the extent the Court determines that CACIB's appeal is not moot under section 364(e), the Appellees respectfully request that the Court dismiss CACIB's broad attack on the permissibility of roll-up postpetition finance arrangements, an attack that CACIB has raised for the first time in this appeal.

CONCLUSION

32. For the reasons stated above, the Appellees respectfully request that the Court dismiss the appeal in its entirety.

Dated: July 9, 2020

Respectfully submitted,

MCKOOL SMITH PC

/s/ John J. Sparacino

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Conflicts Counsel to the Debtors

CERTIFICATE OF CONFERENCE

The undersigned, counsel for the Appellee, certifies that at approximately 2:00 p.m. (CST) on July 7, 2020, the undersigned conferred with counsel for the Appellant regarding the subject matter of this Motion and the relief requested herein. Counsel for the Appellant indicated that the Appellant opposes the relief requested herein.

/s/ Gayle R. Klein
Gayle R. Klein

RULE 8015(h) CERTIFICATE OF COMPLIANCE

This Motion complies with the type-volume limitation of Federal Rule of Bankruptcy Procedure 8013(f)(3)(A) because it has 3,475 words, excluding the items that do not count toward the limit set forth in Federal Rule of Bankruptcy Procedure 8015(g).

/s/ John J. Sparacino
John J. Sparacino

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Appellee's Motion to Dismiss Appeal as Moot was served by electronic delivery on all counsel of record and persons and entities receiving ECF notice in this case on July 9, 2020.

/s/ John J. Sparacino
John J. Sparacino

Exhibit A

DIP Finance Order

(Bankr. Dkt. No. 239; Appellate Record pp. 2860-2930)

United States Bankruptcy Court Southern - Texas
2860
ENTERED
05/20/2020

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

In re:	§	**Chapter 11**
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
Debtors.[1]	§	**(Jointly Administered)**

FINAL ORDER (I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION FINANCING AND (B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS, (III) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES, (IV) MODIFYING THE AUTOMATIC STAY, AND (V) GRANTING RELATED RELIEF

Upon the motion (the "**DIP Motion**")[2] of SpeedCast International Limited and each of its affiliates that are debtors and debtors-in-possession (each, a "**Debtor**" and collectively, the "**Debtors**") in the above-captioned cases (the "**Chapter 11 Cases**") and pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 363(m), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 503, 506(c) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "**Bankruptcy Code**"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1 of the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas (together, the "**Local Rules**"), and the Procedures for Complex Chapter 11 Bankruptcy Cases (the "**Complex Case Rules**" and, together with the Local Rules, the "**Bankruptcy Local Rules**"),

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[1] A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at http://www.kccllc.net/speedcast. The Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

[2] Capitalized terms used but not defined herein are given the meanings ascribed to such terms in the DIP Credit Agreement (as defined herein).

seeking entry of an interim order (as entered at [ECF No. 77], the "**Interim Order**") and this final order (this "**Final Order**") among other things:

(i) authorizing SpeedCast Communications, Inc. (the "**Borrower**") to obtain postpetition financing ("**DIP Financing**") pursuant to a senior secured, superpriority and priming debtor-in-possession term loan credit facility (the "**DIP Facility**") subject to the terms and conditions set forth in that certain Senior Secured Superpriority Debtor-in-Possession Term Loan Credit Agreement attached hereto as **Exhibit 1** (as amended, supplemented, or otherwise modified from time to time, the "**DIP Credit Agreement**"), in an aggregate principal amount of up to $180 million, consisting of:

a. new money term loans in the aggregate principal amount of $90 million (the "**DIP New Money Term Loans**") from the DIP Lenders (as defined herein), of which $35 million was made available upon entry of the Interim Order and of which the remaining $55 million is to be available in accordance with the terms of the DIP Credit Agreement; and

b. term loans in an aggregate principal amount of $90 million (the "**DIP Roll-Up Loans**" and, together with the DIP New Money Term Loans, the "**DIP Loans**") from the DIP Lenders issued in substitution and exchange for Prepetition Loans (as defined herein) of the DIP Lenders on a dollar-for-dollar basis pursuant to the terms and conditions of the DIP Credit Agreement;

by and among, SpeedCast International Limited, as parent, the Borrower, as borrower, the several banks and other financial institutions or entities from time to time party thereto as "Lenders" (as defined in the DIP Credit Agreement) (the "**DIP Lenders**"), Credit Suisse AG, Cayman Islands Branch, as administrative agent, collateral agent and security trustee (in such capacity, together with its successors and permitted assigns, the "**DIP Agent**" and, collectively, with the DIP Lenders, the **"DIP Secured Parties"**);

(ii) authorizing the Debtors other than the Borrower (such Debtors, the "**Debtor DIP Guarantors**," and together with the Borrower, the "**Debtor DIP Loan Parties**") to jointly and severally guarantee the DIP Loans and the other DIP Obligations as set forth in that certain Guarantee Agreement among SpeedCast International Limited, certain subsidiaries thereof, and the DIP Agent (the "**DIP Guarantee Agreement**");

(iii) authorizing and directing the Debtors to use reasonable best efforts to cause the DIP Guarantors that are not Debtors (the "**Non-Debtor DIP Loan Parties**" and together with the Debtor DIP Guarantors, the "**DIP Guarantors**" and together with the Borrower and the Debtor DIP Guarantors, the "**DIP Loan Parties**") to jointly and severally guarantee on the basis set forth in the DIP Guarantee Agreement, the DIP Loans and the other DIP Obligations;

(iv) authorizing the Debtors, (i) subject to entry of the Interim Order, on the Syndication End Date, to substitute and exchange Prepetition Loans of the DIP Lenders on a dollar-for-dollar basis with DIP Roll-Up Loans in an amount equal to the amount of the Initial Commitments in effect as of the Closing Date (such substitution and exchange, the "**Initial Roll-Up**") and (ii) upon entry of this Final Order, to substitute and exchange Prepetition Loans of the DIP Lenders on a dollar-for-dollar basis with DIP Roll-Up Loans in an amount equal to the amount of the Delayed Draw Commitments in effect as of the Closing Date (such substitution and exchange, the "**Delayed Draw Roll-Up**" and, together with the Initial Roll-Up, the "**Roll-Up**");

(v) authorizing the Debtor DIP Loan Parties to, and authorizing and directing the Debtor DIP Loan Parties to use reasonable best efforts to cause the Non-Debtor DIP Loan Parties to, execute, deliver and perform under the DIP Credit Agreement and all other loan documentation, including security agreements, pledge agreements, control agreements, mortgages, deeds, charges, guarantees, promissory notes, intercompany notes, certificates, instruments, intellectual property security agreements, notes, the DIP Intercreditor Agreement,[3] the Syndicated Facility Amendment,[4] the Fee Letter, and such other documents that may be reasonably requested by the DIP Agent and the DIP Lenders, in each case, as amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms thereof and hereof (collectively, together with the DIP Credit Agreement, all Loan Documents, the Interim Order and this Final Order, the "**DIP Documents**");

(vi) authorizing the Debtor DIP Loan Parties to incur, and to use reasonable best efforts to cause the Non-Debtor DIP Loan Parties to incur, loans, advances, extensions of credit, financial accommodations, reimbursement obligations, fees (including, without limitation, commitment fees, administrative agency fees, exit fees, other fees and fees payable pursuant to the Fee Letter), costs, expenses and other liabilities, all other obligations (including indemnities and similar obligations, whether contingent or absolute) and all other Obligations due or payable under the DIP Documents (collectively, the "**DIP Obligations**"), and to perform such other and further acts as may be necessary, desirable or appropriate in connection therewith;

(vii) subject to the Carve Out (as defined herein), granting to the DIP Agent, for itself and for the benefit of the DIP Secured Parties, allowed superpriority administrative expense claims pursuant to section 364(c)(1) of the Bankruptcy Code in respect of all DIP Obligations of the Debtor DIP Loan Parties;

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[3] That certain DIP Intercreditor Agreement, dated as of April 24, 2020, among SpeedCast International Limited, as Parent, the other grantors party thereto, the DIP Agent and the Prepetition Agent (as defined herein).

[4] That certain Syndicated Facility Amendment, dated as of April 24, 2020, by and among SpeedCast International Limited, as Parent Borrower, SpeedCast Americas Inc., the Borrower, and SpeedCast Limited, each of the other "Loan Parties" party thereto, and the lenders party thereto.

(viii) granting to the DIP Agent, for itself and for the benefit of the DIP Secured Parties, valid, enforceable, non-avoidable and automatically perfected liens pursuant to section 364(c)(2) and 364(c)(3) of the Bankruptcy Code and priming liens pursuant to section 364(d) of the Bankruptcy Code on all prepetition and postpetition property of the Debtor DIP Loan Parties' estates (other than certain excluded property as provided in the DIP Documents (the "**Excluded Assets**")) and all proceeds thereof, including, any Avoidance Proceeds (as defined herein), in each case subject to the Carve Out (as defined herein);

(ix) authorizing the DIP Agent, acting at the direction of the Requisite DIP Lenders (as defined below), and the Prepetition Agent, acting at the direction of the Required Prepetition Lenders (as defined below), to take all commercially reasonable actions to implement and effectuate the terms of the Interim Order, this Final Order and the DIP Documents;

(x) subject to the Carve Out (as defined herein), authorizing the Debtors to waive (a) their right to surcharge the Prepetition Collateral and the DIP Collateral (as defined herein) (together, but excluding any Excluded Assets, the "**Collateral**") pursuant to section 506(c) of the Bankruptcy Code and (b) any "equities of the case" exception under section 552(b) of the Bankruptcy Code;

(xi) waiving the equitable doctrine of "marshaling" and other similar doctrines (a) with respect to the DIP Collateral for the benefit of any party other than the DIP Secured Parties and (b) with respect to any of the Prepetition Collateral (including the Cash Collateral) for the benefit of any party other than the Prepetition Secured Parties (as defined herein);

(xii) authorizing the Debtors to, and to use reasonable best efforts to cause the Non-Debtor DIP Loan Parties to, use proceeds of the DIP Facility solely in accordance with the Interim Order, this Final Order and the DIP Documents;

(xiii) authorizing the Debtors to, and to use reasonable best efforts to cause the Non-Debtor DIP Loan Parties to, pay the principal, interest, fees, expenses and other amounts payable under the DIP Documents as such become earned, due and payable to the extent provided in, and in accordance with, the DIP Documents;

(xiv) subject to the restrictions set forth in the Interim Order, this Final Order and the DIP Documents, authorizing the Debtors to use the Prepetition Collateral (as defined herein), including Cash Collateral of the Prepetition Secured Parties under the Prepetition Loan Documents (as defined herein), and provide adequate protection to the Prepetition Secured Parties for any diminution in value of their respective interests in the Prepetition Collateral (including Cash Collateral) (as defined herein), resulting from the imposition of the automatic stay under section 362 of the Bankruptcy Code (the "**Automatic Stay**"), the Debtors' use, sale, or lease of the Prepetition Collateral (including Cash Collateral), and the priming of their respective interests in the Prepetition Collateral (including Cash Collateral);

(xv) vacating and modifying the Automatic Stay to the extent set forth herein to the extent necessary to permit the DIP Secured Parties and the Prepetition Secured Parties to implement and effectuate the terms and provisions of the Interim Order, this Final Order and the DIP Documents and to deliver any notices of termination described below and as further set forth herein; and

(xvi) waiving any applicable stay (including under Bankruptcy Rule 6004) and providing for immediate effectiveness of this Final Order.

The Court having considered the final relief requested in the DIP Motion, the exhibits attached thereto, the *Declaration of Adam Waldman in Support of Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [ECF No. 34] (the "**Waldman Declaration**"), and the *Declaration of Michael Healy in Support of the Debtors' Chapter 11 Petitions and First Day Relief* [ECF No. 16] (the "**Healy Declaration**"), the available DIP Documents, and the evidence submitted and arguments made at the interim hearing held on April 23, 2020 (the "**Interim Hearing**") and the final hearing held on May 20, 2020 (the "**Final Hearing**," and together with the Interim Hearing, the "**Hearings**"); and due and sufficient notice of the Final Hearing having been given in accordance with Bankruptcy Rules 2002, 4001(b), (c) and (d), and all applicable Bankruptcy Local Rules; and the Final Hearing having been held and concluded; and all objections, if any, to the final relief requested in the DIP Motion having been withdrawn, resolved or overruled by the Court; and otherwise is fair and reasonable and in the best interests of the Debtor DIP Loan Parties and their estates, and is essential for the continued operation of the Debtor DIP Loan Parties' businesses and the preservation of the value of the Debtor DIP Loan Parties' assets; and it appearing that the Debtor DIP Loan Parties' entry into the DIP

Documents is a sound and prudent exercise of the Debtors' business judgment; and after due deliberation and consideration, and good and sufficient cause appearing therefor.

BASED UPON THE RECORD ESTABLISHED AT THE HEARINGS, THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:[5]

A. *Petition Date*. On April 23, 2020 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "**Court**"). On April 23, 2020, this Court entered an order approving the joint administration of the Chapter 11 Cases.

B. *Joint Administration*. The Chapter 11 Cases are being jointly administered pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [ECF No. 18].

C. *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 and 1108 of the Bankruptcy Code.

D. *Interim Order*. The Court entered the Interim Order on April 24, 2020 [ECF No. 77].

E. *Jurisdiction and Venue*. This Court has core jurisdiction over the Chapter 11 Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012. Consideration of the DIP

[5] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. THESE WRITTEN FINDINGS ARE SUPPLEMENTED BY THE COURT'S ORAL FINDINGS MADE ON THE RECORD ON THIS DATE. IF THERE IS A CONFLICT, THE ORAL FINDINGS CONTROL.

Motion constitutes a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court may enter a final order consistent with Article III of the United States Constitution. Venue for the Chapter 11 Cases and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are sections 105, 361, 362, 363(c), 363(e), 363(m), 364(c), 364(d)(1), 364(e), and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and Bankruptcy Local Rules 2002-1, 4001-1(b), 4002-1(i), and 9013-1.

F. *Committee Formation*. On May 6, 2020, the United States Trustee for the Southern District of Texas (the "**U.S. Trustee**") appointed an official committee of unsecured creditors (the "**Committee**") in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

G. *Notice*. The Final Hearing was scheduled and noticed pursuant to Bankruptcy Rule 4001(b)(2) and (c)(2). Proper, timely, adequate and sufficient notice of the DIP Motion has been provided in accordance with the Interim Order, Bankruptcy Code, the Bankruptcy Rules and the Bankruptcy Local Rules, and no other or further notice of the DIP Motion or the entry of this Final Order shall be required.

H. The relief granted pursuant to the Interim Order was necessary to avoid immediate and irreparable harm to the Debtors and their estates.

I. *Cash Collateral*. As used herein, the term "**Cash Collateral**" shall mean all of the Debtors' cash except for cash that is an Excluded Asset, wherever located and held, including cash in deposit accounts, that constitutes or will constitute "cash collateral" of the Prepetition Secured Parties and DIP Secured Parties within the meaning of section 363(a) of the Bankruptcy Code.

J. *Debtors' Stipulations*. Subject to the limitations contained in paragraph 20 hereof, and after consultation with their attorneys and financial advisors, the Debtors admit, stipulate and agree that:

(i) *Prepetition Credit Facility*. Pursuant to that certain Syndicated Facility Agreement, dated as of May 15, 2018 (as amended, restated, amended and restated, supplemented, waived, or otherwise modified from time to time, the "**Prepetition Credit Agreement**", and collectively with the other Loan Documents (as defined in the Prepetition Credit Agreement) and any other agreements and documents executed or delivered in connection therewith, each as may be amended, restated, amended and restated, supplemented, waived, or otherwise modified from time to time, the "**Prepetition Loan Documents**"), among (a) SpeedCast International Limited, SpeedCast Americas, Inc., SpeedCast Communications, Inc. and SpeedCast Limited, as borrowers (in such capacity, the "**Prepetition Borrowers**"), (b) SpeedCast International Limited, as parent, (c) Credit Suisse AG, Cayman Islands Branch, as administrative agent, collateral agent and security trustee (in such capacities, the "**Prepetition Agent**"), (d) the Term Lenders (as defined in the Prepetition Credit Agreement) party thereto (collectively, the "**Prepetition Term Loan Lenders**"), (e) the Issuing Banks (as defined in the Prepetition Credit Agreement) party thereto (the "**Prepetition Issuers**"), and (f) the Revolving Credit Lenders (as defined in the Prepetition Credit Agreement) party thereto (collectively, the "**Prepetition Revolving Lenders**" and, together with the Prepetition Term Loan Lenders, the "**Prepetition Lenders**") (the Prepetition Lenders, collectively with the Prepetition Agent, the Prepetition Issuers and all other holders of Prepetition Credit Facility Debt (as defined herein), the "**Prepetition Secured Parties**"), (1)(x) the Prepetition Issuers issued and participated in letters of credit in support of the Prepetition Borrowers and (y) the Prepetition Revolving

Lenders provided revolving loans and other financial accommodations to the Prepetition Borrowers pursuant to the Prepetition Loan Documents (the "**Prepetition Revolving Credit Facility**") and (2) the Prepetition Term Loan Lenders provided term loans to the Prepetition Borrowers pursuant to the Prepetition Loan Documents (the "**Prepetition Term Loan Credit Facility**" and, together with the Prepetition Revolving Credit Facility, the "**Prepetition Credit Facilities**").

(ii) *Prepetition Guarantee*. Pursuant to that certain Guarantee Agreement, dated as of May 15, 2018 (as amended, restated, amended and restated, supplemented, waived, or otherwise modified from time to time), certain of the Debtors and their direct and indirect non-Debtor subsidiaries and affiliates party thereto (the "**Prepetition Guarantors**") guaranteed on a joint and several basis the obligations under the Prepetition Loan Documents.

(iii) *Prepetition Credit Facility Debt*. As of the Petition Date, the Prepetition Borrowers were justly and lawfully indebted and liable to the Prepetition Secured Parties, without defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than $689.7 million including (a) $87.7 million in outstanding principal amount of Revolving Loans (as defined in the Prepetition Credit Agreement), (b) $10.6 million of outstanding Letters of Credit (as defined in the Prepetition Credit Agreement) and (c) $591.4 million in outstanding principal amount of Term Loans (as defined in the Prepetition Credit Agreement) (collectively, together with accrued and unpaid interest, any reimbursement obligations (contingent or otherwise) in respect of letters of credit, any fees, expenses and disbursements (including attorneys' fees, accountants' fees, auditor fees, appraisers' fees and financial advisors' fees, and related expenses and disbursements), treasury, cash management, bank product and derivative obligations, indemnification obligations, guarantee obligations, and other charges, amounts and

costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing, or chargeable in respect of any of the Prepetition Borrowers' or the Prepetition Guarantors' obligations pursuant to, or secured by, the Prepetition Credit Agreement, including all Obligations (as defined in the Prepetition Credit Agreement, the "**Prepetition Obligations**"), and all interest, fees, prepayment premiums, early termination fees, costs and other charges, the "**Prepetition Credit Facility Debt**") which Prepetition Credit Facility Debt has been guaranteed on a joint and several basis by each of the Prepetition Guarantors.

(iv) *Prepetition Credit Facility Liens.* As more fully set forth in the Prepetition Loan Documents, prior to the Petition Date, the Prepetition Borrowers and the Prepetition Guarantors each granted to the Prepetition Agent, for the benefit of itself and the other Prepetition Secured Parties, a security interest in and continuing lien on (the "**Prepetition Liens**") substantially all of their assets and property, including Cash Collateral, subject to certain limited customary exclusions as set forth in the Prepetition Loan Documents (the "**Prepetition Collateral**").

(v) *Validity, Perfection and Priority of Prepetition Liens and Prepetition Debt.* The Debtors acknowledge and agree that as of the Petition Date (a) the Prepetition Liens on the Prepetition Collateral were valid, binding, enforceable, non-avoidable and properly perfected and were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value; (b) the Prepetition Liens were senior in priority over any and all other liens on the Prepetition Collateral, subject only to certain liens senior by operation of law or otherwise permitted by the Prepetition Loan Documents (solely to the extent any such permitted liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition Liens as of the Petition Date, the "**Prepetition Permitted Prior Liens**"); (c) the

Prepetition Credit Facility Debt constitutes legal, valid, binding, and non-avoidable obligations of the Prepetition Borrowers and Prepetition Guarantors enforceable in accordance with the terms of the applicable Prepetition Loan Documents; (d) no offsets, recoupments, challenges, objections, defenses, claims or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Credit Facility Debt exist, and no portion of the Prepetition Liens or Prepetition Credit Facility Debt is subject to any challenge or defense, including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or applicable non-bankruptcy law; (e) the Debtors and their estates have no claims, objections, challenges, causes of action, and/or choses in action, including avoidance claims under Chapter 5 of the Bankruptcy Code or applicable state law equivalents or actions for recovery or disgorgement, against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors and employees arising out of, based upon or related to the Prepetition Credit Facilities; and (f) the Debtors waive, discharge, and release any right to challenge any of the Prepetition Credit Facility Debt, the priority of the Debtors' obligations thereunder, and the validity, extent, and priority of the Prepetition Liens securing the Prepetition Credit Facility Debt.

(vi) *No Control*. None of the Prepetition Secured Parties control the Debtors or their properties or operations, have authority to determine the manner in which any Debtors' operations are conducted or are control persons or insiders of the Debtors by virtue of any of the actions taken with respect to, in connection with, related to or arising from the Prepetition Loan Documents.

(vii) *No Claims or Causes of Action*. No claims or causes of action held by the Debtors or their estates exist against, or with respect to, the Prepetition Secured Parties (in their

capacity as such) under any agreements by and among the Debtors and any Prepetition Secured Party that is in existence as of the Petition Date.

(viii) *Release*. Effective as of the date of entry of the Interim Order, each of the Debtors and the Debtors' estates, on its own behalf, on behalf of (to the greatest extent permitted by law) the Non-Debtor DIP Loan Parties, and on behalf of its and their past, present and future predecessors, successors, subsidiaries, and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits the Prepetition Secured Parties, the DIP Secured Parties, and each of their respective Representatives (as defined herein) (collectively, the "**Released Parties**"), from any and all obligations and liabilities to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action arising prior to the Petition Date (collectively, the "**Released Claims**") of any kind, nature or description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, upon contract or tort or under any state or federal law or otherwise, arising out of or related to (as applicable) the Prepetition Loan Documents, the DIP Documents, the obligations owing and the financial obligations made thereunder, the negotiation thereof and of the deal reflected thereby, and the obligations and financial obligations made thereunder, in each case that the Debtors at any time had, now have or may have, or that their successors or assigns hereafter can or may have against any of the Released Parties for or by reason of any act, omission, matter, cause or thing whatsoever arising at any time on or prior to the date of the Interim Order. For the avoidance of doubt, nothing in this release shall relieve the DIP Secured

Parties of their Obligations under the DIP Documents from and after the date of the Interim Order.

K. *Findings Regarding the DIP Financing and Use of Cash Collateral*.

(i) Good and sufficient cause has been shown for the entry of this Final Order and for authorization of the Debtor DIP Loan Parties to obtain financing pursuant to the DIP Credit Agreement.

(ii) The Debtor DIP Loan Parties have a critical need for the DIP Financing and to continue to use Prepetition Collateral (including Cash Collateral) in order to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures, to satisfy other working capital and operational needs and to fund expenses of these Chapter 11 Cases. The access of the Debtor DIP Loan Parties to sufficient working capital and liquidity through the use of Cash Collateral and other Prepetition Collateral, the incurrence of new indebtedness under the DIP Documents and other financial accommodations provided under the DIP Documents are necessary and vital to the preservation and maintenance of the going concern values of the Debtor DIP Loan Parties and to a successful reorganization of the Debtor DIP Loan Parties.

(iii) The Debtor DIP Loan Parties are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtor DIP Loan Parties are also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting to the DIP Secured Parties, the DIP Liens and the DIP Superpriority

Claims (as defined herein) and incurring the Adequate Protection Obligations (as defined herein), in each case subject to the Carve Out, under the terms and conditions set forth in the Interim Order, this Final Order and in the DIP Documents.

(iv) The Debtor DIP Loan Parties continue to collect cash, rents, income, offspring, products, proceeds, and profits generated from the Prepetition Collateral and acquire equipment, inventory and other personal property, all of which constitute Prepetition Collateral under the Prepetition Loan Documents that are subject to the Prepetition Secured Parties' security interests as set forth in the Prepetition Loan Documents.

(v) The Debtor DIP Loan Parties desire to use a portion of the cash, rents, income, offspring, products, proceeds and profits described in the preceding paragraph in their business operations that constitute Cash Collateral of the Prepetition Secured Parties under section 363(a) of the Bankruptcy Code. Certain prepetition rents, income, offspring, products, proceeds, and profits, in existence as of the Petition Date, including balances of funds in the Debtor DIP Loan Parties' prepetition and postpetition operating bank accounts, also constitute Cash Collateral.

(vi) Based on the DIP Motion, the Healy Declaration, the Waldman Declaration and the record presented to the Court at the Hearings, the terms of the DIP Financing, the terms of the adequate protection granted to the Prepetition Secured Parties as provided in paragraph 15 of this Final Order (the "**Adequate Protection**"), and the terms on which the Debtor DIP Loan Parties may continue to use the Prepetition Collateral (including Cash Collateral) pursuant to this Final Order and the DIP Documents are fair and reasonable, reflect the Debtor DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(vii) The DIP Financing (including the Roll-Up), the Adequate Protection and the use of the Prepetition Collateral (including Cash Collateral) have been negotiated in good faith and at arm's length among the Debtor DIP Loan Parties, the DIP Secured Parties, and the Prepetition Secured Parties, and all of the Debtor DIP Loan Parties' obligations and indebtedness arising under, in respect of, or in connection with, the DIP Financing and the DIP Documents, including, without limitation: all loans made to and guarantees issued by the Debtor DIP Loan Parties pursuant to the DIP Documents and any DIP Obligations shall be deemed to have been extended by the DIP Agent and the DIP Secured Parties and their respective affiliates in good faith, as that term is used in section 364(e) of the Bankruptcy Code and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code, and the DIP Agent and the DIP Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order, this Final Order or any provision hereof or thereof is vacated, reversed or modified, on appeal or otherwise.

(viii) The Prepetition Agent and the Prepetition Secured Parties have acted in good faith regarding the DIP Financing and the Debtor DIP Loan Parties' continued use of the Prepetition Collateral (including Cash Collateral) to fund the administration of the Debtor DIP Loan Parties' estates and continued operation of their businesses (including entry into the Syndicated Facility Amendment and the incurrence and payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens (as defined herein)), in accordance with the terms hereof, and the Prepetition Agent and Prepetition Secured Parties (and the successors and assigns thereof) shall be entitled to the full protection of sections 363(m) of the

Bankruptcy Code in the event that the Interim Order, this Final Order or any provision hereof or thereof is vacated, reversed or modified, on appeal or otherwise.

(ix) The Prepetition Secured Parties are entitled to the Adequate Protection provided in the Interim Order and this Final Order as and to the extent set forth herein and therein pursuant to sections 361, 362, 363 and 364 of the Bankruptcy Code. Based on the DIP Motion and on the record presented to the Court, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including Cash Collateral) are fair and reasonable, reflect the Debtor DIP Loan Parties' prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of the Prepetition Collateral, including the Cash Collateral, and the "Required Lenders" (as such term is defined in the Prepetition Credit Agreement, the "**Required Prepetition Lenders**"), have consented or are deemed hereby to have consented to the use of the Prepetition Collateral, including the Cash Collateral, the priming of the Prepetition Liens by the DIP Liens pursuant to the DIP Documents, and the Roll-Up; *provided* that nothing in the Interim Order, this Final Order or the DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Final Order and in the context of the DIP Financing authorized by the Interim Order and this Final Order to the extent such consent has been or will be given, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) or (z) prejudice, limit or otherwise impair the rights of any of the Prepetition Secured Parties to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties, and the rights of any other party in interest, including the Debtor DIP Loan Parties, to object to such relief are hereby preserved.

(x) The exchange and substitution of Prepetition Loans with DIP Roll-Up Loans on a dollar-for-dollar basis in an amount of Prepetition Loans equal to 100% of the amount of the DIP Commitments (as of the Closing Date) reflects the Debtor DIP Loan Parties' exercise of prudent business judgment consistent with their fiduciary duties. The Prepetition Secured Parties would not otherwise consent to the use of their Cash Collateral or the subordination of their liens to the DIP Liens (as defined herein), and the DIP Secured Parties would not be willing to provide the DIP Facility or extend credit to the Debtor DIP Loan Parties thereunder without the Roll-Up. The Roll-Up will benefit the Debtors and their estates because it will enable the Debtors to obtain urgently needed financing critical to administering these Chapter 11 Cases and funding their operations, which financing would not otherwise be available.

(xi) The Debtors have prepared and delivered to the advisors to the DIP Secured Parties an initial budget (the "**Initial DIP Budget**"), attached as Schedule 1 to the Interim Order. The Initial DIP Budget reflects, among other things, the Parent's and its Subsidiaries' anticipated cash receipts and anticipated disbursements for each calendar week, in form and substance satisfactory to the Requisite DIP Lenders. The Initial DIP Budget may be modified, amended and updated from time to time in accordance with the DIP Credit Agreement, and once approved by the Requisite DIP Lenders,[6] shall supplement and replace the Initial DIP Budget (the Initial DIP Budget and each subsequent approved budget, shall constitute without duplication, an "**Approved Budget**"). The Debtors believe that the Initial DIP Budget is reasonable under the facts and circumstances. The DIP Secured Parties are relying, in part, upon the DIP Loan Parties' agreement to comply with the Approved Budget (subject to only permitted

[6] "**Requisite DIP Lenders**" means, as applicable, pursuant to the requirements of the DIP Credit Agreement, either or both of the "Required IC Lenders" and/or "Required Lenders" (each as defined in the DIP Credit Agreement).

variances), the other DIP Documents and this Final Order in determining to enter into the postpetition financing arrangements provided for in this Final Order.

(xii) Each of the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, product, offspring, or profits with respect to any of the Prepetition Collateral.

L. *Relief Essential; Best Interest*. Sufficient cause exists for entry of this Final Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Bankruptcy Local Rule 4001-1(b). Consummation of the DIP Financing and the use of Prepetition Collateral (including Cash Collateral), in accordance with this Final Order and the DIP Documents are therefore in the best interests of the Debtor DIP Loan Parties' estates and consistent with the Debtor DIP Loan Parties' exercise of their fiduciary duties. The DIP Motion, the Interim Order and this Final Order comply with the requirements of Bankruptcy Local Rule 4001-1(b).

M. *Permitted Prior Liens; Continuation of Prepetition Liens*. Nothing herein shall constitute a finding or ruling by this Court that any alleged Permitted Prior Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing herein shall prejudice the rights of any party-in-interest, including, but not limited to, the Debtor DIP Loan Parties, the DIP Agent, the DIP Secured Parties, the Prepetition Agent, or the Prepetition Secured Parties to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Prior Lien and/or security interests. The right of a seller of goods to reclaim such goods under section 546(c) of the Bankruptcy Code is not a Permitted Prior Lien and is expressly subject to the DIP Liens (as defined herein). The Prepetition Liens, and the DIP Liens

that prime the Prepetition Liens, are continuing liens and the DIP Collateral is and will continue to be encumbered by such liens in light of the integrated nature of the DIP Facility, the DIP Documents and the Prepetition Loan Documents.

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

IT IS HEREBY ORDERED THAT:

1. *Motion Granted*. The relief sought in the DIP Motion is granted, the financing described herein is authorized and approved, and the use of Cash Collateral is authorized, in each case, on a final basis, subject to the terms and conditions set forth in the DIP Documents and this Final Order. All objections to this Final Order to the extent not withdrawn, waived, settled, or resolved are hereby denied and overruled on the merits.

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

(a) The Debtor DIP Loan Parties were, by the Interim Order, and hereby are authorized, and the Debtors were, by the Interim Order, and hereby are authorized and directed to use reasonable best efforts to cause the Non-Debtor DIP Loan Parties, as applicable, to execute, deliver, enter into and, as applicable, perform all of their obligations under the DIP Documents (including without limitation the DIP Intercreditor Agreement and the Syndicated Facility Amendment) and such other and further acts as may be necessary, appropriate or desirable in connection therewith. The Borrower was, by the Interim Order, and hereby is authorized to borrow money pursuant to the DIP Credit Agreement, each Debtor DIP Guarantor was, by the Interim Order, and hereby is authorized to, and the Debtors were, by the Interim Order, and hereby are authorized and directed to use reasonable best efforts to cause the Non-

Debtor DIP Loan Parties to, provide a guaranty of payment in respect of the Borrower's obligations with respect to such borrowings, subject to any limitations on borrowing under the DIP Documents, which shall be used for all purposes permitted under the DIP Documents (and subject to and in accordance with the Approved Budget) (subject to any permitted variances); *provided*, that the permitted variance set forth in Section 6.15(v) of the DIP Credit Agreement for the line items in the Approved Budget under the heading "Professional Fees" shall be (x) 12.5% for each Cumulative Budget Test Period ending through July 17, 2020 and (y) 10% thereafter.

(b) In furtherance of the foregoing and without further approval of this Court, each Debtor DIP Loan Party is authorized to, and authorized and directed to use reasonable best efforts to cause the Non-Debtor DIP Loan Parties to, perform all acts, to make, execute and deliver all instruments, certificates, agreements, charges, deeds and documents (including, without limitation, the execution or recordation of pledge and security agreements, mortgages, financing statements and other similar documents), and to pay all fees, expenses and indemnities in connection with or that may be reasonably required, necessary, or desirable for the DIP Loan Parties' performance of their obligations under or related to the DIP Financing, including, without limitation:

(i) the execution and delivery of, and performance under, each of the DIP Documents;

(ii) the execution and delivery of, and performance under, one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case, in such form as the DIP Loan Parties and the DIP Agent (acting in accordance with the terms of the DIP Credit Agreement and at the direction of the Requisite DIP Lenders) may

agree, it being understood that no further approval of this Court shall be required for any authorizations, amendments, waivers, consents or other modifications to and under the DIP Documents (and any fees and other expenses (including attorneys', accountants', appraisers' and financial advisors' fees), amounts, charges, costs, indemnities and other obligations paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder or increase the aggregate commitments or the rate of interest payable thereunder; *provided* that, for the avoidance of doubt, updates and supplements to the Approved Budget required to be delivered by the DIP Loan Parties under the DIP Documents shall not be considered amendments or modifications to the Approved Budget or the DIP Documents;

(iii) the non-refundable payment to the DIP Agent and the DIP Secured Parties, as the case may be, of all fees, whether paid pursuant to the Interim Order or this Final Order, including unused facility fees, amendment fees, prepayment premiums, early termination fees, servicing fees, audit fees, liquidator fees, structuring fees, administrative agent's, collateral agent's or security trustee's fees, upfront fees, closing fees, commitment fees, exit fees, closing date fees, backstop fees, original issue discount fees, prepayment fees or agency fees, indemnities and professional fees (which fees shall be irrevocable, and were, and were deemed to have been, approved upon entry of the Interim Order, whether or not the fees arose before or after the Petition Date, and whether or not the transactions contemplated hereby are consummated, and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification and expense reimbursement obligations, in each case

referred to in the DIP Credit Agreement or DIP Documents (or in any separate letter agreements, including, without limitation, any fee letters between any or all DIP Loan Parties, on the one hand, and any of the DIP Agent and/or DIP Secured Parties, on the other, in connection with the DIP Financing) and the costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained by, or on behalf of, any of the DIP Agent or DIP Secured Parties (including without limitation those of Davis Polk & Wardwell LLP, Stroock & Stroock & Lavan LLP, Skadden, Arps, Slate, Meagher & Flom LLP, King & Wood Mallesons, Rapp & Krock, P.C., Greenhill & Co., LLC, and any local legal counsel or other advisors in any foreign jurisdictions and any other advisors as are permitted under the DIP Documents), in each case, as provided for in the DIP Documents (collectively, the "**DIP Fees and Expenses**"), without the need to file retention motions or fee applications; and

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

3. *DIP Obligations*. Upon execution and delivery of the DIP Documents, the DIP Documents shall constitute legal, valid, binding and non-avoidable obligations of the DIP Loan Parties, enforceable against each Debtor DIP Loan Party and their estates and each Non-Debtor DIP Loan Party in accordance with the terms of the DIP Documents and this Final Order, and any successors thereto, including any trustee appointed in the Chapter 11 Cases, or in any case under Chapter 7 of the Bankruptcy Code upon the conversion of any of the Chapter 11 Cases, or in any other proceedings superseding or related to any of the foregoing (collectively, the "**Successor Cases**"). Upon execution and delivery of the DIP Documents, the DIP Obligations

included all loans and any other indebtedness or obligations, contingent or absolute, which may now or from time to time be owing by any of the DIP Loan Parties to any of the DIP Agent or DIP Secured Parties, in each case, under, or secured by, the DIP Documents or this Final Order, including all principal, interest, costs, fees, expenses, indemnities and other amounts under the DIP Documents (including the Interim Order and this Final Order); *provided*, that notwithstanding anything to the contrary in the DIP Credit Agreement, no Exit Fee shall be payable on the DIP Roll-Up Loans (as defined herein). The DIP Loan Parties shall be jointly and severally liable for the DIP Obligations. Except as permitted hereby, no obligation, payment, transfer, or grant of security hereunder or under the DIP Documents to the DIP Agent and/or the DIP Secured Parties (including their Representatives) shall be stayed, restrained, voidable, avoidable, or recoverable, under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 544, and 547 to 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any defense, avoidance, reduction, setoff, recoupment, offset, recharacterization, subordination (whether equitable, contractual, or otherwise), disallowance, impairment, claim, counterclaim, cross-claim, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

4. *Prepetition Credit Facility Debt Roll-Up*.

(a) The Debtors were, pursuant to paragraph 4(a) of the Interim Order, deemed to, and are hereby deemed to have, exchanged and substituted Prepetition Loans of the DIP Lenders on a cashless, dollar-for-dollar basis with the DIP Roll-Up Loans in an amount equal to the Initial Commitments in effect as of the Closing Date allocated pro rata

among the DIP Lenders in accordance with the respective principal amounts of their DIP Loans as of such date and subject to the terms and conditions set forth in the DIP Documents; *provided* that any interest, fees and other amounts, accrued or accruing on the Prepetition Loans as of the date of the Roll-Up that were so exchanged remained and shall remain outstanding under the Prepetition Credit Agreement and constitute claims for Prepetition Credit Facility Debt thereunder. The DIP Roll-Up Loans deemed substituted and exchanged pursuant to paragraph 4(a) of the Interim Order were thereby, and hereby are, deemed indefeasible and the applicable Prepetition Loans substituted thereby were by the Interim Order, and hereby are, deemed exchanged therefor. The cashless substitution and exchange dollar-for-dollar of Prepetition Loans under the Prepetition Term Loan Credit Facility by "rolling-up" such amounts into DIP Obligations as described in this paragraph 4(a) was, by the Interim Order, and hereby is authorized as compensation for, in consideration for, as a necessary inducement for, and on account of the agreement of the DIP Lenders to fund the DIP New Money Term Loans and not as adequate protection for, or otherwise on account of, any Prepetition Credit Facility Debt. Notwithstanding anything to the contrary herein, in the Interim Order or in the DIP Documents, the claims and liens in respect of the DIP Roll-Up Loans shall be subject and subordinate to the claims and liens in respect of the DIP New Money Term Loans and the Carve-Out in all respects.

(b) Effective upon entry of this Final Order, in accordance with the DIP Credit Agreement and the other DIP Documents, the Debtors shall be deemed to exchange and substitute Prepetition Loans of the DIP Lenders on a cashless dollar-for-dollar basis with DIP Roll-Up Loans in an amount equal to the Delayed-Draw Commitments in effect as of the Closing Date allocated pro rata among the DIP Lenders in accordance with the respective

principal amounts of their DIP Loans as of such date, subject to the terms and conditions set forth in the DIP Documents; *provided* that any interest, fees and other amounts, accrued or accruing on the Prepetition Loans as of the date of the Roll-Up that are so exchanged shall remain outstanding under the Prepetition Credit Agreement and constitute claims for Prepetition Credit Facility Debt thereunder; *provided, further*, that solely in the event that the Committee is granted standing to bring and actually brings a Challenge prior to the expiration of the Challenge Period (each as defined herein) and such Challenge results in a determination in a final, nonappealable order of the Bankruptcy Court that (i) some or all of the Prepetition Liens did not constitute valid or properly perfected liens on the Prepetition Collateral as of the Petition Date or (ii) some or all of the Prepetition Credit Facility Debt did not constitute valid and binding obligations of the Prepetition Borrower or Prepetition Guarantors as of the Petition Date, and the result of such defect is that the value of the Prepetition Credit Facility Debt that is secured by Prepetition Liens on the Prepetition Collateral as of the Petition Date was less than $90 million, the right of the Committee to argue that the DIP Roll-Up Loans approved pursuant to this paragraph 4(b) only (and not, for the avoidance of doubt, the DIP Roll-Up Loans approved pursuant to paragraph 4(a)) should be "rolled down" or disgorged solely in an amount equal to the negative difference between (x) the amount of the Prepetition Credit Facility Debt that is secured by valid and properly perfected Prepetition Liens on Prepetition Collateral as of the Petition Date and (y) $90 million (such loans in such amount, the "**Rolled Down Loans**"), is hereby preserved; *provided, further* that the rights of the Debtors and the Prepetition Secured Parties to object to the Committee's assertion that some or all of the DIP Roll-Up Loans should be rolled down or disgorged on any grounds are hereby expressly preserved; *provided, further* that such Rolled Down Loans shall (i) no longer be part of the DIP Facility and (ii) subject to

paragraph 20 hereof, shall be deemed to constitute Prepetition Loans held by the holders of the Rolled Down Loans immediately prior to such exchange and substitution for all purposes under the Prepetition Credit Agreement (and, for the avoidance of doubt, as Prepetition Loans shall not have the right to recover on a secured or priority basis from proceeds of Avoidance Actions successfully brought against the Prepetition Secured Parties), and the interest rate on the Rolled Down Loans will revert to the interest rate in effect on all amounts that were not "rolled-up" under the Prepetition Credit Agreement, as though the Roll-Up had never occurred with respect to such loans; *provided, further, however,* that in such an event the DIP Commitments for such Rolled Down Loans shall be deemed terminated. The DIP Roll-Up Loans deemed substituted and exchanged under this paragraph 4(b), except as provided above, shall be deemed indefeasible and the applicable Prepetition Loans substituted thereby shall be deemed exchanged therefor. The cashless substitution and exchange dollar-for-dollar of Prepetition Loans under the Prepetition Term Loan Credit Facility by "rolling-up" such amounts into DIP Obligations as described in this paragraph 4(b) shall be authorized as compensation for, in consideration for, as a necessary inducement for, and on account of the agreement of the DIP Lenders to fund the DIP New Money Term Loans and not as adequate protection for, or otherwise on account of, any Prepetition Credit Facility Debt. Notwithstanding anything to the contrary herein or in the DIP Documents, the claims and liens in respect of the DIP Roll-Up Loans shall be subject and subordinate to the claims and liens in respect of the DIP New Money Term Loans in all respects.

(c) The DIP Agent and Prepetition Agent, acting at the direction of, as applicable, the Requisite DIP Lenders or the Required Prepetition Lenders, was, by the Interim Order, and hereby is authorized to take any actions as may be necessary or advisable to

effectuate the terms of the Roll-Up, including entry into and performance under the DIP Intercreditor Agreement and in accordance with the terms thereof and of the other DIP Documents, and may conclusively rely on the provisions of the Interim Order and this Final Order, as applicable, in adjusting the Register and the Register (as defined in the Prepetition Credit Agreement) to reflect the Roll-Up.

5. *Professional Fee Account*.

(a) As soon as reasonably practicable following the entry of the Interim Order, the Debtors shall transfer an amount equal to the total budgeted (or actual, if available) weekly fees and expenses incurred or to be incurred by persons or firms retained by the Debtors pursuant to sections 327, 328, or 363 of the Bankruptcy Code (such persons or firms, the "**Debtor Professionals**") and any persons or firms retained by any Committee (the "**Committee Professionals**" and, together with the Debtor Professionals, the "**Professional Persons**" and, such fees and expenses of the Professional Persons, the "**Professional Fees**") for the weekly periods set forth in the Approved Budget through the weekly period that is two (2) weeks following such initial transfer into a segregated account not subject to the control, liens, security interests, or claims of the DIP Agent, any DIP Lender, or any Prepetition Secured Party, other than the reversionary interest of the DIP Agent and Prepetition Agent (for the benefit of the DIP Secured Parties and Prepetition Secured Parties, respectively), which interest shall be senior to any interest of the Debtors therein (the "**Professional Fees Account**"). Thereafter, on a weekly basis, the Debtors shall transfer into the Professional Fees Account cash proceeds from the DIP Facility or cash on hand in an amount equal to the aggregate unpaid amount of Estimated Fees and Expenses (as defined herein) included in all Weekly Statements (as defined herein) timely received by the Debtors, which shall be reported to the DIP Agent (or, in the event of a DIP

Repayment, the Prepetition Agent), or if an estimate is not provided, the total budgeted weekly fees of Professional Persons for the prior week set forth in the Approved Budget.

(b) Starting with the first full calendar week following the initial funding of the Professional Fee Account, each Professional Person shall have delivered and shall deliver to the Debtors a statement (each such statement, a "**Weekly Statement**") setting forth a good-faith estimate of the amount of unpaid fees and expenses incurred during the preceding week by such Professional Person (the "**Estimated Fees and Expenses**"). No later than one business day after the delivery of a Carve-Out Trigger Notice (as defined below) (the "**Carve-Out Statement Date**"), each Professional Person shall deliver one additional statement to the Debtors setting forth a good-faith estimate of the amount of Estimated Fees and Expenses incurred on and during the period prior to the Carve-Out Statement Date to the extent not otherwise paid or included in a previous Weekly Statement, and the Debtors shall transfer such amounts to the Professional Fees Account.

(c) The Debtors shall be authorized to use funds held in the Professional Fees Account to pay Professional Fees as they become allowed and payable pursuant to any interim or final order of the Bankruptcy Court or otherwise; *provided*, that when all allowed Professional Fees have been paid in full (regardless of when such Professional Fees are allowed by the Bankruptcy Court) and the Carve-Out (as defined herein) is funded, any funds remaining in the Professional Fees Account shall revert to the Debtors for use solely in accordance with the Interim Order, this Final Order and the other DIP Documents and subject to the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens and 507(b) Claims in the order of priority set forth herein; *provided, further*, that the Debtors' obligations to pay allowed Professional Fees shall in no way be limited or deemed limited to funds held in the Professional Fees Account.

(d) Notwithstanding anything herein to the contrary, (i) funds transferred to the Professional Fees Account shall be held in trust exclusively for the Professional Persons, including with respect to obligations arising out of the Carve-Out (as defined herein) and (ii) funds transferred to the Professional Fees Account shall not be subject to any liens or claims granted to the DIP Agent or DIP Lenders herein or any liens or claims granted to the Prepetition Agent or the Prepetition Secured Parties, and shall not constitute DIP Collateral, Prepetition Collateral, or Cash Collateral; *provided*, that the DIP Collateral and the Prepetition Collateral shall include a reversionary interest in funds held in the Professional Fees Account, if any, after all allowed Professional Fees have been paid in full (regardless of when such Professional Fees are allowed by the Bankruptcy Court) and the Carve-Out (as defined herein) is funded, which reversionary interest shall be senior to (i) any liens and claims against the Debtors other than the Carve-Out and (ii) any interest of the Debtors therein.

6. *Carve-Out.*

(a) As used in this Final Order, the term "**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 28 U.S.C. § 1930(a) plus interest at the statutory rate (without regard to the notice set forth in clause (iv) below); (ii) fees and expenses up to $100,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in clause (iv) below); (iii) to the extent allowed at any time, whether by interim or final compensation order, all professional fees and expenses (excluding any transaction fees or success fees) of Professional Persons (collectively, the "**Allowed Professional Fees**") incurred at any time before or on the day of delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined herein), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice (as defined herein) and

without regard to whether such fees and expenses are provided for in the Approved Budget; and (iv) Allowed Professional Fees incurred after the day following delivery by the DIP Agent of the Carve-Out Trigger Notice (as defined herein) in an aggregate amount not to exceed $7,000,000 (the amount set forth in this clause (iv) being the "**Post-Carve-Out Trigger Notice Cap**"); *provided*, *further*, that nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in this paragraph 6(a) on any grounds.

(b) For purposes of the foregoing, "**Carve-Out Trigger Notice**" shall mean a written notice delivered by email (or other electronic means) by the DIP Agent (or, after the DIP Obligations have been indefeasibly paid in full and the DIP Commitments terminated, the Prepetition Agent) to the Debtors, their lead restructuring counsel (Weil, Gotshal & Manges LLP), the U.S. Trustee, and lead counsel to the Committee, which notice may be delivered following the occurrence and during the continuation of an Event of Default and acceleration of the obligations under the DIP Facility (or, after the DIP Obligations have been indefeasibly paid in full and the DIP Commitments terminated, any occurrence that would constitute an Event of Default hereunder) or the occurrence of the Stated Maturity Date (as defined in the DIP Credit Agreement), stating that the Post-Carve-Out Trigger Notice Cap has been invoked.

(c) On the day on which a Carve-Out Trigger Notice is received by the Debtors, the Carve-Out Trigger Notice shall constitute a demand to the Debtors to utilize all cash on hand to transfer to the Professional Fees Account cash in an amount equal to all obligations benefitting from the Carve-Out.

(d) For the avoidance of doubt, to the extent that professional fees and expenses of the Professional Persons have been incurred by the Debtors at any time before or on

the first business day after delivery by the DIP Agent or the Prepetition Agent, as applicable, of a Carve-Out Trigger Notice but have not yet been allowed by the Bankruptcy Court, such professional fees and expenses of the Professional Persons shall constitute Allowed Professional Fees benefiting from the Carve-Out upon their allowance by the Bankruptcy Court, whether by interim or final compensation order and whether before or after delivery of the Carve-Out Trigger Notice, and the Debtors shall fund the Professional Fees Account in the amount of such professional fees and expenses.

(e) Following delivery of a Carve-Out Trigger Notice, the Debtors shall deposit into the Professional Fees Account any cash swept or foreclosed upon (including cash received as a result of the sale or other disposition of any assets) until the Professional Fees Account has been fully funded in an amount equal to all obligations benefiting from the Carve-Out. Notwithstanding anything to the contrary in the DIP Documents, the Interim Order, or this Final Order, following delivery of a Carve-Out Trigger Notice, the DIP 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 Professional Fees Account has been fully funded in an amount equal to all obligations benefiting from the Carve-Out. Further, notwithstanding anything to the contrary herein, (i) disbursements by the Debtors from the Professional Fees Account shall not constitute DIP Loans, (ii) the failure of the Professional Fees Account to satisfy in full the Professional Fees shall not affect the priority of the Carve-Out, and (iii) in no way shall the Carve-Out, Professional Fees Account, any Approved Budget, the Permitted Variance, Weekly Statements, Estimated Fees and Expenses, 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 or that may be allowed by the Bankruptcy Court at any time (whether by interim order, final order, or otherwise).

7. *DIP Superpriority Claims*. Pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims against the Debtor DIP Loan Parties on a joint and several basis (without the need to file any proof of claim) with priority over any and all claims against the Debtor DIP Loan Parties, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code and any and all administrative expenses or other claims arising under sections 105, 326, 327, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code (including the Adequate Protection Obligations), whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims (the "**DIP Superpriority Claims**") shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtor DIP Loan Parties and all proceeds thereof (excluding claims and causes of action under sections 502(d), 544, 545, 547, 548 and 550 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code (collectively, "**Avoidance Actions**") but including any proceeds or property recovered, unencumbered or otherwise, from Avoidance Actions, whether by judgment, settlement or otherwise ("**Avoidance Proceeds**")) in accordance with the DIP Documents, the Interim Order and this Final Order, subject only to the liens on such property and the Carve Out, and all other property of the Non-Debtor DIP Loan Parties as set forth in this Final Order and the DIP Documents. The DIP Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order, this Final Order or any provision hereof or thereof is

vacated, reversed or modified, on appeal or otherwise. The DIP Superpriority Claims shall be *pari passu* in right of payment with one another and senior to the 507(b) Claims (as defined herein), and subordinated to the Carve Out.

8. *DIP Liens*. As security for the DIP Obligations, effective and automatically and properly perfected upon the date of the Interim Order and without the necessity of the execution, recordation or filing by the DIP Loan Parties or any of the DIP Secured Parties of mortgages, security agreements, control agreements, pledge agreements, financing statements, notation of certificates of title for titled goods or other similar documents, instruments, deeds, charges or certificates, or the possession or control by the DIP Agent of, or over, any Collateral, the following valid, binding, continuing, enforceable and non-avoidable security interests and liens (all security interests and liens granted to the DIP Agent, for its benefit and for the benefit of the DIP Secured Parties, pursuant to the Interim Order, this Final Order and the DIP Documents, the "**DIP Liens**") were, by the Interim Order, and hereby are granted to the DIP Agent for its own benefit and the benefit of the DIP Secured Parties (all property identified in clauses (a) through (c) below being collectively referred to as the "**DIP Collateral**"); *provided* that notwithstanding anything herein to the contrary, the DIP Liens shall be (a) subject and junior to the Carve Out in all respects, (b) senior in all respects to the Prepetition Liens and (c) senior in all respects to the Adequate Protection Liens:

(a) *Liens on Unencumbered Property*. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected first priority senior security interest in and lien upon all prepetition and postpetition property of the Debtor DIP Loan Parties, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date, is not subject to (i) a valid, perfected and non-avoidable lien or (ii) a valid and non-

avoidable lien in existence as of the Petition Date that is perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, including, without limitation, any and all unencumbered cash of the Debtor DIP Loan Parties (whether maintained with any of the DIP Secured Parties or otherwise) and any investment of cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, fixtures, machinery, equipment, general intangibles, documents, instruments, securities, goodwill, commercial tort claims and claims that may constitute commercial tort claims (known and unknown), chattel paper, interests in leaseholds, real properties, deposit accounts, patents, copyrights, trademarks, trade names, rights under license agreements and other intellectual property, capital stock of subsidiaries, wherever located, and the proceeds, products, rents and profits of the foregoing, whether arising under section 552(b) of the Bankruptcy Code or otherwise, of all the foregoing (the "**Unencumbered Property**"), in each case other than the Avoidance Actions (but, for the avoidance of doubt, "Unencumbered Property" shall include Avoidance Proceeds); *provided that*, the DIP Collateral shall not include any proceeds of Avoidance Actions that are successfully prosecuted against the Prepetition Secured Parties (for the avoidance of doubt for purposes of this proviso, solely in their capacity as Prepetition Secured Parties).

(b) *Liens Priming Certain Prepetition Secured Parties' Liens*. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all prepetition and postpetition property of the Debtor DIP Loan Parties subject to the Prepetition Liens, regardless of where located, regardless whether or not any liens on such assets are voided, avoided, invalidated, lapsed or unperfected (the "**Priming Liens**"), which Priming Liens shall prime in all

respects the interests of the Prepetition Secured Parties arising from the current and future liens of the Prepetition Secured Parties (including, without limitation, the Adequate Protection Liens granted to the Prepetition Secured Parties) (the "**Primed Liens**").

(c) *Liens Junior to Certain Other Liens.* Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all tangible and intangible prepetition and postpetition property of each Debtor DIP Loan Party that is subject to either (i) valid, perfected and non-avoidable senior liens in existence immediately prior to the Petition Date (other than the Primed Liens) or (ii) any valid and non-avoidable senior liens (other than the Primed Liens) in existence immediately prior to the Petition Date that are perfected subsequent to such commencement as permitted by section 546(b) of the Bankruptcy Code, which shall be (x) junior and subordinate to any valid, perfected and non-avoidable liens (other than the Primed Liens) in existence immediately prior to the Petition Date, and (y) any such valid and non-avoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code; *provided* that nothing in the foregoing clauses (i) and (ii) shall limit the rights of the DIP Secured Parties under the DIP Documents to the extent such liens are not permitted thereunder; and

(d) *Liens Senior to Certain Other Liens.* The DIP Liens shall not be (i) subject or subordinate to or made *pari passu* with (A) any lien or security interest that is avoided and preserved for the benefit of the Debtors or their estates under section 551 of the Bankruptcy Code, (B) unless otherwise provided for in the DIP Documents or in this Final Order, any liens or security interests arising after the Petition Date, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental

unit (including any regulatory body), commission, board or court for any liability of the Debtor DIP Loan Parties, or (C) any intercompany or affiliate liens of the Debtor DIP Loan Parties or security interests of the Debtor DIP Loan Parties; or (ii) subordinated to or made *pari passu* with any other lien or security interest under section 363 or 364 of the Bankruptcy Code granted after the date hereof.

9. *Protection of DIP Lenders' Rights.*

(a) So long as there are any DIP Obligations outstanding or the DIP Lenders have any outstanding Commitments (the "**DIP Commitments**") under the DIP Documents, the Prepetition Secured Parties shall: (i) have no right to and shall take no action to foreclose upon, or recover in connection with, the liens granted thereto pursuant to the Prepetition Loan Documents, the Interim Order or this Final Order, or otherwise seek to exercise or enforce any rights or remedies against the DIP Collateral, including in connection with the Adequate Protection Liens; (ii) be deemed to have consented to any transfer, disposition or sale of, or release of liens on, the DIP Collateral (but not any proceeds of such transfer, disposition or sale to the extent remaining after payment in cash in full of the DIP Obligations and termination of the DIP Commitments), to the extent the transfer, disposition, sale or release is authorized under the DIP Documents; (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral other than as necessary to give effect to this Final Order other than, (x) solely as to this clause (iii), the DIP Agent filing financing statements or other documents to perfect the liens granted pursuant to the Interim Order and this Final Order, or (y) as may be required by applicable state law or foreign law to complete a previously commenced process of perfection or to continue the perfection of valid and non-

avoidable liens or security interests existing as of the Petition Date; and (iv) deliver or cause to be delivered, at the DIP Loan Parties' cost and expense, any termination statements, releases and/or assignments in favor of the DIP Agent or the DIP Secured Parties or other documents necessary to effectuate and/or evidence the release, termination and/or assignment of liens on any portion of the DIP Collateral subject to any sale or court-approved disposition.

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

(c) Any proceeds of Prepetition Collateral subject to the Primed Liens received by any Prepetition Secured Party, whether in connection with the exercise of any right or remedy (including setoff) relating to the Prepetition Collateral or otherwise received by the Prepetition Agent, shall be segregated and held in trust for the benefit of and forthwith paid over to the DIP Agent for the benefit of the DIP Secured Parties in the same form as received, with any necessary endorsements. The DIP Agent is hereby authorized to make any such endorsements as agent for the Prepetition Agent or any such Prepetition Secured Parties. This authorization is coupled with an interest and is irrevocable.

(d) The Automatic Stay is hereby modified to the extent necessary to permit the DIP Agent (acting at the direction of the Requisite DIP Lenders) (and in the case of the following clause (i), after the DIP Obligations have been indefeasibly paid in full and the DIP Commitments terminated, the Prepetition Agent, acting at the direction of the Required Prepetition Lenders) to take any or all of the following actions, at the same or different time, in each case without further order or application of the Court and immediately upon the occurrence of an Event of Default: (i) deliver a notice of an Event of Default to the Debtors; (ii) declare the termination, reduction or restriction of any further DIP Commitment to the extent any such DIP Commitment remains outstanding; (iii) declare the termination of the DIP Documents as to any future liability or obligation of the DIP Agent and the DIP Secured Parties (but, for the avoidance of doubt, without affecting any of the DIP Liens or the DIP Obligations); and (iv) declare all applicable DIP Obligations to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Debtors (or, in the case of the Prepetition Agent, rescind consent to the use of Prepetition Collateral (including Cash Collateral)). Following the delivery of such notice, the DIP Agent (or, after the DIP Obligations have been indefeasibly paid in full and the DIP Commitments terminated, the Prepetition Agent) may file a motion (the "**Stay Relief Motion**") seeking emergency relief from the Automatic Stay on at least five (5) business days' notice to request a further order of the Court permitting the DIP Agent (or Prepetition Agent, if applicable), whether or not the maturity of any of the DIP Obligations shall have been accelerated, to proceed to protect, enforce and exercise all other rights and remedies provided for in the DIP Documents and under applicable law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in any such DIP

Document or any instrument pursuant to which such DIP Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of any of such DIP Secured Parties. The Debtors shall not object to the fact that the Stay Relief Motion is being heard on such shortened notice. Until such time that the Stay Relief Motion has been adjudicated by the Court the Debtor DIP Loan Parties may use the proceeds of the DIP Facility (to the extent drawn prior to the occurrence of Event of Default) or Cash Collateral to fund operations in accordance with the DIP Credit Agreement and the Approved Budget (subject to permitted variances).

(e) No rights, protections or remedies of the DIP Agent or the DIP Secured Parties granted by the provisions of the Interim Order, this Final Order or the DIP Documents shall be limited, modified or impaired in any way by: (i) any actual or purported withdrawal of the consent of any party to the Debtors' authority to continue to use Cash Collateral; (ii) any actual or purported termination of the Debtors' authority to continue to use Cash Collateral; or (iii) the terms of any other order or stipulation related to the Debtors' continued use of Cash Collateral or the provision of adequate protection to any party.

10. *Limitation on Charging Expenses Against Collateral*. No costs or expenses of administration of the Chapter 11 Cases or any Successor Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral (including Cash Collateral) or Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Agent or the Prepetition Agent, as applicable, and no consent shall be implied from any other action, inaction or acquiescence by the DIP Agent, the DIP Secured Parties, the Prepetition Agent or the Prepetition

Secured Parties, and nothing contained in the Interim Order or this Final Order shall be deemed to be a consent by the DIP Agent, the DIP Secured Parties, the Prepetition Agent or the Prepetition Secured Parties to any charge, lien, assessment or claims against the Collateral under section 506(c) of the Bankruptcy Code or otherwise.

11. *No Marshaling*. In no event shall the DIP Agent, the DIP Secured Parties, the Prepetition Agent or the Prepetition Secured Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, the DIP Obligations, the Prepetition Credit Facility Debt, or the Prepetition Collateral; *provided* that prior to seeking payment of any DIP Claims, DIP Liens, 507(b) Claims or Adequate Protection Liens from Avoidance Proceeds, the DIP Secured Parties and Prepetition Secured Parties shall use reasonable best efforts to first satisfy such claims or liens from all other DIP Collateral. Further, in no event shall the "equities of the case" exception in section 552(b) of the Bankruptcy Code apply to the Prepetition Agent or the Prepetition Secured Parties with respect to proceeds, products, offspring or profits of any Prepetition Collateral.

12. *Payments Free and Clear*. Any and all payments or proceeds remitted to the DIP Agent by, through or on behalf of the DIP Secured Parties pursuant to the provisions of the Interim Order, this Final Order, the DIP Documents or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability, including without limitation, any claim or charge arising out of or based on, directly or indirectly, sections 506(c) or 552(b) of the Bankruptcy Code, whether asserted or assessed by through or on behalf of the Debtors.

13. *Use of Cash Collateral*. The Debtors are hereby authorized, subject to the terms and conditions of this Final Order, to use all Cash Collateral; *provided* that (a) the Prepetition

Secured Parties are granted the Adequate Protection as hereinafter set forth and (b) except on the terms and conditions of this Final Order, the Debtors shall be enjoined and prohibited from at any times using the Cash Collateral absent further order of the Court.

14. *Disposition of DIP Collateral*. The Debtor DIP Loan Parties shall not sell, transfer, lease, encumber or otherwise dispose of any portion of the DIP Collateral, except as otherwise provided for in the DIP Documents or otherwise permitted by an order of the Court.

15. *Adequate Protection of Prepetition Secured Parties*. The Prepetition Secured Parties are entitled, pursuant to sections 361, 362, 363(e), 364(d)(1) and 507 of the Bankruptcy Code, to adequate protection of their interests in all Prepetition Collateral (including Cash Collateral) in an amount equal to the aggregate diminution in the value of the Prepetition Secured Parties' interests in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date, if any, for any reason provided for under the Bankruptcy Code, including, without limitation, any diminution resulting from the sale, lease or use by the Debtors of the Prepetition Collateral, the priming of the Prepetition Liens by the DIP Liens pursuant to the DIP Documents, the Interim Order and this Final Order, the payment of any amounts under the Carve Out or pursuant to the Interim Order, this Final Order or any other order of the Court or provision of the Bankruptcy Code or otherwise, and the imposition of the Automatic Stay (the "**Adequate Protection Claims**"); *provided*, that the priming of the Prepetition Liens by the liens securing the DIP Roll-Up Loans (but not, for the avoidance of doubt, the DIP New Money Term Loans) shall not, in and of itself, constitute diminution in value for purposes of determining the amount of the Prepetition Secured Parties' Adequate Protection Claims;. In consideration of the foregoing, the Prepetition Agent, for the benefit of the Prepetition Secured Parties, was, by the Interim Order, and hereby is granted the following as Adequate Protection

for, and to secure repayment of an amount equal to such Adequate Protection Claims, and as an inducement to the Prepetition Secured Parties to consent to the priming of the Prepetition Liens and use of the Prepetition Collateral (including Cash Collateral) (collectively, the "**Adequate Protection Obligations**"):

(a) *Prepetition Adequate Protection Liens*. The Prepetition Agent, for itself and for the benefit of the other Prepetition Secured Parties, was, pursuant to the Interim Order, and hereby is granted (effective and perfected upon the date of the Interim Order and without the necessity of the execution of any mortgages, security agreements, pledge agreements, financing statements or other agreements) in the amount of the Prepetition Secured Parties' Adequate Protection Claims, a valid, perfected replacement security interest in and lien upon all of the DIP Collateral (the "**Adequate Protection Liens**"), in each case subject and subordinate only to (A) the DIP Liens and (B) the Carve Out.

(b) *Section 507(b) Claims*. The Prepetition Agent, for itself and for the benefit of the other Prepetition Secured Parties, is hereby granted, subject to the Carve Out and effective as of the date of the Interim Order, an allowed superpriority administrative expense claim as provided for in section 507(b) of the Bankruptcy Code in the amount of the Prepetition Secured Parties' Adequate Protection Claims, with priority in payment over any and all administrative expenses of the kind specified or ordered pursuant to any provision of the Bankruptcy Code (the "**507(b) Claims**") which 507(b) Claims shall have recourse to and be payable from all prepetition and postpetition property of the Debtors and all proceeds thereof (excluding Avoidance Actions, but including Avoidance Proceeds). The 507(b) Claims shall be subject and subordinate only to the Carve Out and the DIP Superpriority Claims; *provided, further* that the 507(b) Claims shall not recover on a priority basis from proceeds of Avoidance

Actions that are successfully prosecuted against the Prepetition Secured Parties (for the avoidance of doubt for purposes of this proviso, solely in their capacity as Prepetition Secured Parties). Except to the extent expressly set forth in this Final Order or the DIP Documents, the Prepetition Secured Parties shall not receive or retain any payments, property or other amounts in respect of the 507(b) Claims unless and until the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) have indefeasibly been paid in cash in full and all DIP Commitments have been terminated.

(c) *Prepetition Secured Parties Fees and Expenses*. The Debtor DIP Loan Parties shall provide the Prepetition Agent, for the benefit of the Prepetition Secured Parties, without duplication of fees paid for the benefit of the DIP Secured Parties, current cash payments of all reasonable and documented prepetition and postpetition fees and expenses, including, but not limited to, the reasonable and documented fees and out-of-pocket expenses of primary, special and local counsel (in each applicable jurisdiction) and financial advisors to the Prepetition Agent and ad hoc group of Prepetition Lenders, including without limitation (i) Davis Polk & Wardwell LLP, Stroock & Stroock & Lavan LLP, King & Wood Mallesons, Greenhill & Co., LLC, Rapp & Krock, P.C., and any other advisors retained by or on behalf of the ad hoc group of Prepetition Lenders and (ii) Skadden, Arps, Slate, Meagher & Flom LLP as counsel to the Prepetition Agent (the "**Adequate Protection Fees and Expenses**") (and such counsel and advisors, the "**Prepetition Secured Parties Advisors**"), subject to the review procedures set forth in paragraph 19 of this Final Order.

(d) *Adequate Protection Payments.* Upon indefeasible payment in full of all DIP Obligations and termination of all DIP Commitments, (i) the Prepetition Secured Parties are hereby entitled to application of all mandatory prepayments as described in Section 2.13 of the

DIP Credit Agreement to repayment of the Prepetition Secured Obligations in accordance with the priorities set forth in the Prepetition Loan Documents (the "**Adequate Protection Payments**") and (ii) the Required Prepetition Lenders shall constitute the Requisite DIP Lenders for purposes of any amendment, extension, waiver or other modification with respect to such Adequate Protection Payments; *provided* that the application of such mandatory prepayments shall only be permitted upon notice and hearing before the Court, and the rights of the Committee, the Debtors and other parties in interest to argue that such amounts should not be so applied are hereby expressly preserved; *provided further* that any amounts subject to application pursuant to this paragraph 15(d) shall, upon receipt by any DIP Loan Party, be held in a segregated escrow account by the Debtors until the time that such motion regarding the application thereof is resolved, at which time the proceeds shall be applied in accordance with such resolution.

(e) *Milestones*. Upon indefeasible payment in full of all DIP Obligations and termination of all DIP Commitments, (i) the Prepetition Secured Parties are hereby entitled to performance of those certain case milestones set forth in Section 5.16 of the DIP Credit Agreement (for such purposes, the "**Adequate Protection Milestones**"), and (ii) the Required Prepetition Lenders shall constitute the Requisite DIP Lenders for purposes of any amendment, extension, waiver or other modification of such Adequate Protection Milestones.

(f) *Budget and Financial Covenants.* Upon indefeasible payment in full of all DIP Obligations and termination of all DIP Commitments, (i) the Approved Budget shall continue to be updated in accordance with the terms and conditions of the DIP Credit Agreement (for such purposes, the "**Adequate Protection Budget Requirement**"), (ii) the Prepetition Secured Parties are hereby entitled to performance of those certain financial and other covenants

set forth in Section 6.15 of the DIP Credit Agreement (for such purposes, the "**Adequate Protection Covenants**") and (iii) the Required Prepetition Lenders shall constitute the Requisite DIP Lenders for purposes of any amendment, extension, waiver or other modification relating to the Adequate Protection Budget Requirement or Adequate Protection Covenants.

(g) *Prepetition Secured Parties' Information Rights*. The DIP Loan Parties shall promptly provide the Prepetition Agent, for distribution to the Prepetition Secured Parties (and subject to applicable confidentiality restrictions governing the Prepetition Credit Agreement, including with respect to any "private" side lender database), and the Committee or its professionals (pursuant to a confidentiality agreement or information sharing protocol in form and substance reasonably satisfactory to the Debtors) with all required written financial reporting and other periodic reporting that is required to be provided to the DIP Agent or the DIP Secured Parties under the DIP Documents, including without limitation the reporting required under Sections 5.04, 5.05, 5.06 and 5.07 of the DIP Credit Agreement (the "**Adequate Protection Reporting Requirement**"). Upon indefeasible payment in full of all DIP Obligations and termination of all DIP Commitments, (i) the Prepetition Secured Parties and the Committee shall continue to be entitled hereby to satisfaction of the Adequate Protection Reporting Requirement and (ii) the Required Prepetition Lenders shall constitute the Requisite DIP Lenders for purposes of any amendment, extension, waiver or other modification relating to the Adequate Protection Reporting Requirement.

(h) *Maintenance of Collateral*. The DIP Loan Parties shall continue to maintain and insure the Prepetition Collateral and DIP Collateral in amounts and for the risks, and by the entities, as required under the Prepetition Credit Facilities and the DIP Documents.

(i) *Prepetition Secured Parties' Additional Adequate Protection*. In the event the Debtors file, support, make a written proposal or counterproposal to any party relating to, or take any other similar action in furtherance of (any of the foregoing, a "**Non-Permitted Action**"), a chapter 11 plan, sale process or other restructuring transaction that does not (i) provide for the indefeasible payment on the effective date thereof of all claims on account of the Prepetition Credit Facility Debt in full in cash or (ii) constitute an Approved Restructuring (as defined in the DIP Credit Agreement) (in each case, a "**Non-Permitted Restructuring**"), the Debtors shall provide notice to counsel to the ad hoc group of Prepetition Lenders not less than seven (7) business days before taking such Non-Permitted Action (the "**Non-Permitted Restructuring Notice**"). Upon receipt of a Non-Permitted Restructuring Notice, each of the Prepetition Secured Parties shall have the right to immediately file a Stay Relief Motion on five Business Days' notice seeking to terminate the Debtor DIP Loan Parties' right to use Cash Collateral pursuant to this Final Order (consistent with the procedures set forth in paragraph 9 of this Final Order), and seek authority thereby to proceed to protect, enforce and exercise all other rights and remedies provided under the Prepetition Loan Documents or applicable law.

16. *Reservation of Rights of Prepetition Secured Parties*. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties and any other parties' holding interests that are secured by Primed Liens; *provided* that the Prepetition Agent, acting on its own behalf or at the direction of the requisite Prepetition Secured Parties, may request further or different adequate protection and the Debtor DIP Loan Parties or any other party in interest may contest any such request.

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

(a) Without in any way limiting the automatically effective perfection of the DIP Liens granted pursuant to paragraph 8 hereof and the Adequate Protection Liens granted pursuant to paragraph 15 hereof, the DIP Agent, the DIP Secured Parties, the Prepetition Agent and the Prepetition Secured Parties are hereby authorized, but not required, to file or record (and to execute in the name of the DIP Loan Parties and the Prepetition Secured parties (as applicable), as their true and lawful attorneys, with full power of substitution, to the maximum extent permitted by law) financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, including as may be reasonably required or deemed appropriate by the DIP Agent, acting at the direction of the Requisite DIP Lenders, and the Prepetition Agent, acting at the direction of the Required Prepetition Lenders, under applicable local laws, or take possession of or control over cash or securities, or to amend or modify security documents, or enter into, amend or modify intercreditor agreements, or to subordinate existing liens and any other similar action or action in connection therewith or take any other action in order to document, validate and perfect the liens and security interests granted to them hereunder the ("**Perfection Actions**"). Whether or not the DIP Agent, on behalf of the DIP Secured Parties and acting at the direction of the Required DIP Lenders, or the Prepetition Agent, on behalf of the Prepetition Secured Parties and acting at the direction of the Required Prepetition Lenders, shall take such Perfection Actions, the liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination, at the time and on the date of entry of the Interim Order. Upon the request of the DIP Agent, acting at the direction of the Required DIP Lenders, or the Prepetition Agent, acting at the direction of the Required Prepetition Lenders, each of the

Prepetition Secured Parties and the Debtor DIP Loan Parties, without any further consent of any party, and at the sole cost of the Debtors as set forth herein, is authorized (in the case of the Debtor DIP Loan Parties), authorized and directed to use reasonable best efforts to cause (in the case of the Debtors with respect to the Non-Debtor DIP Loan Parties) and directed (in the case of the Prepetition Secured Parties), and such direction is hereby deemed to constitute required direction under the applicable DIP Documents or Prepetition Loan Documents, to take, execute, deliver and file such actions, instruments and agreements (in each case, without representation or warranty of any kind) to enable the DIP Agent to further validate, perfect, preserve and enforce the DIP Liens in all jurisdictions required under the DIP Credit Agreement, including all local law documentation therefor determined to be reasonably necessary by the DIP Agent, acting at the direction of the Required DIP Lenders; *provided*, *however*, that no action need be taken in a foreign jurisdiction that would jeopardize the validity and enforceability of the Prepetition Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date. To the extent necessary to effectuate the terms of the Interim Order, this Final Order and the DIP Documents, each of the DIP Agent and the Prepetition Agent hereby is deemed to appoint the other (and deemed to have accepted such appointment) to act as its agent with respect to the Shared Collateral (as defined in the DIP Documents) and under the Common Security Documents (as defined in the DIP Documents) to which they are a party in such capacity, with such powers as are expressly delegated thereto under the DIP Documents and Prepetition Loan Documents (and even if it involves self-contracting and multiple representation to the extent legally possible), together with such other powers as are reasonably incidental thereto.

(b) A certified copy of the Interim Order and/or this final Order may, in the discretion of the DIP Agent, acting at the direction of the Required DIP Lenders, and the

Prepetition Agent, acting at the direction of the Required Prepetition Lenders, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized and directed to accept a certified copy of the Interim Order and/or this Final Order for filing and/or recording, as applicable. The Automatic Stay shall be modified to the extent necessary to permit the DIP Agent and the Prepetition Agent to take all actions, as applicable, referenced in this subparagraph (b) and the immediately preceding subparagraph (a).

18. *Preservation of Rights Granted Under this Final Order.*

(a) Other than the Carve Out and other claims and liens expressly granted by this Final Order, no claim or lien having a priority superior to or *pari passu* with those granted by this Final Order to the DIP Agent and the DIP Secured Parties or the Prepetition Agent and the Prepetition Secured Parties shall be permitted while any of the DIP Obligations or the Adequate Protection Obligations remain outstanding, and, except as otherwise expressly provided in this Final Order, the DIP Liens and the Adequate Protection Liens shall not be: (i) 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; (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise; (iii) subordinated to or made *pari passu* with any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other domestic or foreign governmental unit (including any regulatory body), commission, board or court for any liability of the DIP Loan Parties; or (iv) subject or junior to any intercompany or affiliate liens or security interests of the DIP Loan Parties.

(b) The occurrence of (i) any Event of Default or (ii) any violation of any of the terms of this Final Order, shall, after notice by the DIP Agent (acting in accordance with the terms of this Final Order) in writing to the Borrower (and, in the case of violation of any terms of this Final Order, and after indefeasible payment in full of the DIP Obligations and termination of the DIP Commitments, notice by the Prepetition Agent acting at the direction of the Required Prepetition Lenders), constitute an event of default under this Final Order (each an "**Event of Default**") and, upon any such Event of Default, interest, including, where applicable, default interest, shall accrue and be paid as set forth in the DIP Credit Agreement. Notwithstanding any order that may be entered dismissing any of the Chapter 11 Cases under section 1112 of the Bankruptcy Code: (A) the DIP Superpriority Claims, the 507(b) Claims, the DIP Liens, and the Adequate Protection Liens, and any claims related to the foregoing, shall continue in full force and effect and shall maintain their priorities as provided in this Final Order until all DIP Obligations and Adequate Protection Obligations shall have been paid in full (and that such DIP Superpriority Claims, 507(b) Claims, DIP Liens and Adequate Protection Liens shall, notwithstanding such dismissal, remain binding on all parties in interest); (B) the other rights granted by this Final Order, including with respect to the Carve Out, shall not be affected; and (C) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in this paragraph and otherwise in this Final Order.

(c) If any or all of the provisions of this Final Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacatur or stay shall not affect: (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agent or the Prepetition Agent,

as applicable, of the effective date of such reversal, modification, vacatur or stay; or (ii) the validity, priority or enforceability of the DIP Liens or the Adequate Protection Liens or the Carve Out. Notwithstanding any reversal, modification, vacatur or stay of any use of Cash Collateral, any DIP Obligations, DIP Liens, Adequate Protection Obligations or Adequate Protection Liens incurred by the Debtor DIP Loan Parties to the DIP Agent, the DIP Secured Parties, the Prepetition Agent, or the Prepetition Secured Parties, as the case may be, prior to the actual receipt of written notice by the DIP Agent or the Prepetition Agent, as applicable, of the effective date of such reversal, modification, vacatur or stay shall be governed in all respects by the original provisions of this Final Order, and the DIP Agent, the DIP Secured Parties, the Prepetition Agent, and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in sections 364(e) and 363(m) of the Bankruptcy Code, this Final Order and the DIP Documents with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(d) Except as expressly provided in this Final Order or in the DIP Documents, the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens, the Adequate Protection Obligations, the 507(b) Claims and all other rights and remedies of the DIP Agent, the DIP Secured Parties, the Prepetition Agent, and the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents and the Carve Out shall survive, and shall not be modified, impaired or discharged by: (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, dismissing any of the Chapter 11 Cases or terminating the joint administration of these Chapter 11 Cases or by any other act or omission; (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code (except to the extent permitted by the DIP Documents);

(iii) the entry of an order confirming a chapter 11 plan in any of the Chapter 11 Cases and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the DIP Loan Parties have waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Final Order and the DIP Documents shall continue in these Chapter 11 Cases, in any Successor Cases if these Chapter 11 Cases cease to be jointly administered and in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the DIP Superpriority Claims, the Adequate Protection Liens and the Adequate Protection Obligations and all other rights and remedies of the DIP Agent, the DIP Secured Parties, the Prepetition Agent, and the Prepetition Secured Parties granted by the provisions of this Final Order and the DIP Documents shall continue in full force and effect until the DIP Obligations are indefeasibly paid in full in cash, as set forth herein and in the DIP Documents, and the DIP Commitments have been terminated (and in the case of rights and remedies of the Prepetition Agent and Prepetition Secured Parties, shall remain in full force and effect thereafter, subject to the terms of this Final Order), and the Carve Out shall continue in full force and effect.

19. *Payment of Fees and Expenses*. The Fee Letter is hereby approved, and the Debtor DIP Loan Parties are authorized to and shall pay the DIP Fees and Expenses. Subject to the review procedures set forth in this paragraph 19, payment of all DIP Fees and Expenses and Adequate Protection Fees and Expenses shall not be subject to allowance or review by the Court. Professionals for the DIP Secured Parties and the Prepetition Secured Parties shall not be required to comply with the U.S. Trustee fee guidelines, however any time that such professionals seek payment of fees and expenses from the Debtor DIP Loan Parties prior to confirmation of a chapter 11 plan, each professional shall provide summary copies of its invoices (which shall not be required to contain time entries and which may be redacted or modified to

the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of their invoices shall not constitute any waiver of the attorney client privilege or of any benefits of the attorney work product doctrine) to the Debtor DIP Loan Parties, the U.S. Trustee, and counsel to the Committee (together, the "**Review Parties**"). Any objections raised by any Review Party with respect to such invoices must be in writing and state with particularity the grounds therefor and must be submitted to the applicable professional within ten (10) calendar days after the receipt by the Review Parties (the "**Review Period**"). If no written objection is received by 12:00 p.m., prevailing Eastern Time, on the end date of the Review Period, the Debtor DIP Loan Parties shall pay such invoices within three (3) calendar days. If an objection to a professional's invoice is received within the Review Period, the Debtor DIP Loan Parties shall promptly pay the undisputed amount of the invoice and this Court shall have jurisdiction to determine the disputed portion of such invoice if the parties are unable to resolve the dispute consensually. Notwithstanding the foregoing, the Debtor DIP Loan Parties are authorized and directed to pay on the Closing Date the DIP Fees and Expenses and Adequate Protection Fees and Expenses incurred on or prior to such date without the need for any professional engaged by, or on behalf of, the DIP Secured Parties or the Prepetition Secured Parties to first deliver a copy of its invoice or other supporting documentation to the Review Parties (other than the Debtor DIP Loan Parties). No attorney or advisor to the DIP Secured Parties or any Prepetition Secured Party shall be required to file an application seeking compensation for services or reimbursement of expenses with the Court. Any and all fees, costs, and expenses paid prior to the Petition Date by any of the Debtors to the (i) DIP Secured Parties in connection with or with respect to the DIP Facility and (ii) Prepetition Secured Parties in

connection or with respect to these matters, are hereby approved in full and shall not be subject to recharacterization, avoidance, subordination, disgorgement or any similar form of recovery by the Debtor DIP Loan Parties or any other person.

20. *Effect of Stipulations on Third Parties.* The Debtors' stipulations, admissions, agreements and releases contained in this Final Order shall be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors) in all circumstances and for all purposes. The Debtors' stipulations, admissions, agreements and releases contained in this Final Order shall be binding upon all parties in interest, including, without limitation, any Committee or other statutory or non-statutory committees appointed or formed in the Chapter 11 Cases and any other person or entity acting or seeking to act on behalf of the Debtors' estates, including any chapter 7 or chapter 11 trustee or examiner appointed or elected for any of the Debtors, in all circumstances and for all purposes unless: (a) such committee or any other party in interest with requisite standing (subject in all respects to any agreement or applicable law that may limit or affect such entity's right or ability to do so) has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including, *inter alia*, in this paragraph) by no later than (i) the earlier of (x) an order confirming a chapter 11 plan, and (y) July 6, 2020; (ii) any such later date agreed to in writing by the DIP Agent (acting with the direction of the Requisite DIP Lenders) and Prepetition Agent (acting with the direction of the Required Prepetition Lenders); and (iii) any such later date as has been ordered by the Court for cause upon a motion filed and served within any applicable period (the time period established by the foregoing clauses (i)-(iii), the "**Challenge Period**"), (A) objecting to or challenging the amount, validity, perfection, enforceability, priority or extent of the Prepetition Credit Facility Debt or the

Prepetition Liens, or (B) otherwise asserting or prosecuting any action for preferences, fraudulent transfers or conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses (collectively, the "**Challenges**") against the Prepetition Secured Parties or their respective subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof, in each case in their respective capacity as such (each, a "**Representative**" and, collectively, the "**Representatives**") in connection with matters related to the Prepetition Loan Documents, the Prepetition Credit Facility Debt, the Prepetition Liens and the Prepetition Collateral (*provided* that in the event that the Committee files a motion seeking standing to pursue a Challenge prior to the end of the Challenge Period, the Challenge Period shall be extended, solely with respect to the Challenges for which the Committee seeks standing as set forth in a reasonably detailed complaint attached to such motion, to two business days after entry of a final, non-appealable order granting or denying such motion, and solely with respect to the Challenges that the Committee is granted standing to pursue by such order); and (b) there is a final non-appealable order in favor of the plaintiff sustaining any such Challenge in any such timely filed adversary proceeding or contested matter; *provided*, *however*, that any pleadings filed in connection with any Challenge shall set forth with specificity the basis for such challenge or claim and any challenges or claims not so specified prior to the expiration of the Challenge Period shall be deemed forever, waived, released and barred. If no such Challenge is timely and properly filed during the Challenge Period or the Court does not rule in favor of the plaintiff in any such proceeding then: (1) the Debtors' stipulations, admissions, agreements and releases contained in this Final Order shall be binding on all parties in interest, including, without

limitation, the Committee; (2) the obligations of the Debtor DIP Loan Parties under the Prepetition Loan Documents, including the Prepetition Credit Facility Debt, shall constitute allowed claims not subject to defense, claim, counterclaim, recharacterization, subordination, recoupment, offset or avoidance, for all purposes in the Chapter 11 Cases, and any subsequent chapter 7 case(s); (3) the Prepetition Liens on the Prepetition Collateral shall be deemed to have been, as of the Petition Date, legal, valid, binding, perfected, security interests and liens, not subject to recharacterization, subordination, avoidance or other defense; and (4) the Prepetition Credit Facility Debt and the Prepetition Liens on the Prepetition Collateral shall not be subject to any other or further claim or challenge by the Committee or any other statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any other party in interest acting or seeking to act on behalf of the Debtor DIP Loan Parties' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors) and any defenses, claims, causes of action, counterclaims and offsets by any statutory or non-statutory committees appointed or formed in the Chapter 11 Cases or any other party acting or seeking to act on behalf of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 trustee or chapter 11 trustee or examiner appointed or elected for any of the Debtors), whether arising under the Bankruptcy Code or otherwise, against any of the Prepetition Secured Parties and their Representatives arising out of or relating to any of the Prepetition Loan Documents, the Prepetition Credit Facility Debt, the Prepetition Liens and the Prepetition Collateral shall be deemed forever waived, released and barred. If any such Challenge is timely filed during the Challenge Period, the stipulations, admissions, agreements and releases contained in this Final Order shall nonetheless remain binding and preclusive (as provided in the second sentence of this

paragraph) on the Committee or any other statutory or non-statutory committee appointed or formed in the Chapter 11 Cases and on any other person or entity, except to the extent that such stipulations, admissions, agreements and releases were expressly and successfully challenged in such Challenge as set forth in a final, non-appealable order of a court of competent jurisdiction. Nothing in the Interim Order or this Final Order vests or confers on any Person (as defined in the Bankruptcy Code), including the Committee or any other statutory or non-statutory committees appointed or formed in these Chapter 11 Cases, standing or authority to pursue any claim or cause of action belonging to the Debtors or their estates, including, without limitation, Challenges with respect to the Prepetition Loan Documents, the Prepetition Credit Facility Debt or the Prepetition Liens, and any ruling on standing, if appealed, shall not stay or otherwise delay the Chapter 11 Cases or confirmation of any plan of reorganization.

21. *Limitation on Use of DIP Financing Proceeds and Collateral*. Notwithstanding any other provision of the Interim Order, this Final Order or any other order entered by the Court, no DIP Loans, DIP Collateral, Prepetition Collateral (including Cash Collateral) or any portion of the Carve Out, may be used directly or indirectly, (a) in connection with the investigation, threatened initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the DIP Secured Parties, or the Prepetition Secured Parties, or their respective predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors, in each case in their respective capacity as such, or any action purporting to do the foregoing in respect of the DIP Obligations, DIP Liens, DIP Superpriority Claims, Prepetition Credit Facility Debt, and/or the Adequate Protection Obligations and Adequate Protection Liens granted to the Prepetition Secured Parties, as applicable, or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset with respect to the

DIP Obligations, the Prepetition Credit Facility Debt and/or the liens, claims, rights, or security interests securing or supporting the DIP Obligations granted under the Interim Order, this Final Order, the DIP Documents or the Prepetition Loan Documents in respect of the Prepetition Credit Facility Debt, including, in the case of each (i) and (ii), without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550 or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise (*provided* that, notwithstanding anything to the contrary herein, the proceeds of the DIP Loans and/or DIP Collateral (including Cash Collateral) may be used by any Committee to investigate but not to prosecute (A) the claims and liens of the Prepetition Secured Parties and (B) potential claims, counterclaims, causes of action or defenses against the Prepetition Secured Parties (together, the "**Investigation**"), up to an aggregate cap of no more than $250,000 (the "**Investigation Budget**"), (b) to prevent, hinder, or otherwise delay or interfere with the Prepetition Agent's, the Prepetition Secured Parties', the DIP Agent's, or the DIP Secured Parties', as applicable, enforcement or realization on the Prepetition Credit Facility Debt, Prepetition Collateral, DIP Obligations, DIP Collateral, and the liens, claims and rights granted to such parties under the Interim Order or this Final Order, as applicable, each in accordance with the DIP Documents, the Prepetition Loan Documents or this Final Order; (c) to seek to modify any of the rights and remedies granted to the Prepetition Agent, the Prepetition Secured Parties, the DIP Agent, or the DIP Secured Parties under this Final Order, the Prepetition Secured Debt Documents or the DIP Documents, as applicable; (d) to apply to the Court for authority to approve superpriority claims or grant liens (other than the liens permitted pursuant to the DIP Documents) or security interests in the DIP Collateral or any portion thereof that are senior to, or on parity with, the DIP Liens, DIP Superpriority Claims, Adequate Protection Liens and 507(b) Claims granted to the Prepetition Secured Parties; or (e) to pay or to

seek to pay any amount on account of any claims arising prior to the Petition Date unless such payments are approved or authorized by the Court, agreed to in writing by the DIP Lenders, expressly permitted under this Final Order or permitted under the DIP Documents (including the Approved Budget, subject to permitted variances), in each case unless all DIP Obligations, Prepetition Credit Facility Debt, Adequate Protection Obligations, and claims granted to the DIP Agent, DIP Secured Parties, Prepetition Agent and Prepetition Secured Parties under this Final Order, have been refinanced or paid in full in cash (including the cash collateralization of any letters of credit) or otherwise agreed to in writing by the DIP Secured Parties. For the avoidance of doubt, this paragraph 21 shall not limit the Debtors' right to use DIP Collateral to contest that an Event of Default has occurred hereunder pursuant to and consistent with paragraph 9(d) of this Final Order.

22. *Final Order Governs*. In the event of any inconsistency between the provisions of the Interim Order, this Final Order and the DIP Documents (including, but not limited to, with respect to the Adequate Protection Obligations) or any other order entered by this Court, the provisions of this Final Order shall govern. Notwithstanding anything to the contrary in any other order entered by this Court, any payment made pursuant to any authorization contained in any other order entered by this Court shall be consistent with and subject to the requirements set forth in this Final Order and the DIP Documents, including, without limitation, the Approved Budget (subject to permitted variances).

23. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of this Final Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Agent, the DIP Secured Parties, the Prepetition Agent, the Prepetition Secured Parties, the Committee or any other statutory or

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

24. *Exculpation*. Nothing in the Interim Order, this Final Order, the DIP Documents, the Prepetition Loan Documents or any other documents related to the transactions contemplated hereby shall in any way be construed or interpreted to impose or allow the imposition upon any DIP Secured Party or Prepetition Secured Party any liability for any claims arising from the prepetition or postpetition activities of the Debtors in the operation of their businesses, or in connection with their restructuring efforts. The DIP Secured Parties and Prepetition Secured Parties shall not, in any way or manner, be liable or responsible for (i) the safekeeping of the DIP Collateral or Prepetition Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof or (iv) any act or default of any carrier, servicer, bailee, custodian, forwarding agency or other person and (b) all risk of loss, damage or destruction of the DIP Collateral or Prepetition Collateral shall be borne by the Debtors.

25. *Limitation of Liability*. In determining to make any loan or other extension of credit under the DIP Documents, to permit the use of the DIP Collateral or Prepetition Collateral (including Cash Collateral) or in exercising any rights or remedies as and when permitted pursuant to this Final Order or the DIP Documents or Prepetition Loan Documents, none of the DIP Secured Parties or Prepetition Secured Parties shall (a) have any liability to any third party or be deemed to be in "control" of the operations of the Debtors; (b) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates; or (c) be deemed to be acting as a "Responsible Person" or "Owner" or "Operator" or "managing agent" with respect to the operation or management of any of the Debtors (as such terms or similar terms are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, *et seq.*, as amended, or any other federal or state statute, including the Internal Revenue Code). Furthermore, nothing in this Final Order shall in any way be construed or interpreted to impose or allow the imposition upon any of the DIP Agent, DIP Secured Parties, Prepetition Agent or Prepetition Secured Parties of any liability for any claims arising from the prepetition or postpetition activities of any of the Debtors and their respective affiliates (as defined in section 101(2) of the Bankruptcy Code).

26. *Master Proof of Claim*. The Prepetition Agent, and/or any other Prepetition Secured Parties shall not be required to file proofs of claim in the Chapter 11 Cases or any Successor Case in order to assert claims on behalf of themselves or the Prepetition Secured Parties for payment of the Prepetition Credit Facility Debt arising under the Prepetition Loan Documents, including, without limitation, any principal, unpaid interest, fees, expenses and other amounts under the Prepetition Loan Documents. The statements of claim in respect of such indebtedness set forth in this Final Order, together with any evidence accompanying the

DIP Motion and presented at the Hearings, are deemed sufficient to and do constitute proofs of claim in respect of such debt and such secured status. However, in order to facilitate the processing of claims, to ease the burden upon the Court and to reduce an unnecessary expense to the Debtors' estates, the Prepetition Agent is authorized, but not directed or required, to file in the Debtors' lead chapter 11 case *In re Speedcast International Limited*, Case No. 20-32243 (MI), a master proof of claim on behalf of its respective Prepetition Secured Parties on account of any and all of their respective claims arising under the applicable Prepetition Loan Documents and hereunder (each, a "**Master Proof of Claim**") against each of the Debtors. Upon the filing of a Master Proof of Claim by the Prepetition Agent, it shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Debtors of any type or nature whatsoever with respect to the applicable Prepetition Loan Documents, and the claim of each applicable Prepetition Secured Party (and each of its respective successors and assigns), named in a Master Proof of Claim shall be treated as if it had filed a separate proof of claim in each of these Chapter 11 Cases. The Master Proofs of Claim shall not be required to identify whether any Prepetition Secured Party acquired its claim from another party and the identity of any such party or to be amended to reflect a change in the holders of the claims set forth therein or a reallocation among the holders of the claims asserted therein resulting from the transfer of all or any portion of such claims. The provisions of this paragraph 26 and each Master Proof of Claim are intended solely for the purpose of administrative convenience and shall not affect the right of each Prepetition Secured Party (or its successors in interest) to vote separately on any plan proposed in these Chapter 11 Cases. The Master Proofs of Claim shall not be required to attach any instruments, agreements or other documents evidencing the obligations owing by each of the Debtors to the applicable Prepetition

Secured Parties, which instruments, agreements or other documents will be provided upon written request to counsel to the Prepetition Agent. The DIP Agent and the DIP Secured Parties shall similarly not be required to file proofs of claim with respect to their DIP Obligations under the DIP Documents, and the evidence presented with the DIP Motion and the record established at the Hearings are deemed sufficient to, and do, constitute proofs of claim with respect to their obligations, secured status, and priority.

27. *Forbearance of the Prepetition Secured Parties*. Except as expressly permitted pursuant to the terms of this Final Order, the Prepetition Secured Parties shall not (i) exercise any rights or remedies with respect to any Prepetition Liens or Prepetition Collateral, (ii) enforce or pursue an event of default or other breach under any Prepetition Loan Document, or (iii) assert any demand for payment of any kind whatsoever, in each case with respect to any Debtor or Non-Debtor DIP Loan Party on account of any Prepetition Obligations; *provided* that, following (x) payment in full of the DIP Obligations and termination of the DIP Commitments, (y) the occurrence of any Event of Default or other violation of the terms of this Final Order and (z) five (5) business days' notice delivered to the Debtors and the Committee or counsel thereto (which may be delivered via email) the (i) the forbearance set forth in this paragraph 27 shall be of no further force or effect, and (ii) the Prepetition Secured Parties shall be permitted to rescind any consent given under the Interim Order or this Final Order regarding the use of Prepetition Collateral (including Cash Collateral) and file a Stay Relief Motion (consistent with the procedures set forth in paragraph 9 of this Final Order and which Stay Relief Motion may, for the avoidance of doubt, be filed immediately upon the occurrence of the conditions set forth in clauses (x) and (y) of this paragraph 27) seeking authority to proceed to protect, enforce and exercise all other rights and remedies provided under the Prepetition Loan Documents or

applicable law; *provided* that (i) for the avoidance of doubt, no Stay Relief Motion shall be required to be filed with respect to any non-Debtor and (ii) with respect to any Government Business Subsidiary (as defined in the DIP Credit Agreement), the condition set forth in clause (z) of this paragraph 27 shall not apply, or to the extent commenced shall immediately terminate without notice or otherwise, as a result of (I) any Default or Event of Default under the Prepetition Credit Agreement (including as a result of an Event of Default under Sections 7.01(g), (h) or (i)), that occurs as a result of any act or omission by any Government Business Subsidiary or (II) the seeking of any legal action or request for relief in connection with the Prepetition Obligations by any Government Business Subsidiary from any Governmental Authority (as defined in the Prepetition Credit Agreement) other than the Bankruptcy Court); *provided* that the each of the Debtors and the Prepetition Agent shall provide counsel to the Committee with notice (which shall include email) of the existence of any event or condition described in clauses (I) or (II) of this paragraph as soon as reasonably practicable after having or receiving actual knowledge thereof.

28. *ING ISDA.* Prior to the Petition Date, SpeedCast International Limited entered into that certain ISDA 2002 Master Agreement, dated as of May 15, 2018 (as amended, supplemented, or otherwise modified as of the Petition Date, together with any schedules thereto and confirmations thereunder (the "**ISDA Master Agreement**"), and together with all security, pledge, and guaranty agreements and all other documentation executed in connection with any of the foregoing, the "**ING Swap Documents**"), pursuant to which SpeedCast International Limited owes to ING Bank N.V. ("**ING**") certain secured swap obligations (together with accrued and unpaid interest thereon and unpaid fees, expenses, disbursements, indemnifications, obligations, and charges or claims of whatever nature (including attorneys' fees), in each case, whether or not

contingent, whenever arising, due or owing pursuant to the terms of the ING Swap Documents or applicable law under each Transaction (as such term is defined in the ING Swap Documents) (collectively, the "**ING Swap Obligations**")). To resolve any and all objections that may be raised by ING to the DIP Motion or the DIP Facility, upon entry of this Final Order, and subject to the conditions set forth in this paragraph 28, the ING Swap Documents will be terminated (including a designation by ING of an Early Termination Date thereunder as of May 21, 2020) with the consent of each of the Debtors and ING; provided, that notwithstanding anything in this Final Order to the contrary, nothing in this Final Order shall prevent, hinder or otherwise limit ING's ability to (i) submit a calculation or similar statement to the Debtors setting forth ING's determination of the Early Termination Amount (calculated in accordance with Section 6(e)(i) of the ISDA Master Agreement, and which such Early Termination Amount shall, solely for the purposes of Section 6(d)(ii) of the ISDA Master Agreement, be payable on the day on which the calculation or similar statement is submitted by ING to the Debtors) and the amount of the ING Swap Obligations owed (or payable, as appropriate) under the ING Swap Documents in connection with such Early Termination Date (including, without limitation, interest payable on the Early Termination Amount in accordance with Section 9(h)(ii)(2) of the ISDA Master Agreement and any other amounts due and payable in accordance with the terms and conditions of the ING Swap Documents), and/or (ii) file a proof of claim (any such proof of claim, an "**ING Proof of Claim**") in the Chapter 11 Cases for any amount of the ING Swap Obligations owed under the ING Swap Documents in connection with such Early Termination Date (including, without limitation, interest payable on the Early Termination Amount in accordance with Section 9(h)(ii)(2) of the ISDA Master Agreement and any other amounts due and payable in accordance with the terms and conditions of the ING Swap Documents); provided, further, that the rights of

the Debtors and any other party in interest to object to any ING Proof of Claim on any grounds are hereby expressly preserved; provided, further that except as provided in this paragraph, the forbearance provisions set forth in this Final Order and the Automatic Stay (as and to the extent set forth in, as applicable, this Final Order, including paragraph 27 hereof, and the Bankruptcy Code, but, for avoidance of doubt, subject to the applicable terms and conditions of such forbearance provisions set forth in this Final Order) shall be of full force and effect against ING, and ING shall not be permitted to exercise any rights or remedies other than those described in clauses (i) and (ii) of this paragraph, whether pursuant to this Final Order and the terms and conditions of the ING Swap Documents or otherwise permitted under the Prepetition Loan Documents, including (x) taking action to setoff, foreclose upon, or recover in connection with, the liens granted pursuant to or in connection with the ING Swap Documents, or otherwise seek to exercise or enforce any netting, setoff or other rights or remedies under the ING Swap Documents (other than those set forth in Section 6 of the ISDA Master Agreement for purposes of determining the Early Termination Amount) or against any Prepetition Collateral, DIP Collateral or other property of the DIP Loan Parties, Prepetition Borrowers or Prepetition Guarantors, (y) enforcing or pursuing an event of default, termination event or other breach under the ING Swap Documents, or (z) asserting any demand for payment of any kind whatsoever, in each case with respect to any Debtor or Non-Debtor DIP Loan Party on account of any obligations under the ING Swap Documents; provided, further that nothing in this Final Order shall affect or otherwise limit ING's right to vote on, object to, or otherwise respond in any way to any plan filed in these Cases in connection with the ING Swap Obligations; provided, further that, notwithstanding the foregoing, in determining the Early Termination Amount (as defined under the ISDA Master Agreement), no effect shall be given to any rights of setoff with

respect to any agreements or arrangements other than Transactions under and as defined in the ISDA Master Agreement.

29. *Texas Tax Liens*. Notwithstanding any provisions of the Motion, the Interim Order, this Final Order, or the other DIP Documents, any valid, binding, perfected, enforceable, and non-avoidable liens currently held by the Texas Taxing Authorities[7] for state or local taxes on any DIP Collateral that under applicable non-bankruptcy law are granted priority over a prior perfected security interest or lien (the "**Texas Tax Liens**") shall neither be primed by nor subordinated to any DIP Liens or Adequate Protection Liens granted under the Interim Order or this Final Order, and the Texas Tax Liens shall attach to any proceeds of any sale of DIP Collateral subject to the Texas Tax Liens in accordance with such priority. All parties' rights (a) to object to the priority, validity, amount, and extent of the claims and liens, including any Texas Tax Liens, asserted by the Texas Taxing Authorities and (b) with respect to any rights of the Texas Taxing Authorities to request an ad valorem tax reserve from the proceeds of the sale of any DIP Collateral that is secured by the Texas Tax Liens are fully preserved.

30. *Intercompany Transfers*. The Debtors shall provide not less than two (2) business days' notice to counsel to the Creditors' Committee prior to (i) any DIP Loan Party making any investment in any Subsidiary that is not a DIP Loan Party (including any Guarantees by any DIP Loan Party of any Indebtedness or other obligations of any Subsidiary that is not a DIP Loan Party and any loans and advances made by any DIP Loan Party to any Subsidiary that is not a DIP Loan Party) (each, as defined in the DIP Credit Agreement) to the extent that the aggregate

[7] For purposes of this Final Order, the term "Texas Taxing Authorities" shall refer to Bexar County, Cleveland ISD, Culberson Co – Allamoore ISD, Culberson County, Dallas County, Harris County, Hidalgo Country Hood CAD, Jasper County, Jim Wells CAD, City of McAllen, Nueces County, Parker CAD, Rio Grande City CISD, Smith County, Starr Country, Tarrant Country, Victoria County, Midland County, Cooke County, Alvarado Independent School District, Johnson County, Zavalla Independent School District, Tyler Independent School District, and Brazoria County Tax Office.

of all such investments outstanding would exceed $500,000; (ii) entering into any agreement with respect to Section 6.04(c)(ii) of the DIP Credit Agreement to increase, waive or otherwise modify the $500,000 investment threshold set forth therein; or (iii) the addition or removal of any entity as a Non-Debtor DIP Loan Party.

31. *Insurance*. To the extent that the Prepetition Agent is listed as loss payee under the Borrower's or DIP Guarantors' insurance policies, the DIP Agent is also deemed to be the loss payee under the insurance policies and shall act in that capacity and distribute any proceeds recovered or received in respect of the insurance policies, to the indefeasible payment in full of the DIP Obligations (other than contingent indemnification obligations as to which no claim has been asserted) and termination of the DIP Commitments, and to the payment of the applicable Prepetition Credit Facility Debt.

32. *Credit Bidding*. (a) The DIP Agent shall have the right to credit bid, in accordance with the DIP Documents, up to the full amount of the DIP Obligations in any sale of the DIP Collateral and (b) the Prepetition Agent shall have the right, consistent with the provisions of the Prepetition Loan Documents (and providing for the DIP Obligations to be indefeasibly repaid in full in cash and the termination of the DIP Commitments), to credit bid up to the full amount of the Prepetition Credit Agreement Debt, in each case as and to the extent provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether any such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise, in each case unless the Court for cause orders otherwise.

33. *Effectiveness*. This Final Order shall constitute findings of fact and conclusions of law in accordance with Bankruptcy Rule 7052 and shall take effect and be fully enforceable

nunc pro tunc to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9014 of the Bankruptcy Rules or any Local Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Final Order.

34. *Modification of DIP Documents and Approved Budget*. The Debtors are hereby authorized, without further order of this Court, to enter into agreements with the DIP Secured Parties (or the Prepetition Secured Parties after the indefeasible payment in full of the DIP Obligations and termination of the DIP Commitments) providing for any consensual non-material modifications to the Approved Budget or the DIP Documents, or of any other modifications to the DIP Documents necessary to conform the terms of the DIP Documents to this Final Order, in each case consistent with the amendment provisions of the DIP Documents; *provided*, *however*, that notice of any material modification or amendment to the DIP Documents shall be provided to the U.S. Trustee, the Committee and any other statutory committee which shall have five (5) days from the date of such notice within which to object, in writing, to the modification or amendment. If the U.S. Trustee, the Committee or any other statutory committee timely objects to any material modification or amendment to the DIP Documents, the modification or amendment shall only be permitted pursuant to an order of the Court. The foregoing shall be without prejudice to the Debtors' right to seek approval from the Court of a material modification on an expedited basis.

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

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

37. *Bankruptcy Rules*. The requirements of Bankruptcy Rules 4001, 6003 and 6004, in each case to the extent applicable, are satisfied by the contents of the DIP Motion.

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

39. *Necessary Action*. The Debtors, the DIP Secured Parties and the Prepetition Secured Parties are authorized to take all actions as are necessary or appropriate to implement the terms of this Final Order. In addition, the Automatic Stay is modified to permit affiliates of the Debtors who are not debtors in these Chapter 11 cases to take all actions as are necessary or appropriate to implement the terms of this Final Order.

40. *Interim Order*. Except as specifically amended or otherwise modified hereby, all of the provisions of the Interim Order and any actions taken by the Debtors, the DIP Secured Parties or the Prepetition Secured Parties (including, without limitation, the DIP Agent and the

Prepetition Agent) in accordance therewith shall remain in effect and are hereby ratified by this Final Order.

41. *Retention of Jurisdiction.* The Court shall retain jurisdiction to enforce the provisions of this Final Order, and this retention of jurisdiction shall survive the confirmation and consummation of any chapter 11 plan for any one or more of the Debtors notwithstanding the terms or provisions of any such chapter 11 plan or any order confirming any such chapter 11 plan.

42. The Debtors shall serve this order in accordance with all applicable rules and orders and shall file a certificate of service evidencing compliance therewith.

Signed: May 20, 2020

Marvin Isgur
United States Bankruptcy Judge

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

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,	§	
	§	
Appellant	§	
	§	
v.	§	**CIVIL ACTION NO: 4:20-cv-01970**
	§	
SPEEDCAST INTERNATIONAL LIMITED, et al.,	§	
	§	
Appellees.	§	

ORDER DISMISSING APPEAL AS MOOT

Before the Court is *Appellee's Motion to Dismiss Appeal as Moot*. The Court, having considered the pleadings and determined that the Motion bears merit, hereby **GRANTS** the Motion.

It is therefore **ORDERED** that the above-captioned appeal is hereby dismissed as moot.

It is so Ordered.

SIGNED on this _____ day of _____, 2020.

_____
Lee H. Rosenthal
Chief United States District Judge