IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
FISKER INC., *et al.*,	)	Case No. 24-11390
Debtors.[1]	)	(Jointly Administered)
	)	**Re: Docket No. 56**

INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO USE CASH COLLATERAL, (II) GRANTING ADEQUATE PROTECTION, (III) MODIFYING THE AUTOMATIC STAY, (IV) SCHEDULING A FURTHER HEARING ON THE MOTION, AND (V) GRANTING RELATED RELIEF

Upon the motion, dated June 21, 2024 (the "Motion") of Fisker Inc. and its subsidiaries, as debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), for the entry of an order pursuant to sections 105, 361, 362, 363, 503, 506(c) and 507 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules"), and Rules 2002-1, 4001-1, 4001-2, and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure for the District of Delaware (the "Local Rules"), seeking entry of an interim order (this "Interim Order") (I) authorizing the Debtors to use cash collateral, (II) granting adequate protection, (III) modifying the automatic stay, (IV) Scheduling a Further Hearing on the Motion, and (V) granting related relief, the Debtors sought, among other things, the following relief:

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number (where available), are: (1) Fisker Group, Inc. (3342), (2) Terra Energy Inc. (0739), (3) Platinum IPR LLC, (4) Fisker TN LLC (6212) and (5) Blue Current Holding LLC. The location of the Debtors' principal place of business is 1888 Rosecrans Avenue, Manhattan Beach, CA 9026.

(i) the Court's authorization pursuant to sections 105(a), 363(b), and 363(c)(2) of the Bankruptcy Code, for the Debtors to use "cash collateral" as such term is defined in section 363(a) of the Bankruptcy Code, in which the Prepetition Secured Parties (as defined below) have an interest (the "Cash Collateral"), solely in accordance with this Interim Order and the Approved Budget (as defined below);

(ii) the Court's authorization to grant pursuant to sections 361, 362, 363, and 507 of the Bankruptcy Code, as of the Petition Date, adequate protection for the benefit of the Prepetition Secured Parties, as set forth more fully below, including the Adequate Protection Superpriority Claim and Adequate Protection Liens (each as defined below) to the extent of and as compensation for any Diminution in Value (as defined below), and the payment of fees and expenses of the Prepetition Collateral Agent (as defined below), the Prepetition Trustee (as defined below), and the other Prepetition Secured Parties;

(iii) the Court's authorization for the modification or waiver of the automatic stay imposed by section 362 of the Bankruptcy Code and the waiver of any stay applicable to the effectiveness of this Interim Order under the Bankruptcy Rules or otherwise.

(iv) the scheduling of a second interim hearing (the "Second Interim Hearing") in one week to consider the entry of an order (the "Second Interim Order") extending use of Cash Collateral; and

(v) approval of this Interim Order.

The Court having considered the Motion, the *Declaration of John R. DiDonato in Support of Debtors' Chapter 11 Petitions and First Day Motions*, and the evidence submitted at the interim hearing held before this Court on June 21, 2024 to consider entry of this Interim Order (the "Interim Hearing"); and it appearing that approval of the interim relief requested in the Motion

is necessary to make payroll and pay other critical expenses so as to avoid immediate and irreparable harm to the Debtors, is otherwise fair and reasonable and in the best interests of the Debtors' creditors and their estates, and is essential to preserve value for the benefit of creditors and the Debtors' estates pending an orderly liquidation thereof; and all objections, if any, to the entry of this Interim Order having been withdrawn, resolved, or overruled by the Court; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

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

A. **Petition Date**. On June 17, 2024, (the "Original Petition Date"), Fisker Group, Inc. filed a voluntary petition under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Court"). On June 19, 2024 (the "Subsequent Petition Date" and, together with the Original Petition Date, the "Petition Date")[2], the other Debtors also filed voluntary petitions under Chapter 11 of the Bankruptcy Code with the Court. The Debtors have continued in the management and operation of their businesses and properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Cases.

B. **Jurisdiction and Venue**. The Court has jurisdiction over these proceedings, pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* dated February 29, 2012, from the United States District Court for the District of Delaware. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Chapter 11 Cases and the proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

[2] With respect to each Debtor, references to the Petition Date shall mean the applicable Petition Date for such Debtor.

C. **Committee Formation**. As of the date hereof, no official committee of unsecured creditors has been appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (a "Committee").

D. **Notice**. The Interim Hearing was held pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2). Proper, timely, adequate, and sufficient notice of the Interim Hearing and the relief requested in the Motion has been provided to (a) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"); (b) counsel to the Prepetition Secured Parties; (c) all other parties asserting a lien on or a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (d) the United States Attorney's Office for the District of Delaware; (e) the state attorney's general for states in which the Debtors conduct business; (f) the Internal Revenue Service; (g) those creditors holding the 30 largest unsecured claims against the Debtors' estates (on a consolidated basis); and (h) the Securities and Exchange Commission (collectively, the "Notice Parties"). Under the circumstances, such notice of the Interim Hearing and the relief requested in the Motion constitutes due, sufficient, and appropriate notice and complies with section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002 and 4001(b) and (c), and the Local Rules.

E. **Prepetition Secured Indebtedness**.

(i) Prepetition Notes Due 2025. Debtor Fisker Inc. (the "Issuer" or "Fisker Inc."), as issuer, issued certain Prepetition 2025 Secured Notes (as defined below) to CVI Investments, Inc. (in such capacity, the "Prepetition Secured Noteholder") pursuant to (1) that certain Securities Purchase Agreement, dated July 10, 2023 (as amended pursuant to that certain Amendment No.1 to Securities Purchase Agreement, dated September 29, 2023, pursuant to that certain Second Amendment and Waiver Agreement, dated January 21, 2024 (the "Second

Waiver"), and that certain Amendment Waiver, dated March 18, 2024, and as further amended, amended and restated, supplemented and/or otherwise modified from time to time, the "Prepetition Securities Purchase Agreement"), by and among the Issuer and each party listed as a "Buyer" on the Schedule of Buyers attached thereto and (2) that certain Indenture, dated as of July 11, 2023 (as amended, amended and restated, supplemented and/or otherwise modified from time to time, the "Base Indenture"), as supplemented by (x) a first supplemental indenture with respect to the Series A-1 Senior Convertible Notes Due 2025 (the "Series A-1 Notes"), dated as of July 11, 2023 (the "First Supplemental Indenture"), (y) a second supplemental indenture with respect the Series B-1 Senior Convertible Notes Due 2025 (the "Series B-1 Notes," and together with the Series A-1 Notes, in each case as amended, amended and restated, supplemented and/or otherwise modified from time to time, the "Prepetition 2025 Secured Notes"), dated as of September 29, 2023 ("Second Supplemental Indenture"), pursuant to which, among other things, the Prepetition Secured Noteholder agreed to, subject to the terms and conditions set forth in the Prepetition Securities Purchase Agreement, the Prepetition 2025 Secured Notes, and the Prepetition Secured Indenture (as defined below), to purchase the Prepetition 2025 Secured Notes from the Issuer, and (z) a third supplemental indenture with respect to the Prepetition 2025 Secured Notes, dated as of November 22, 2023 (the "Third Supplemental Indenture," and together with the Base Indenture, the First Supplemental Indenture, and the Second Supplemental Indenture, collectively, and in each case as amended, amended and restated, modified or supplemented from to time, the "Prepetition Secured Indenture") which further supplemented the Base Indenture, First Supplemental Indenture and Second Supplemental Indenture and provided for (i) the unconditional guaranty on a joint and several basis by the Debtors and Fisker GmbH, an Austrian limited liability

company ("Fisker Austria")[3], of the Prepetition 2025 Notes Secured Obligations (as defined below) pursuant to the Prepetition 2025 Guaranty Agreement (as defined below) and (ii) the granting of liens and security interests in the Prepetition 2025 Notes Collateral (as defined below) to secure the Prepetition 2025 Notes Secured Obligations and the obligations under the Prepetition 2025 Notes Guaranty Agreement.

(ii) The Issuer, the other Debtors, and Fisker Austria are parties to a Guaranty Agreement, dated December 28, 2023 (as amended, amended and restated, supplemented and/or otherwise modified from time to time, the "Prepetition 2025 Notes Guaranty Agreement") in favor of CVI Investment, Inc. as collateral agent (in such capacity the "Prepetition Collateral Agent," and, together with the Prepetition Secured Noteholder and Wilmington Savings Fund Society, FSB, as trustee (the "Prepetition Trustee"), collectively, the "Prepetition Secured Parties"), pursuant to which each of the Debtors and Fisker Austria unconditionally guaranteed on a joint and several basis the Prepetition 2025 Notes Secured Obligations, which guaranty is secured by the Prepetition 2025 Notes Collateral.

(iii) The Issuer, Debtor Fisker Group, Inc., and Fisker Austria are parties to a Pledge Agreement, dated November 22, 2023 (the "Prepetition 2025 Notes Pledge Agreement"), with the Prepetition Collateral Agent, which Prepetition 2025 Notes Pledge Agreement was amended and restated by that certain Amended and Restated Pledge Agreement, dated December 28, 2023 (the Prepetition 2025 Notes Pledge Agreement, as further amended, amended and restated, supplemented and/or otherwise modified from time to time, the "Prepetition Amended 2025 Notes Pledge Agreement" and, together with the Prepetition 2025 Notes Pledge Agreement,

[3] Fisker Austria filed for the opening of restructuring proceedings with self-administration in Austria on May 7, 2024. Such restructuring proceedings are ongoing.

the "Prepetition 2025 Notes Pledge Agreements") among the Debtors, Fisker Austria, and the Prepetition Collateral Agent.

(iv) The Issuer, certain of the other Debtors, and Fisker Austria, and the Prepetition Collateral Agent are also party to (1) that certain Intellectual Property Security Agreement, dated December 15, 2023, (2) that certain Supplemental Intellectual Property Security Agreement, dated January 31, 2024, and (3) that certain Supplemental Intellectual Property Security Agreement, dated March 29, 2024 (the agreements in clauses (1)-(3), collectively, the "Prepetition 2025 Notes IP Security Agreements").

(v) The Issuer, the Prepetition Collateral Agent, and SS&C GIDS, Inc., as transfer agent of JPMorgan Prime Money Market Fund and other JPMorgan Mutual Funds, are parties to a Securities Account Control Agreement, dated as of January 23, 2024 (the "US SACA") and the Issuer, certain of the other Debtors, the Collateral Agent, and JPMorgan Chase Bank N.A. (the "Account Bank") are parties to a Blocked Account Control Agreement, dated January 18, 2024 (the "US DACA," and together with the US SACA, the Prepetition 2025 Notes Guaranty Agreement, the Prepetition 2025 Notes Pledge Agreements, and the Prepetition 2025 Notes IP Security Agreements, collectively, and each as amended, amended and restated, waived, supplemented and/or modified from time to time, the "Prepetition 2025 Notes Security Documents").[4] On June 3, 2024, the Prepetition Collateral Agent issued a shifting control notice

[4] In addition, to secure the Prepetition 2025 Notes Secured Obligations (i) pursuant to an Austrian-law governed receivables pledge agreement, Fisker Austria has granted to the Prepetition Collateral Agent a pledge of all of its receivables, (ii) pursuant to an Austrian law guarantee agreement (as amended, amended and restated, supplemented, and/or otherwise modified from time to time, the "Prepetition 2025 Notes Austrian Guaranty Agreement") between Fisker Austria and the Prepetition Collateral Agent, Fisker Austria has guaranteed the Prepetition 2025 Notes Secured Obligations, and (iii) pursuant to various local law pledges (together with acknowledgements of notice thereto as signed by the applicable account bank) granted by Fisker Austria and certain other non-Debtor subsidiaries and affiliates, specifically, Fisker Germany, Fisker France, Fisker UK, Fisker Norway, and Fisker Denmark ApS (each as defined below), have granted the Prepetition Collateral Agent security interests and pledges over certain of their respective bank accounts and all amounts on deposit therein. On June 10, 2024, the Prepetition Collateral Agent issued acceleration and shifting control notices to the Account

to the Account Bank with respect to such bank accounts in accordance with the Prepetition 2025 Notes Security Documents and the Bridge Notes Documents (as defined below).[5]

(vi) Pursuant to the Prepetition 2025 Notes Security Documents and the other Prepetition 2025 Note Documents[6], the Prepetition Secured Obligations owed to the Prepetition Secured Parties are secured by first priority Liens (as defined in the Prepetition Securities Purchase Agreement, the "Prepetition 2025 Notes Liens") on, and security interests in, all of the Prepetition 2025 Notes Collateral (as defined below), subject to any Bridge Note Liens (as defined below) in any Bridge Note Collateral (as defined below) constituting Prepetition 2025 Notes Collateral, as provided in that certain Senior Intercreditor Agreement, between the Prepetition Noteholder, as First Lien Collateral Agent and as Junior Lien Collateral Agent, and the Issuer, dated May 10, 2024 (as amended, amended and restated, supplemented and/or modified from time to time, the "Senior Intercreditor Agreement").

(vii) Bridge Financing Secured Notes Due 2024. The Issuer, as issuer, and the Prepetition Secured Noteholder are party to that certain Securities Purchase Agreement, dated May 10, 2024 (as amended, amended and restated, supplemented and/or otherwise modified from time to time, the "Bridge Note Securities Purchase Agreement"), pursuant to which, among other things, the Issuer issued and sold, and the Prepetition Secured Noteholder purchased, a senior secured promissory note in the aggregate original principal amount of $3,456,000 (as amended, amended

Bank in accordance with the Prepetition 2025 Note Documents with respect to the bank accounts pledged by Fisker Germany, Fisker France, Fisker UK, Fisker Norway, and Fisker Denmark ApS.

[5] Notwithstanding the issuance of the shifting control notice issued by the Prepetition Collateral Agent with respect to such accounts, the Prepetition Collateral Agent subsequently authorized transfers of funds from such accounts to the Debtors to satisfy certain prepetition obligations, including employee payroll, requested by the Debtors.

[6] The Prepetition 2025 Security Documents, together with the Prepetition Secured Indenture, the Prepetition Securities Purchase Agreement, and each of the other Transaction Documents (as defined in the Prepetition 2025 Secured Notes), in each case, as amended, amended and restated, waived, supplemented and/or modified from time to time, shall be referred to herein, collectively, as the "Prepetition 2025 Note Documents").

and restated, or supplemented and/or otherwise modified from time to time, the "Bridge Secured Note"). In connection with the foregoing, (i) the Debtors and non-Debtor subsidiaries Fisker GmbH (Germany) ("Fisker Germany"), Fisker (GB) Limited ("Fisker UK") and Fisker France SAS ("Fisker France") provided the Prepetition Secured Noteholder with an unconditional guaranty, on a joint and several basis, of the Bridge Note Obligations, pursuant to that certain Guaranty Agreement, dated as of May 10, 2024 (as amended, amended and restated, supplemented and/or otherwise modified from time to time, the "Bridge Note Guaranty Agreement"), to which Fisker Denmark ApS ("Fisker Denmark"), Fisker Sweden AB ("Fisker Sweden"), Fisker Belgium SrL ("Fisker Belgium") and Fisker Norway AS ("Fisker Norway") also acceded, as guarantors, on May 17, 2024, and (ii) the Debtors and the foregoing non-Debtor guarantors and pledgors granted to the Prepetition Secured Noteholder liens on and security interests in all Bridge Note Collateral (as defined below) to secure the Bridge Note Secured Obligations and the obligations under the Bridge Note Guaranty Agreement.

(viii) Pursuant to that certain Security and Pledge Agreement, dated as of May 10, 2024, by and between the Prepetition Collateral Agent, the Debtors, Fisker Germany, Fisker UK, Fisker France, Fisker Denmark, Fisker Sweden and Fisker Norway (as amended, amended and restated, supplemented and/or otherwise modified from time to time, the "Bridge Note Security Agreement") and the other Bridge Note Documents[7], the Bridge Note Secured

[7] The Bridge Note Security Agreement, together with the Bridge Note Securities Purchase Agreement, the Bridge Secured Note, and each of the other Transaction documents (as defined in the Bridge Secured Note), including various local law security documents (including account pledge agreements) granted by Fisker Germany, Fisker UK, Fisker France, Fisker Denmark, Fisker Sweden, Fisker Norway, and Fisker Belgium, in each case, as amended, amended and restated, waived, supplemented and/or modified from time to time shall be referred to herein, collectively, as the "Bridge Note Documents," and together with the Prepetition 2025 Note Documents, and including the Senior Intercreditor Agreement, the "Prepetition Note Documents"). On June 10, 2024, the Prepetition Collateral Agent issued acceleration and shifting control notices to the Account Bank in accordance with the Prepetition Bridge Note Documents with respect to bank accounts pledged by Fisker Germany, Fisker UK, Fisker France, Fisker Denmark, Fisker Sweden, Fisker Norway, and Fisker Belgium.

Obligations owed to the Prepetition Secured Parties are secured by first priority Liens (as defined in the Bridge Securities Purchase Agreement, the "Bridge Note Liens" and, together with the Prepetition 2025 Notes Liens, the "Prepetition Liens") on, and security interests in, all of the Bridge Note Collateral.[8]

(ix) Redemption Notices.

(a) On April, 4, 2024, the Prepetition Secured Noteholder sent an Event of Default Redemption Notice with respect to the Prepetition 2025 Secured Notes, as a result of the occurrence of certain events of default under the Prepetition Securities Purchase Agreement, and exercising its rights under the Prepetition 2025 Note Documents to accelerate the Prepetition 2025 Secured Notes by requiring the Issuer to immediately redeem 100% of the outstanding Prepetition 2025 Secured Notes at the Event of Default Redemption Price, including any applicable Interest, Late Charges, Installment Redemption Amount, Redemption Premium (each as defined in the Prepetition 2025 Note Documents), and other amounts due under the Prepetition 2025 Secured Notes, and reserving all other rights.[9]

(b) On May 29, 2024, the Prepetition Secured Noteholder sent an Event of Default Redemption Notice with respect to the Bridge Secured Note, as a result of the occurrence of certain events of default under the Bridge Note Documents, among other things,

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[8] Pursuant to the Senior Intercreditor Agreement, the Prepetition Collateral Agent, as collateral agent with respect to the Prepetition 2025 Notes Obligations agreed that it holds that part of the Prepetition Collateral that is in its possession or control (or in the possession or control of its agents or bailees) (if any), to the extent that possession or control thereof is taken to perfect a Lien thereon under the Uniform Commercial Code, on behalf of the Prepetition Secured Parties and on behalf of and for the benefit of and as gratuitous bailee for the Prepetition Collateral Agent with respect to the Bridge Note Obligations for the purpose of perfecting the security interest granted under the Prepetition 2025 Note Documents and the Bridge Note Documents, respectively, subject to the terms and conditions of Section 5.04 of the Senior Intercreditor Agreement. As noted above, on June 3, 2024, the Prepetition Collateral Agent issued a shifting control notice to the Account Bank in accordance with the Prepetition 2025 Notes Documents and the Bridge Notes Documents with respect to the Debtors' pledged bank accounts.

[9] On June 7, 2024, the Prepetition Collateral Agent also sent a letter of demand to Fisker Austria with respect of the Prepetition 2025 Notes Austrian Guaranty Agreement.

exercising its rights under the Bridge Note Documents to accelerate the Bridge Secured Note by requiring the Issuer to immediately redeem 100% of the outstanding Bridge Secured Note at the Event of Default Redemption Price, including any applicable Interest, Late Charges, Redemption Premium, and other amounts due under the Bridge Secured Note (each as defined in the Bridge Note Documents), and other amounts due under the Bridge Secured Note, and reserving all other rights.

(x) Forbearance Agreements. On April 4, 2024, the Issuer, the other Debtors, certain other subsidiaries thereof, and the Prepetition Secured Noteholder entered into that certain Forbearance Agreement, in respect of certain specified events of default under the Prepetition 2025 Note Documents (the "First Forbearance"). On April 21, 2024, the Issuer, the other Debtors, certain other subsidiaries thereof, and the Prepetition Secured Noteholder entered into that certain Forbearance Agreement, in respect of certain specified events of default under the Prepetition 2025 Note Documents (as amended on May 7, 2024, the Second Forbearance, and collectively with the First Forbearance, the "Forbearance Agreements"). Such forbearance expired no later than May 17, 2024.[10]

F. **Stipulations as to Prepetition Secured Obligations.** Without limiting the rights of any party in interest as and to the extent set forth in paragraph 10 hereof, after consultation with

[10] Pursuant to each of the Forbearance Agreements (as well as the Bridge Note Securities Purchase Agreement), each of the Debtors, on behalf of itself and each other "Fisker Releasing Party" (i.e., each subsidiary and each of its and of its subsidiary's "past and/or present officers, directors, employees, predecessors, successors, assigns, affiliates, parents and subsidiaries") granted broad releases in favor of the Prepetition Secured Parties. See Forbearance Agreements § 7(a). In addition, each of the Debtors, on behalf of itself and each of the other Fisker Releasing Party, agreed that it would not at any time "make, publish or communicate . . . to any Person, any "Disparaging" remarks, comments or statements [(i.e., remarks, comments or statements "that impugn, or threaten to impugn, the character, honesty, integrity, morality, legality, business acumen or abilities of the individual or Person or Transaction Document being disparaged, as applicable")] concerning the [Prepetition Secured] Noteholder, any other the Released Party or any of the Transaction Documents." See Forbearance Agreements § 7(b). Each of the Debtors further agreed that it would be jointly and severally liable for any Disparaging remarks, comments or statements by any of the Fisker Releasing Parties. Id.

their attorneys, the Debtors permanently, immediately, and irrevocably acknowledge, represent, stipulate, and agree to the following (the provisions set forth in this paragraph F, the "Stipulations"):

(i) **Prepetition Secured Obligations**.

(a) As of the Petition Date, the Debtors are indebted and liable to the Prepetition Secured Parties under the Prepetition 2025 Note Documents, without objection, defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $183,050,000, plus accrued and accruing (both before and after the Petition Date) unpaid interest, fees, expenses, and other obligations under the Prepetition 2025 Note Documents, including, without limitation, Interest, Late Charges, Installment Redemption Amounts, and Redemption Premiums (each as defined in the Prepetition 2025 Note Documents), all additional amounts owed as part of the event of default redemption price, any attorneys', accountants', consultants', appraisers', and financial and other advisors' fees that are chargeable or reimbursable under the Prepetition 2025 Note Documents, and all other liabilities and obligations under the Prepetition Note Documents (collectively, the "Prepetition 2025 Notes Secured Obligations").

b. As of the Petition Date, the Debtors are indebted and liable to the Prepetition Secured Parties under the Bridge Note Documents, without objection, defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $3,456,000, plus accrued and accruing (both before and after the Petition Date) unpaid interest, fees, expenses, and other obligations under the Bridge Note Documents, including, without limitation, Interest, Late Charges, Installment Redemption Amounts, and Redemption Premiums (each as defined in the Bridge Note Documents), any attorneys', accountants', consultants', appraisers', and financial and other advisors' fees that are chargeable or reimbursable under the Bridge Note Documents, and all

other liabilities and obligations under the Bridge Note Documents (collectively, the "Bridge Note Secured Obligations" and, collectively with the Prepetition 2025 Notes Secured Obligations, the "Prepetition Secured Obligations").

(ii) **Enforceability, Etc. of the Prepetition Secured Obligations**. The Prepetition Note Documents, the release and non-disparagement provisions in the Forbearance Agreements and in the Prepetition Note Documents, and the Prepetition Secured Obligations are (a) legal, valid, binding, and enforceable against the Debtors, and (b) not subject to any contest, attack, objection, recoupment, defense, counterclaim, offset, subordination, re-characterization, avoidance, or other claim, cause of action, or other challenge of any kind or nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise.

(iii) **Validity, Perfection, and Priority of the Prepetition Liens**.

(a) The Prepetition 2025 Note Liens granted by the Debtors under the Prepetition 2025 Note Documents to or for the benefit of the Prepetition Secured Parties as security for the Prepetition 2025 Note Secured Obligations encumber all Collateral (as defined in the Prepetition 2025 Notes Pledge Agreements), which includes substantially of the Debtors' assets and property, including but not limited to all personal property (whether tangible or intangible) of the Debtors of every kind and nature, wherever located, including goods, instruments, documents, accounts, chattel paper (whether tangible or electronic), deposit accounts, inventory, letter-of-credit rights, commercial tort claims, securities and other investment property, equity interests in each Debtor (other than the Issuer), intellectual property, intercompany obligations, general intangibles, supporting obligations and all proceeds thereof; *provided* that such Collateral does included any Excluded Property (as defined in the Prepetition 2025 Notes Pledge Agreements) (collectively, the "Prepetition 2025 Notes Collateral").

(b) The Bridge Liens granted by the Debtors under the Bridge Note Documents to or for the benefit of the Prepetition Secured Parties as security for the Bridge Note Secured Obligations encumber all Collateral (as defined in the Bridge Note Security Agreement), which includes substantially of the Debtors' assets and property, including but not limited to all personal property (whether tangible or intangible) of the Debtors of every kind and nature, wherever located, including fixtures, equipment, goods, inventory, instruments, documents, accounts, chattel paper (whether tangible or electronic), deposit accounts, inventory, letter-of-credit rights, insurance proceeds, commercial tort claims, securities and other investment property, equity interests in each Debtor (other than the Issuer), intellectual property, intercompany obligations, general intangibles, supporting obligations and all proceeds thereof; *provided* that such Collateral does not include any Excluded Property (as defined in the Bridge Note Security Agreement) (collectively, the "Bridge Note Collateral" and, together with the Prepetition 2025 Notes Collateral, the "Prepetition Collateral").

(c) The Prepetition Liens on the Prepetition Collateral have in each case been properly recorded and perfected under applicable law, and are legal, valid, binding, enforceable, non-avoidable, and not subject to contest, avoidance, attack, offset, recharacterization, subordination (other than as, and solely to the extent, expressly contemplated hereunder), or other challenge of any kind or nature under the Bankruptcy Code, under applicable nonbankruptcy law, or otherwise, and were granted to or for the benefit of the Prepetition Secured Parties for fair consideration and reasonably equivalent value. As of the Petition Date, (1) the Bridge Liens are senior in priority over any and all other liens on the Bridge Note Collateral, subject only to any liens of third parties which, as of the Petition Date, were valid, enforceable, properly perfected, and non-avoidable (or were perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of

the Bankruptcy Code) and, in each case, were senior in priority to the Bridge Note Liens and the Prepetition 2025 Notes Liens as of the Petition Date and permitted by the terms of the Bridge Note Documents and the Prepetition 2025 Note Documents (any such liens, "Permitted Prepetition Liens")[11]; (2) the Prepetition 2025 Notes Liens are senior in priority over any and all other liens on the Prepetition 2025 Notes Collateral, subject only to any Bridge Note Liens, and to any Permitted Prepetition Liens; (3) the Prepetition Secured Obligations constitute legal, valid, binding, and non-avoidable obligations of the Debtors enforceable in accordance with the terms of the respective Prepetition Note Documents; (4) no offsets, recoupments, challenges, objections, defenses, claims, or counterclaims of any kind or nature to any of the Prepetition Liens or Prepetition Secured Obligations exist, and no portion of the Prepetition Liens or Prepetition Secured Obligations is subject to any challenge or defense including avoidance, disallowance, disgorgement, recharacterization, or subordination (equitable or otherwise) pursuant to the Bankruptcy Code or any other applicable law, (5) 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 Note Documents; (6) the Debtors have waived, discharged, and released any right to challenge any of the Prepetition Secured Obligations, the priority of the Debtors' respective obligations thereunder, and the validity, extent, perfection, and priority of the

[11] Nothing herein shall constitute a finding or ruling by this Court that any such Permitted Prepetition Lien is valid, senior, enforceable, prior, perfected, or non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest, including, but not limited to the Debtors, the Prepetition Secured Parties, or Committee (if any), to challenge the validity, priority, enforceability, seniority, avoidability, perfection, or extent of any alleged Permitted Prepetition Lien.

liens securing the respective Prepetition Secured Obligations; and (7) the Bridge Note Secured Obligations and the Prepetition 2025 Notes Secured Obligations each constitute allowed, secured claims within the meaning of sections 502 and 506 of the Bankruptcy Code.

(iv) **Indemnity**. The Prepetition Secured Parties and each of their respective Related Parties (as defined below) have acted in good faith and without negligence, misconduct, or violation of public policy or law in respect of all actions taken by them in connection with or related in any way to negotiating, implementing, documenting, or obtaining requisite approvals of the use of Cash Collateral, including in respect of the granting of the Adequate Protection Obligations (as defined below) and any of the other rights, privileges, remedies, and protections granted hereunder, any challenges or objections to the use of Cash Collateral, and all documents related to and all transactions contemplated by the foregoing. Accordingly, without limitation to any other right to indemnification (including any and all rights of the Prepetition Secured Parties (and their Related Parties (as defined below) to indemnification under the Prepetition Note Documents), the Prepetition Secured Parties, each of their respective affiliates, and each of their and their respective affiliates' officers, directors, fiduciaries, employees, agents, representatives, shareholders, managers, accountants, advisors, attorneys, successors, predecessors, assignors, assignees, funds, and representatives, in each case solely in their capacities as such (collectively, the "Related Parties") are indemnified and held harmless by the Debtors under the terms of the Prepetition Notes Documents in respect of any claim or liability incurred in respect thereof or in any way related thereto. No exception or defense in contract, law, or equity exists as to any obligation set forth, as the case may be, in this paragraph F(iv) or in the Prepetition Note Documents, to indemnify and/or hold harmless any Prepetition Secured Party or any Related Party of any Prepetition Secured Party, as the case may be, and, subject only to the rights of any party

in interest (other than the Debtors or and any of the Debtors' successors in interest and assigns (including, subject to the Challenge Period (as defined below), any chapter 7 or chapter 11 trustee)) as, and to the extent set forth in paragraph 10, any such defenses are hereby waived.

(v) **No Control**. None of the Prepetition Secured Parties control the Debtors or their properties or operations, has authority to determine the manner in which any of the Debtors' operations are conducted, or is a "control" or "responsible" person or insider, or "owner or operator" of the Debtors or any of their affiliates by virtue of any of the actions taken with respect to, in connection with, related to, or arising from this Interim Order, the Prepetition Note Documents, or the transactions contemplated hereby or thereby.

(vi) **No Claims, Causes of Action**. As of the date hereof, there exist no claims, cross-claims, counterclaims, defenses, or causes of action, including claims and causes of action arising under chapter 5 of the Bankruptcy Code or applicable state law equivalents (the "Avoidance Actions"), or actions for recovery, recoupment, offset, setoff, disallowance, recharacterization, subordination (whether equitable, contractual, or otherwise), or disgorgement, against any of the Prepetition Secured Parties, or any of their respective Related Parties with respect to, in connection with, related to, or arising from any Prepetition Secured Obligations, any Prepetition Note Documents, or any action or conduct of any Prepetition Secured Party that may be asserted by the Debtors, their respective estates, or any other person or entity.

(vii) **Cash Collateral**. Any and all of the Debtors' cash, whether existing as of the Petition Date or thereafter, wherever located (including, without limitation, all cash or cash equivalents in the control of or on deposit or maintained by the Debtors in any account or accounts, any amounts generated by the sale or other disposition of Prepetition Collateral, and all income, proceeds, products, rents or profits of any Prepetition Collateral (other than accounts that are

expressly excluded Prepetition Notes Collateral under the Prepetition Note Documents and which do not otherwise contain any amounts generated by the sale or other disposition of Prepetition Collateral, or income, proceeds, products, rents or profits of any Prepetition Collateral)), constitutes Cash Collateral of the Prepetition Secured Parties. The Debtors have represented and warranted that any and all bank accounts belonging to any of the Debtors and their subsidiaries, as well as all balances in such accounts as of the Petition Date, have been disclosed to the Prepetition Secured Parties.

(viii) **Default**. The Debtors are in default under the Prepetition Note Documents, and one or more events of default have occurred under the Prepetition 2025 Note Documents and the Bridge Note Documents, respectively.

(ix) **Release**. Subject only to the rights of any party in interest (other than the Debtors or and any of the Debtors' successors in interest and assigns, including, subject to the Challenge Period, any chapter 7 or chapter 11 trustee) as, and to the extent set forth in paragraph 10, the Debtors hereby forever and irrevocably release, discharge, and acquit all former, current, and future (a) Prepetition Secured Parties, (b) affiliates of the Prepetition Secured Parties, and (c) Related Parties of each of the Prepetition Secured Parties and each of the Prepetition Secured Parties' and their Related Parties' respective affiliates, in each case acting in their respective capacities as such (collectively, the "Releasees") of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, rights, assertions, allegations, actions, suits, controversies, proceedings, losses, damages, injuries, attorneys' fees, costs, expenses, or judgments of every type, whether known, unknown, asserted, unasserted, suspected, unsuspected, accrued, unaccrued, fixed, contingent, pending, or threatened including, without limitation, all legal and equitable theories of recovery, arising under common

law, statute, or regulation, or by contract, of every nature and description, arising out of, in connection with, or relating to the Prepetition 2025 Note Documents, the Prepetition 2025 Secured Notes, the Bridge Note Documents, the Bridge Secured Notes, this Interim Order, and/or the transactions contemplated hereunder or thereunder including, without limitation, (x) any so-called "lender liability" or equitable subordination claims or defenses, (y) any and all claims and causes of action arising under the Bankruptcy Code, and (z) any and all claims and causes of action with respect to the validity, priority, perfection, or avoidability of the liens or claims of any of the Prepetition Secured Parties. The Debtors further waive and release any defense, right of counterclaim, right of setoff, or deduction to the payment of the Prepetition 2025 Notes Secured Obligations, Bridge Note Secured Obligations, and the Adequate Protection Obligations which the Debtors now have or may claim to have against the Releasees arising out of, connected with, or relating to any and all acts, omissions, or events occurring prior to the entry of this Interim Order by the Court.

(x) **Sale and Credit Bidding**. Subject to paragraph 10 and the Carve-Out, the Prepetition Secured Parties shall have the right to credit bid (independently or together) up to the full amount of the applicable outstanding Prepetition Secured Obligations and the Adequate Protection Obligations in each case, including, without limitation, any accrued interest, fees and other amounts, in a sale of any Adequate Protection Collateral (as defined below) or Prepetition Collateral, as applicable, and whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, or otherwise.

G. **Immediate Need for Use of Cash Collateral**. The Debtors have requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2). Good cause has been shown for entry of this Interim Order. An immediate need exists for the Debtors to use Cash

Collateral for one week, on an interim basis, in order to make payroll and pay other critical expenses so as to, among other things, enable the orderly administration and transition to a liquidation of the Debtors' estates, to preserve and maximize the value of their estates. In the absence of the immediate availability of such funds and liquidity in accordance with the terms hereof, the ability of the Debtors to preserve value, would not be possible, and immediate and irreparable harm to the Debtors and their estates and creditors would occur. Thus, the ability of the Debtors to preserve and maintain the value of their assets and maximize returns for creditors requires the use of Cash Collateral.

H. **Use of Cash Collateral and Proceeds of the Adequate Protection Collateral and Prepetition Collateral**. The Debtors represent and stipulate that all of the Debtors' cash, cash equivalents, negotiable instruments, investment property, and securities constitute Cash Collateral of the Prepetition Collateral Agent on behalf of the Prepetition Secured Parties (other than accounts that are expressly excluded from the Prepetition Notes Collateral under the Prepetition Note Documents and which do not otherwise contain any amounts generated by the sale or other disposition of Prepetition Collateral, or income, proceeds, products, rents or profits of any Prepetition Collateral). As a condition to providing their consent to the use of Cash Collateral, each of the Prepetition Secured Parties require, and the Debtors have agreed that all Cash Collateral, and all proceeds of the Prepetition Collateral and the Adequate Protection Collateral, including proceeds realized from any sale or disposition thereof or from payment thereon, shall be used or applied solely for the purposes permitted in, and in accordance with the terms and conditions of this Interim Order and the Approved Budget and for no other purpose.

I. **Adequate Protection for the Prepetition Secured Parties**. The Prepetition Secured Parties have negotiated in good faith regarding the Debtors' use of Cash Collateral for

one week to fund payroll and pay other critical expenses so as to, among other things, enable the orderly administration and transition to a liquidation of the Debtors' estates, to preserve and maximize the value of their estates, in accordance with the terms hereof (including the Approved Budget). The Prepetition Secured Parties have agreed to permit the Debtors to use the Cash Collateral solely in accordance with the Approved Budget, during the period from the entry of the Interim Order until the Termination Date (the "Interim Period"), subject to the terms and conditions set forth herein, including the protections afforded parties acting in "good faith" under section 363(m) of the Bankruptcy Code. The Prepetition Secured Parties are entitled to the adequate protection as and to the extent set forth herein pursuant to sections 361, 362, and 363 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements and of the use of the Cash Collateral are fair and reasonable, reflect the Debtors' prudent exercise of business judgment, and constitute reasonably equivalent value and fair consideration for the Prepetition Collateral Agent's consent thereto; provided that nothing in this Interim Order shall (x) be construed as a consent by any Prepetition Secured Party that it is adequately protected or that it would be adequately protected in the event any debtor in possession financing is provided by a third party (other than the Prepetition Secured Parties) or a consent to the terms of any such financing, including the consent to any lien encumbering any of the Prepetition Collateral (whether senior or junior), or to the use of Cash Collateral (except under the terms hereof), or (y) prejudice, limit, or otherwise impair the rights of the Prepetition Collateral Agent (for the benefit of the Prepetition Secured Parties) to seek new, different, or additional adequate protection under any circumstances or to seek the immediate conversion of these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, or any other relief. The Prepetition Secured Parties' consent to the Debtors'

use of Cash Collateral and the granting of the Adequate Protection Obligations is expressly conditioned upon entry of this Interim Order, and does not and shall not constitute consent other than pursuant to this Interim Order and on the terms set forth herein (including the Approved Budget).

J. **Sections 506(c) and 552; Marshaling**. In light of, and in exchange for (i) the Prepetition Secured Parties' agreement that their Prepetition Liens and claims, including any adequate protection liens and claims, shall be subject to the Carve-Out, in each case as and to the extent set forth herein; (ii) the consensual use of Cash Collateral consistent with the Approved Budget and the terms of this Interim Order; and (iii) the Prepetition Secured Parties' agreement to the payment (in accordance with the Approved Budget and subject to the terms and conditions of this Interim Order) of certain expenses of administration of these Chapter 11 Cases, the Prepetition Secured Parties are each entitled to a waiver of (x) subject to entry of a final cash collateral order, any "equities of the case" exception under section 552(b) of the Bankruptcy Code, (y) subject to entry of a final cash collateral order, the provisions of section 506(c) of the Bankruptcy Code and (z) subject to the entry of a final cash collateral order, the equitable doctrine of marshaling and other similar doctrines.

K. **Limitation of Liability**. The Debtors stipulate, and subject to paragraph 10, this Court finds that in permitting the Debtors to use Cash Collateral, in accepting the Approved Budget and any future Approved Budget, or in taking any other actions permitted by this Interim Order, none of the Prepetition Secured Parties shall be deemed to be in control of the operations of the Debtors or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtors.

L. **Good Faith**. The terms of the Debtors' use of Cash Collateral pursuant to this Interim Order have been the subject of extensive negotiations conducted in good faith and at arm's length between the Debtors and the Prepetition Secured Parties and, pursuant to sections 105, 361, and 363 of the Bankruptcy Code, the Prepetition Secured Parties are hereby found to have acted in good faith in connection with the negotiation and entry of this Interim Order, and each is entitled to the protections arising under sections 363(m) of the Bankruptcy Code.

M. **Relief Essential; Best Interest**. The relief requested in the Motion (and provided in this Interim Order), is necessary, essential, and appropriate for the management and preservation of the Debtors' assets and property, and satisfies the requirements of Bankruptcy Rule 6003. It is in the best interest of the Debtors' estates, and consistent with the Debtors' exercise of their fiduciary duties, that the Debtors be allowed to incur the obligations hereunder, grant the liens and claims contemplated herein to the Prepetition Secured Parties, and use Cash Collateral, as contemplated herein.

N. **Findings Regarding Corporate Authority**. Each Debtor has all requisite corporate power and authority to enter into, execute, ratify, and perform all of its Adequate Protection Obligations to which it is a party.

O. **Immediate Entry**. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2).

NOW, THEREFORE, on the Motion of the Debtors and the record before this Court with respect to the Motion, including the record made during the Interim Hearing, and with the consent of the Debtors and the Prepetition Secured Parties, and good and sufficient cause appearing therefor,

IT IS ORDERED that:

1. **Motion Granted**. The Motion is granted on an interim basis in accordance with the terms and conditions set forth in this Interim Order. Any objections to the Motion with respect to entry of this Interim Order, to the extent not withdrawn, waived, or otherwise resolved, and all reservation of rights included therein, are hereby denied and overruled.

2. **Use of Cash Collateral**. The Debtors are hereby authorized to use Cash Collateral solely in accordance with, and subject to the conditions of, this Interim Order including the Approved Budget..

3. **Adequate Protection Obligations**. As adequate protection for the interests of the Prepetition Secured Parties in the respective Prepetition Collateral (including Cash Collateral), the Prepetition Collateral Agent, in each case for the benefit of the Prepetition Secured Parties, shall receive, from and after the Petition Date, adequate protection as follows (collectively, the "Adequate Protection Obligations"):

(a) **Adequate Protection Liens**. To the extent of, and in an aggregate amount equal to, the diminution in value of the respective interests of the Prepetition Secured Parties in the Prepetition Collateral (including, on a dollar-for-dollar basis, the Cash Collateral) from and after the Petition Date, resulting from, among other things, the use, sale, or lease by the Debtors of the Prepetition Collateral (including, on a dollar-for-dollar basis, the Cash Collateral), the subordination of the Prepetition Liens to the Carve-Out, and the imposition or enforcement of the automatic stay of section 362(a) (collectively, "Diminution in Value"), the Prepetition Secured Collateral Agent, for the benefit of the Prepetition Secured Parties, is hereby granted (effective and automatically perfected as of the Petition Date and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements or other

agreements), pursuant to sections 361 and 363(e) of the Bankruptcy Code, replacement and additional security interests in and liens upon (the "Adequate Protection Liens") all of the Adequate Protection Collateral, junior and subject only to the Carve-Out.

(b) **Adequate Protection Superpriority Claim**. To the extent of any aggregate Diminution in Value of the interests of the Prepetition Secured Parties in the Prepetition Collateral (including, on a dollar-for-dollar basis, the Cash Collateral), from and after the Petition Date, the Prepetition Collateral Agent, for the benefit of the Prepetition Secured Parties, shall have an allowed superpriority administrative expense claim (the "Adequate Protection Superpriority Claim") as provided for in section 507(b) of the Bankruptcy Code, subject only to the to the Carve-Out, which Adequate Protection Superpriority Claim shall be payable from and have recourse to all assets and properties of the Debtors, including all Adequate Protection Collateral, and shall be enforceable against each Debtor and its estates.

(c) **Adequate Protection Payments, Etc.**

(I) From and after the entry of this Interim Order, interest on the respective Prepetition Secured Obligations shall continue to accrue, at the applicable default rates provided for in the respective Prepetition Note Documents, and shall in each case be paid in kind on the payment dates provided therein and added to the balance of the Prepetition Secured Claims; and

(II) All accrued and unpaid fees and disbursements (including all reasonable and documented legal, financial and other advisory, tax and investment banking fees, costs and expenses) owing to the Prepetition Secured Parties under the Prepetition Note Documents shall continue to accrue and shall constitute Prepetition Obligations or Adequate Protection Obligations, as applicable, in

each case shall accrue as Prepetition Obligations or Adequate Protection Obligations, as applicable, whether incurred prior to or after the Petition Date, including, in each case, without limitation, the fees, costs and expenses of White & Case LLP, Uzzi & Lall, Klehr, Harrison, Harvey Branzburg LLP, and E+H Rechtsanwälte GmbH, and any local and foreign counsel and other advisors of the Prepetition Secured Parties as may be reasonably required, and any replacement or additional advisors thereto, *provided* that the Prepetition Secured Parties reserve the right to seek current payment of such fees and expenses in subsequent cash collateral orders.

(d) **Adequate Protection Collateral**. As used herein, "Adequate Protection Collateral" shall mean all now owned or hereafter acquired assets, interests, rights, and property of any nature whatsoever of the Debtors, including, without limitation, all property in which the Debtors and their estates have an interest, in each case, whether real or personal, tangible or intangible, or otherwise, whenever acquired and wherever located, including, without limitation, all Prepetition Collateral, and all cash, any investment of such cash, inventory (including all vehicles and parts), accounts receivable, including intercompany accounts (and all rights associated therewith), intercompany claims, other rights to payment whether arising before or after the Petition Date, contracts, contract rights, chattel paper (whether electronic or non-electronic), goods, investment property, deposit accounts, "core concentration accounts," "cash collateral accounts," securities accounts, and in each case all amounts on deposit therein from time to time, equity interests, securities accounts, securities entitlements, securities, documents, commercial tort claims, claims, causes of action, books, records, plants, equipment, general intangibles, documents, instruments, interests in leases and leaseholds, interests in real property, fixtures,

payment intangibles, tax or other refunds, insurance proceeds, letters of credit, letter of credit rights, supporting obligations, machinery and equipment, patents, copyrights, trademarks, tradenames, other intellectual property, all licenses therefor, interests of any Debtor in any foreign subsidiary, and all proceeds, rents, profits, products, and substitutions, if any, of any of the foregoing; provided that the Adequate Protection Collateral shall not include Avoidance Actions, but, subject to the entry of a final cash collateral order, shall include all proceeds of Avoidance Actions.

(e) Notwithstanding anything to the contrary herein, no Adequate Protection Liens granted herein shall attach to any cash collateral account, reserve account, or L/C Money Market Account under the control of JPMorgan Chase Bank, National Association ("JPM"), in each case to the extent the account is for the purpose of holding cash collateral of JPM that secures letters of credit, the commercial card program, merchant services relationships, or the customer vehicle financing program; *provided however* that such liens shall attach to the Debtors' right to any refund from such accounts.

4. **Authorization and Approval to Use Cash Collateral**. Subject to the terms and conditions of this Interim Order, and to the adequate protection granted to or for the benefit of the Prepetition Secured Parties as hereinafter set forth, the Debtors are authorized during the Interim Period (and not beyond) to use the Cash Collateral as set forth in the Approved Budget and in accordance with this Interim Order. Notwithstanding anything herein to the contrary, subject only to the Debtors' rights under paragraph 19(b) hereof, the Debtors' right to use Cash Collateral shall terminate on the Termination Date. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates or proceeds resulting therefrom, except as expressly permitted herein (subject to any required Court approval) and, for the avoidance of doubt, no Cash

Collateral and no proceeds of Prepetition Collateral or Adequate Protection Collateral shall be used (i) to make any payment in settlement or satisfaction of any prepetition claim or administrative claim (other than the Adequate Protection Obligations or the Prepetition Secured Obligations as provided herein), unless in compliance with the Approved Budget or otherwise approved in writing by the Prepetition Secured Parties (and approved by the Court, if necessary); (ii) except as expressly provided or permitted hereunder, and in the Approved Budget, or as otherwise approved by the Prepetition Secured Parties (and approved by the Court, if necessary), to make any payment or distribution to or for the benefit of any affiliate, subsidiary, or insider of the Debtors, and in no event shall any management, advisory, consulting, or similar fees be paid to or for the benefit of any affiliate or insider of the Debtors, without the prior written consent of the Prepetition Secured Parties; (iii) to make any payment, advance, intercompany advance or transfer, or any other remittance or transfer whatsoever that is not in accordance with the Approved Budget; (iv) to make any payment otherwise prohibited (or not expressly permitted) by this Interim Order (including the Approved Budget); or (v) to make any intercompany loans and investments (including to and in foreign subsidiaries and affiliates) unless expressly permitted by this Interim Order and the Approved Budget.

5. **Approved Budget**.

(a) The Debtors shall use all proceeds of Prepetition Collateral and Adequate Protection Collateral, including all Cash Collateral, in accordance with the Approved Budget, provided that the Approved Budget.[12] All proceeds of the Prepetition Collateral and Adequate Protection Collateral shall be funded into and held in a blocked account under the sole dominion

[12] Notwithstanding anything to the contrary in this Interim Order, the Approved Budget shall not operate as a cap on the professional fees of the Prepetition Secured Parties' professionals.

and control of the Prepetition Collateral Agent, and shall be disbursed solely in accordance with the terms and conditions set forth in this Interim Order, including the Approved Budget.

(b) The "Approved Budget" means the one-week budget and cash flow forecast prepared by the Debtors and approved by the Prepetition Secured Parties, which is attached hereto as **Exhibit 1**. The Approved Budget may only be amended, supplemented, modified, restated, replaced, or extended with the consent of the Prepetition Secured Parties (in their sole discretion). Any such amendment, supplement, modification, restatement, replacement, or extension of the Approved Budget may be effected without further order of the Court. The Approved Budget is an integral part of this Interim Order and has been relied upon by the Prepetition Secured Parties to provide consent to this Interim Order and the use of Cash Collateral.

6. **Monitoring of Collateral**. The Prepetition Secured Parties, and their consultants and advisors, shall be given reasonable access to the Debtors' books, records, assets, and properties for purposes of monitoring the Debtors' businesses and the value of the Adequate Protection Collateral and Prepetition Collateral, at the Debtors' cost and expense.

7. **Financial Reporting, Etc**. Without limitation of the requirements of the Prepetition Note Documents, the Debtors shall provide to the Prepetition Secured Parties (and, in each case, their consultants, advisors, and professionals):

(a) A weekly certification from the Chief Restructuring Officer ("CRO") of the Debtors (i) reporting the accrued professional fees, which update and certification shall be made on the Tuesday following the end of each weekly period and (ii) confirming whether all payments were made, and all cash amounts were received, in accordance with the Approved Budget, and describing any variances from the Approved Budget, in each case for the prior week, which update and certification shall be made on the Tuesday following the end of each weekly period;

(b) Daily, or at the reasonable request of the Prepetition Secured Parties or their advisors, the CRO (and at the discretion of the CRO, the Debtors and their advisors) shall participate in a teleconference call with the Prepetition Secured Parties and/or their advisors (at the discretion of the Prepetition Secured Parties and their advisors) at such times as may be reasonably agreed by the parties, on the topics requested by the Prepetition Secured Parties and their advisors;

(c) Daily reporting of all balances in each of the Debtors' bank accounts and all bank accounts of the Debtors' non-Debtor subsidiaries;

(d) Upon reasonable notice and during regular business hours, the Debtors and their advisors shall provide the Prepetition Secured Parties and/or their advisors access to the Debtors' books and records, assets, and properties, for purposes of monitoring the Debtors' businesses and the value of the Adequate Protection Collateral and Prepetition Collateral; and

(e) The Debtors and their advisors shall provide any other reports and information required under the Prepetition Note Documents and as may otherwise be reasonably requested by the Prepetition Secured Parties or their advisors, and the Debtors hereby authorize the CRO and their accountants, attorneys, financial advisors, investment bankers, and consultants to cooperate, consult with, and provide to the Prepetition Secured Parties (and, in each case, their consultants, advisors, and professionals) all such information as may be reasonably requested with respect to the business, results of operations and financial condition of the Debtors.

8. **Subordination of Intercompany, Affiliate Liens**. All intercompany or affiliate liens of the Debtors, if any, shall be subordinated to the Adequate Protection Liens granted pursuant to this Interim Order.

9. **Adequate Protection Lien Perfection**. Automatically upon entry of this Interim Order, the Adequate Protection Liens shall be deemed to be valid, perfected, enforceable, non-avoidable, and effective by operation of law, and as of the Petition Date not subject to challenge, without the need of any further action of any kind. This Interim Order shall be sufficient and conclusive evidence of the validity, perfection, and priority of the Adequate Protection Liens without the necessity of filing or recording any financing statement, deed of trust, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction or the taking of any other action to validate or perfect the Adequate Protection Liens or to entitle the Adequate Protection Liens to the priorities granted herein. Notwithstanding the foregoing, the Prepetition Collateral Agent may, in its sole discretion, file such financing statements, deeds of trust, mortgages, security agreements, notices of liens, and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, deeds of trust, mortgages, security agreements, notices, and other agreements or documents shall be deemed to have been filed or recorded at the time and on the Petition Date. The Debtors shall execute and deliver to the Prepetition Collateral Agent all such financing statements, mortgages, security agreements, notices, and other documents as the Prepetition Collateral Agent may reasonably request to evidence, confirm, validate, or perfect, or to insure the contemplated priority of the Prepetition Collateral Agent and the Adequate Protection Liens, and the Debtors shall take all such further actions that may be required under any applicable law, or that the Prepetition Secured Parties or Prepetition Secured Parties, as applicable, may reasonably request in order to grant, preserve, protect, or perfect the Adequate Protection Liens granted pursuant to this Interim Order. The Prepetition Collateral Agent, in its sole discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer

designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtors have real or personal property and, in such event, the subject filing or recording officer shall be authorized to file or record such copy of this Interim Order.

10. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims**.

(a) The Debtors' stipulations, admissions, agreements, releases, and waivers contained in this Interim Order, including the Stipulations, are and shall be irrevocably binding upon the Debtors and any and all of the Debtors' successors in interest and assigns (including, without limitation, subject to the Challenge Period, any chapter 7 or chapter 11 trustee, responsible person, examiner with expanded powers, or other estate representative) in all circumstances and for all purposes.

(b) The Stipulations and all other admissions, agreements, releases, and waivers set forth in this Interim Order also are and shall be binding upon all other persons and entities (including any Committee) and each of their respective successors in interest and assigns in all circumstances and for all purposes, unless, and solely to the extent that (i) such parties in interest (including any Committee) in each case with standing and requisite authority to do so (subject in all respects to any agreement or applicable law which may limit or affect such entity's right or ability to do so) have timely filed the proper pleadings, and timely commenced the appropriate proceedings under the Bankruptcy Code and Bankruptcy Rules, including, without limitation, as required pursuant to Part VII of the Bankruptcy Rules (in each case subject to the limitations set forth below in this paragraph 10), (x) objecting to or challenging any of the Stipulations or (y) otherwise asserting or prosecuting any action against any of the Prepetition Secured Parties or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees in connection with or related to the matters covered by the Stipulations (each such

proceeding or appropriate pleading commencing a proceeding or other contested matter, a "Challenge"), no later than seventy-five (75) calendar days from the date of entry of this Interim Order for any party in interest with requisite standing (such period, the "Challenge Period" and the date that is the next calendar day after the termination of the Challenge Period shall be referred to as the "Challenge Period Termination Date"), as such date may be extended with respect to any such party in interest by the Prepetition Collateral Agent and each applicable Prepetition Secured Party that is the subject of a Challenge or by any such later date as has been ordered by the Court for cause upon a motion filed and served within the Challenge Period (before giving effect to such extension), and (ii) the Court enters judgment in favor of the plaintiff or movant in any such timely and properly commenced Challenge proceeding, and any such judgment has become final and is not subject to any further review or appeal. In the event that a chapter 7 trustee or a chapter 11 trustee is appointed prior to the Challenge Period Termination Date, the Challenge Period Termination Date shall be extended solely for such chapter 7 trustee or chapter 11 trustee to the date that is 20 calendar days after such trustee's appointment.

(c) Any Challenge not asserted by the timely and proper filing of a pleading by a party in interest with the requisite standing and authority as contemplated herein prior to the Challenge Period Termination Date shall be deemed forever waived, released, and barred with respect to such party in interest. To the extent a party in interest with requisite standing and authority timely and properly commences a Challenge prior to the Challenge Period Termination Date, all claims, causes of action, and other matters not specifically set forth in such Challenge shall be deemed forever waived, released, and barred with respect to such party in interest.

(d) To the extent the Stipulations (or any of them) are (x) not subject to a Challenge timely and properly commenced prior to the Challenge Period Termination Date or (y) subject to

a Challenge timely and properly commenced prior to the Challenge Period Termination Date, to the extent any such Challenge does not result in a final and non-appealable judgment or order of the Court that is inconsistent with such Stipulations, then, in each case, without further notice, motion, or application to, or order of, or hearing before, this Court and without the need or requirement to file any proof of claim: (i) any and all such Challenges by any Committee, or any other party in interest shall be deemed to be forever waived, released, and barred, including in the event the Court enters an order dismissing these Chapter 11 Cases or converting these Chapter 11 Cases to cases under chapter 7 (each, a "Successor Case"), and the Prepetition Secured Obligations shall be deemed to be an allowed secured claim within the meaning of sections 502 and 506 of the Bankruptcy Code for all purposes in connection with these Chapter 11 Cases, and all of the Stipulations and all other waivers, releases, and affirmations set forth in this Interim Order (or any not properly and timely challenged) shall be in full force and effect and shall be binding, conclusive, and final on any person, entity, or party in interest, including any Committee (in each case, and their successors and assigns), in the Chapter 11 Cases and in any Successor Case for all purposes, without any further order of the Court, and shall not be subject to challenge or objection by the Committee or any other party in interest, including, without limitation, any other statutory committee, any trustee, responsible individual, examiner with expanded powers, or other representative of the Debtors' estates.

(e) If any Challenge is timely and properly filed during the Challenge Period, the Stipulations and all other waivers, releases, and affirmations contained in this Interim Order shall nonetheless remain binding and preclusive, as provided in this paragraph 10, on all other parties in interest (including any Committee), and on any other person or entity, except for the plaintiff or movant timely and successfully asserting such Challenge, as set forth in a final, non-appealable

order of a court of competent jurisdiction. Notwithstanding anything to the contrary herein, the right to commence any Challenge under this Interim Order is preserved only as against any particular Prepetition Secured Obligation or against any Prepetition Secured Party to the extent such Challenge is commenced timely and properly prior to the Challenge Period Termination Date, and in respect of such Prepetition Secured Obligation or Prepetition Secured Party, and is otherwise waived as set forth in this paragraph 10.

(f) All remedies or defenses of any party with respect to any Challenge are hereby preserved. Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code) including any Committee (if any) appointed in these Chapter 11 Cases, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, any Challenges with respect to any of the Prepetition Secured Obligations, and an order of the Court (or any other court of competent jurisdiction) conferring such standing on a Committee or other party in interest shall be a prerequisite for the prosecution of a Challenge by the Committee or such other party in interest.

11. **Limitations on Use of Cash Collateral**. Notwithstanding anything herein to the contrary, no portion of the proceeds of the Adequate Protection Collateral, Prepetition Collateral, any Cash Collateral, or the Carve-Out, and no disbursements set forth in the Approved Budget, may be used for the payment of professional fees, disbursements, costs, or expenses incurred by any person in connection with (a) incurring indebtedness other than as expressly provided in this Interim Order or the Approved Budget, (b) preventing, hindering, impeding, or delaying any of the Prepetition Secured Parties' enforcement or realization upon, or exercise of rights in respect of, any of the Adequate Protection Collateral or Prepetition Collateral in accordance with this Interim Order and the Prepetition Note Documents, (c) seeking to amend or modify any of the

rights or interests granted to any of the Prepetition Secured Parties under this Interim Order or the Prepetition Note Documents, in a manner adverse to any Prepetition Secured Party, including seeking to use Cash Collateral on a contested basis, without the prior written consent of the Prepetition Collateral Agent, (d) directly or indirectly asserting, commencing, or prosecuting any claims or causes of action, including, without limitation, any Challenge or any other actions under chapter 5 of the Bankruptcy Code (or any similar law), against the Prepetition Collateral Agent, or any other Prepetition Secured Party, or any of their respective affiliates, agents, attorneys, advisors, professionals, officers, directors, or employees, or (e) directly or indirectly asserting, joining, commencing, supporting, investigating, or prosecuting any Challenge, or any other action for any claim, counterclaim, action, cause of action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or adverse to the material interests of, the Prepetition Secured Parties arising out of, in connection with, or relating to this Interim Order or the Prepetition Note Documents, or in each case the transactions contemplated hereunder or thereunder, including, without limitation, (i) any action arising under the Bankruptcy Code, (ii) any so-called "lender liability" claims and causes of action, (iii) any action with respect to the validity and extent of the Adequate Protection Obligations, the Prepetition Secured Obligations, or the validity, extent, perfection and priority of the Prepetition Liens, (iv) any action seeking to invalidate, set aside, avoid, reduce, set off, offset, recharacterize, subordinate (whether equitable, contractual, or otherwise), recoup against, disallow, impair, raise any defenses, cross-claims, or counterclaims, or raise any other challenges under the Bankruptcy Code or any other applicable domestic or foreign law or regulation against, or with respect to, the Prepetition Liens or the Adequate Protection Liens, in whole or in part, or (v) appeal or otherwise challenge this Interim Order or any other interim or final cash collateral order.

12. **Carve-Out**.

(a) As used in this Interim Order, the "Carve-Out" means the sum of: (i) all fees required to be paid to the Clerk of the Court and all statutory fees payable to the U.S. Trustee under section 1930(a) of title 28 of the United States Code, together with the statutory rate of interest (without regard to the notice set forth in (iii) below); (ii) all reasonable and documented fees and expenses up to $25,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (iii) below); and (iii) to the extent allowed by the Court at any time, pursuant to a fee application on notice, or other procedure permitted by any Court order allowing interim compensation or the payment of fees of ordinary course professionals, whether by interim order, final order, procedural order, or otherwise, all reasonable and documented unpaid fees and expenses (but excluding any success, restructuring, or transaction fees) (the "Allowed Professional Fees") incurred by estate professionals retained by the Debtors pursuant to section 327, 328, or 363 of the Bankruptcy Code (collectively, the "Debtor Professionals") and any official committee of unsecured creditors (a "Committee"), if any (together with the Debtor Professionals, the "Professionals") (x) at any time before the Termination Date, for the period of time from the Petition Date to the Termination Date, and (y) after the Termination Date, in the case of this clause (y) up to an amount to be mutually agreed between the Debtors and the Prepetition Secured Parties, whether allowed by the Court prior to or after the Termination Date; *provided* that the portion of the Carve-Out referred to in clause (y) above shall be reduced, dollar-for-dollar, by the amount of any fees and expenses that are incurred by the Debtors after the Termination Date and paid to the applicable Professionals after the Petition Date and by the amount of any prepetition retainers received by any Professional and not previously applied to fees and expenses of such Professional; and *provided further* that with respect to the Debtors' Professionals, the Carve-Out shall not apply

to any Allowed Professional Fees incurred in connection with (A) any actions enumerated in paragraph 11 above, (B) the provision of any advice to any directors or officers of the Debtors in his or her personal capacity, or (C) the pursuit of any sale of assets the pursuit of which is not supported by the Prepetition Secured Parties (it being understood that the currently contemplated fleet sale is supported by the Prepetition Secured Parties).

(b) None of the Prepetition Secured Parties shall be responsible for the payment or reimbursement of any fees or disbursements of any Professional incurred in connection with the Chapter 11 Cases or any successor cases under any chapter of the Bankruptcy Code. Nothing in this Interim Order or otherwise shall be construed to obligate the Prepetition Secured Parties, in any way, to pay compensation to, or to reimburse expenses of, any Professional or to guarantee that the Debtors have sufficient funds to pay such compensation or reimbursement. The Prepetition Secured Parties reserve the right to review and object to any fee statement, interim application, or monthly application issued or filed by the Professionals.

(c) For the avoidance of doubt, the Carve-Out established pursuant to this Interim Order shall (1) be senior in priority to all Prepetition Liens and any Adequate Protection Liens; and (2) have priority in payment over all Prepetition Secured Obligations and any Adequate Protection Superpriority Claims.

13. **Payment of Compensation**. Nothing herein shall be construed as a consent to the allowance of any professional fees or expenses of any of the Debtors or the Committee (if any) or shall limit or otherwise affect the right of the Prepetition Secured Parties or any other party in interest to object to the allowance and payment of any such fees and expenses. No professional fees of any of the Debtors or the Committee (if any) shall be paid absent a Court order allowing

such payment, pursuant to a fee application on notice, or other procedure permitted by any Court order allowing interim compensation or the payment of fees of ordinary course professionals.

14. **Section 506(c) Claims**. As a further condition of the Debtors' authorization to use the Cash Collateral (and the consent of the Prepetition Secured Parties to the Carve-Out to the extent provided herein), the Debtors (and any successors thereto or any representatives thereof, including any trustees appointed in the Chapter 11 Cases or any Successor Case) shall be deemed, subject to the entry of a final cash collateral order, to have waived any rights, benefits, or causes of action under section 506(c) of the Bankruptcy Code as they may relate to or be asserted against the Prepetition Secured Parties, the Adequate Protection Liens, the Adequate Protection Collateral, the Prepetition Liens, and the Prepetition Collateral. Except to the extent of the Carve-Out, nothing contained in this Interim Order, in any other interim or final cash collateral order, or in the Prepetition Note Documents shall be deemed a consent by the Prepetition Secured Parties to any charge, lien, assessment, or claim against, or in respect of, the Adequate Protection Collateral or the Prepetition Collateral under sections 105 or 506(c) of the Bankruptcy Code or otherwise, and no such consent shall be implied from any other action, inaction, or acquiescence by any such parties.

15. **Collateral Rights; Limitations in Respect of Subsequent Court Orders**. Without limiting any other provisions of this Interim Order, unless the Prepetition Collateral Agent has provided its prior written consent, it shall be an Event of Default under this Interim Order for there to be entered in these Chapter 11 Cases, or in any Successor Case, any order which authorizes (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on any all or any portion of the Adequate Protection Collateral, or which is entitled to priority administrative status which is superior to or *pari passu* with those

granted pursuant to this Interim Order to or for the benefit of the Prepetition Secured Parties or the Prepetition Liens or (ii) the use of proceeds of the Cash Collateral for any purpose other than as permitted under the Prepetition Note Documents and in accordance with this Interim Order and the Approved Budget.

16. **Cash Management**. From and after the date of the entry of this Interim Order, the Debtors shall maintain their cash management system in accordance with an order of this Court approving the maintenance of the Debtors' cash management system, in form and substance acceptable to the Prepetition Secured Parties (the "Cash Management Order"), and as otherwise agreed by the Prepetition Secured Parties. Except as otherwise permitted under this Interim Order or otherwise agreed to in writing by the Prepetition Collateral Agent, the Debtors shall maintain no accounts except those identified in the Cash Management Order. The Debtors and the financial institutions where the Debtors maintain deposit accounts (as identified in the Cash Management Order), are authorized and directed to remit, without offset or deduction, funds in such deposit accounts upon receipt of any direction to that effect from the Prepetition Collateral Agent (acting at the direction of the Prepetition Secured Parties). The Prepetition Collateral Agent shall be deemed to have "control" over all cash management accounts for all purposes of perfection under the Uniform Commercial Code pursuant to this Interim Order and, if required, pursuant to control agreements acceptable to the Prepetition Collateral Agent. In no event shall the Debtors be permitted to transfer any funds to any non-Debtor affiliate or subsidiary.

17. **Survival of Certain Provisions**. In the event of the entry of any order converting any of these Chapter 11 Cases into a Successor Case, the Adequate Protection Liens, the Adequate Protection Superpriority Claim, and the Carve-Out shall continue in these proceedings and in any

Successor Case, and such Adequate Protection Liens, Adequate Protection Superpriority Claim, and Carve-Out shall maintain their respective priorities as provided by this Interim Order.

18. **Events of Default**. Unless an Event of Default (as defined below) is waived by the Prepetition Collateral Agent (acting at the direction of the Prepetition Secured Parties) in writing, subject only to any rights and terms set forth in paragraph 19 below, the Debtors' right to use Cash Collateral shall terminate, without further order of this Court or any further action by the Prepetition Secured Parties, on the earliest to occur of any of the following (each, an "Event of Default"):

(a) The Debtors sell (including, without limitation, in any sale and leaseback transaction), transfer (including any assignment of rights), lease, encumber, or otherwise dispose of any portion of the Prepetition Collateral or Adequate Protection Collateral, except as expressly permitted under this Interim Order, or as otherwise agreed to in writing by the Prepetition Secured Parties;

(b) The Debtors' cash management system shall not be maintained at all times in accordance with the terms of this Interim Order and the Cash Management Order;

(c) The Debtors' failure to comply with any provision of this Interim Order, including making any payments other than in accordance with the Approved Budget and this Interim Order;

(d) Any representation made by the Debtors (or the CRO on behalf of the Debtors) regarding the Debtors' or their non-Debtors subsidiaries' bank accounts, or the balances in such accounts as of the date of such representation, is determined to have been materially incorrect when made;

(e) Unless the Prepetition Collateral Agent has provided its prior written consent, the date of the Court entering any order, during these Chapter 11 Cases or any Successor Case, which

authorizes (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other lien on all or any portion of the Adequate Protection Collateral, or which is entitled to priority administrative status which is senior to or *pari passu* with those granted pursuant to this Interim Order to or for the benefit of the Prepetition Secured Parties or (ii) the use of proceeds of the Cash Collateral for any purpose other than as permitted under the Prepetition Note Documents, this Interim Order and the Approved Budget;

(f) The Debtors fail to make any payment due under this Interim Order;

(g) The Debtors file or support any plan of liquidation or reorganization in the Chapter 11 Cases that is not consented to by the Prepetition Secured Parties;

(h) This Interim Order ceases, for any reason, to be in full force and effect;

(i) The Debtors file an application, motion, or other pleading seeking to amend, modify, reverse, revoke, stay, rescind, vacate, supplement, or extend this Interim Order without the prior written consent of the Prepetition Secured Parties, or an order is entered amending, reversing, revoking, staying, rescinding, vacating supplementing, extending, or otherwise modifying this Interim Order without the consent of the Prepetition Secured Parties;

(j) The Debtors file an application, motion, or other pleading seeking, or an order is entered allowing, the use of Prepetition Collateral or Adequate Protection Collateral (including Cash Collateral) on any terms other than as set forth in this Interim Order without the consent of the Prepetition Secured Parties;

(k) The Debtors file any application, motion, or other pleading seeking approval of debtor in possession financing or the use of Cash Collateral without the consent of the Prepetition Secured Parties, or an order is entered approving debtor in possession financing or the use of Cash Collateral in each case without the consent of the Prepetition Secured Parties;

(l) The Debtors file an application, motion, or other pleading for the approval of any superpriority claim or any lien that is *pari passu* with or senior to the Adequate Protection Liens, the Prepetition Liens or the Prepetition Secured Obligations without the prior written consent of the Prepetition Secured Parties or an order is entered approving any superpriority claim or any lien that is *pari passu* with or senior to the Adequate Protection Liens, the Prepetition Liens or the Prepetition Secured Obligations without the prior written consent of the Prepetition Secured Parties;

(m) The Debtors or any affiliate of the Debtors files any pleading or commences any action against any Prepetition Secured Party challenging the validity or enforceability of any of the Prepetition Secured Obligations, the Prepetition Liens, the Adequate Protection Superpriority Claims or the Adequate Protection Liens, or seeking to avoid, disallow, subordinate, or recharacterize any claim, lien, or interest held by any of the Prepetition Secured Parties arising under or related to any of the Prepetition Secured Obligations or this Interim Order;

(n) The Court enters an order dismissing these Chapter 11 Cases, converting these Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, appointing a chapter 11 trustee in any of these chapter 11 cases, or an examiner with expanded powers relating to the operation of the Debtors or administration of any of these chapter 11 cases, or terminates the Debtors' exclusive periods under Bankruptcy Code section 1121, unless, in each case, consented to in writing by the Prepetition Secured Parties; and

(o) The Court enters an order granting relief from the automatic stay in order to permit any party to proceed against any Prepetition Collateral or Adequate Protection Collateral with a fair market value of $10,000.

19. **Rights and Remedies Upon Event of Default**.

(a) Any automatic stay otherwise applicable to the Prepetition Secured Parties and the Prepetition Collateral Agent, whether arising under sections 105 or 362 of the Bankruptcy Code or otherwise, is hereby modified so that, (i) upon the occurrence and during the continuance of an Event of Default, the Prepetition Secured Parties, in their sole and absolute discretion, may immediately (w) deliver a notice of an Event of Default; (x) terminate any use of Cash Collateral; and (y) subject to the Carve-Out and the Debtors' permitted uses of Cash Collateral during the Default Notice Period as set forth in paragraph 19(b), sweep all cash in any controlled accounts, and (ii) upon and after the occurrence of the Termination Date, the Prepetition Collateral Agent shall, without further notice to, hearing of, or order from this Court, at the same time or different times, unless the Court orders otherwise and be immediately entitled to exercise all of the foregoing rights and remedies, and all other rights and remedies in respect of the Adequate Protection Collateral and the Prepetition Collateral, in accordance with this Interim Order and the Prepetition Note Documents, as applicable, and applicable law. The term "Termination Date" shall mean the earlier to occur of (i) June 28, 2024, unless on or prior to such date, the Prepetition Secured Parties have consented to the entry of a Second Interim Order, and the Court enters a Second Interim Order, in form and substance acceptable to the Prepetition Secured Parties, extending the use of Cash Collateral, and (ii) the occurrence of any Event of Default (solely in the case of this clause (ii), subject to the Default Notice Period (as defined below), as and to the extent provided in paragraph 19(b)).

(b) Notwithstanding the foregoing subparagraph (a) of this paragraph 19, immediately following the giving of notice by the Prepetition Collateral Agent to lead restructuring counsel to the Debtors, counsel for the Committee (if any), and the U.S. Trustee of the occurrence of an Event of Default: (i) the Debtors shall have no right to request or use any proceeds of the Adequate

Protection Collateral or Prepetition Collateral, or to use Cash Collateral, other than towards the satisfaction of the Adequate Protection Obligations, the Prepetition Obligations, and the Carve-Out (as and to the extent provided in this Interim Order); *provided* that during the Default Notice Period (defined below), the Debtors shall be permitted to continue to use Cash Collateral (x) solely in accordance with the Approved Budget and with the consent of the Prepetition Secured Parties, to fund expenses critically necessary to preserve the value of the Prepetition Collateral and Adequate Protection Collateral and (y) to make distributions of amounts on account of payroll obligations that accrued prior to the end of the Interim Period; (ii) the Debtors shall deliver and cause the delivery of the proceeds of the Prepetition Collateral and Adequate Protection Collateral, including all Cash Collateral, to the Prepetition Collateral Agent as provided herein; and (iii) the Prepetition Collateral Agent shall be permitted to apply such proceeds in accordance with the terms of this Interim Order. The Debtors and any Committee shall be entitled to an emergency hearing before this Court within three (3) calendar days after the giving of written notice by the Prepetition Collateral Agent, as applicable, of the occurrence of an Event of Default (such 3-calendar day period, the "Default Notice Period"). If the Debtors or any Committee (if any) or any other party in interest, does not contest the occurrence of the Event of Default within the Default Notice Period, or if there is a timely contest of the occurrence of an Event of Default and the Court after notice and a hearing declines to stay the enforcement thereof, the Termination Date shall be deemed to have occurred for all purposes and the automatic stay, as to the Prepetition Secured Parties, shall automatically terminate in all respects.

(c) Upon the occurrence of the Termination Date, the Prepetition Secured Parties are authorized to exercise all remedies and proceed under or pursuant to the applicable the Prepetition Note Documents, this Interim Order, and applicable law, and, at the election of the Prepetition

Secured Parties (1) the Prepetition Secured Parties shall be authorized to exercise all rights to credit bid for or enforce any other rights and remedies against the Adequate Protection Collateral and the Prepetition Collateral, as applicable, (2) the Debtors' board of directors shall be replaced with a single director reasonably acceptable to the Prepetition Secured Parties and the Debtors, with a division of responsibility and authority with the CRO acceptable to the Prepetition Secured Parties, or (3) the Prepetition Secured Parties shall be entitled to an emergency hearing to seek to convert the Chapter 11 Cases to cases under chapter 7 of the Bankruptcy Code, in the case of each of the foregoing, subject only to giving notice to the Court, and, other than with respect to clause (3) above, without further hearing of, or order from the Court.

(d) The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to (i) permit the Debtors to grant the Adequate Protection Liens and to incur all Adequate Protection Obligations to the Prepetition Secured Parties hereunder, and (ii) authorize Prepetition Secured Parties to retain and apply payments, and otherwise enforce all of their respective rights and remedies hereunder.

(e) The Debtors shall reasonably cooperate with the Prepetition Secured Parties in their efforts to enforce their liens and security interests in the Adequate Protection Collateral, as applicable, in accordance with this Interim Order and (other than the right to contest whether an Event of Default has occurred and is continuing) the Debtors shall not take or direct any entity to take any action designed or intended to hinder or restrict in any respect such party from enforcing its rights or remedies in the Adequate Protection Collateral, as applicable.

(f) Nothing included herein shall prejudice, impair, or otherwise affect any of the Prepetition Secured Parties' respective rights to seek any other or supplemental relief in respect of the Debtors (including, as the case may be, any other or additional adequate protection).

20. **Application of Proceeds of Collateral, Payments and Collections**.

(a) As a condition to the authorization to use Cash Collateral, each Debtor has agreed that proceeds of any Prepetition Collateral or Adequate Protection Collateral, any amounts held on account of the Prepetition Collateral or Adequate Protection Collateral, and all payments and collections received by the Debtors with respect to all proceeds of Prepetition Collateral or Adequate Protection Collateral, shall be used and applied in accordance with the Approved Budget, this Interim Order, and the Prepetition Note Documents.

(b) Subject to the Debtors' rights under paragraph 19(b) hereof, upon and after the occurrence of the Termination Date, all Cash Collateral and all proceeds of Adequate Protection Collateral and Prepetition Collateral, whenever received, shall, subject to the Carve-Out, be paid and applied, *first*, subject only to paragraph 10 hereof, to permanently and indefeasibly repay and reduce any Adequate Protection Obligations and the Prepetition Secured Obligations then due and owing in accordance with the Prepetition Note Documents, until paid and satisfied in full in cash, and *thereafter*, if any proceeds remain, to the Debtors' estates. For avoidance of doubt, nothing in this Interim Order shall be construed to limit the voluntary and mandatory repayment provisions set forth in the Prepetition Note Documents.

21. **Proofs of Claim, Etc**. None of the Prepetition Secured Parties shall be required to file proofs of claim in any of the Chapter 11 Cases or any Successor Case for any claim described herein. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in any of the Chapter 11 Cases or any Successor Case to the contrary, the Prepetition Collateral Agent, on behalf of itself and the respective Prepetition Secured Parties, respectively, is hereby authorized and entitled, in each case in its sole and absolute discretion, but not required, to file (and amend or supplement, as each sees fit) a proof of claim or aggregate proofs of claim in any

of the Chapter 11 Cases or any Successor Case for any claim described herein; for avoidance of doubt, any such proof of claim may (but is not required to be) filed as one consolidated proof of claim against all of the Debtors, rather than as separate proofs of claim against each Debtor. Any proof of claim filed by the Prepetition Collateral Agent shall be deemed to be in addition to and not in lieu of any other proof of claim that may be filed by any of the respective Prepetition Secured Parties. Any order entered by the Court in relation to the establishment of a bar date for any claim (including without limitation administrative claims) in any of the Chapter 11 Cases or any Successor Case shall not apply to the Prepetition Collateral Agent or the other Prepetition Secured Parties.

22. **Payments Free and Clear**. Subject only to paragraph 10 hereof, any and all payments or proceeds remitted to the Prepetition Secured Parties, pursuant to the provisions of this Interim Order or any subsequent order of the Court shall be irrevocable, received free and clear of any claim, charge, assessment or other liability.

23. **Loss or Damage**. Nothing in this Interim Order, the Prepetition Note Documents or any other documents related to the transactions contemplated hereunder or thereunder shall in any way be construed or interpreted to impose or allow the imposition upon the Prepetition Secured Parties of (a) any liability for any claims, liabilities, or causes of action arising from, related to, or in connection with the prepetition or postpetition activities of the Debtors in the operation of their business or their restructuring or liquidation efforts, any aspect of, or the negotiation, consummation, or enforcement of any of the ancillary documents and security arrangements related thereto, this Interim Order, or the transactions contemplated herein or therein, or (b) any fiduciary duties to the Debtors, their respective creditors, shareholders, affiliates, or estates. In addition, (a) the Prepetition Secured Parties shall not, in any way or manner, be liable or

responsible for (i) the safekeeping of the Prepetition Collateral and Adequate Protection 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 Prepetition Collateral and Adequate Protection Collateral shall be borne solely by the Debtors.

24. **Other Rights and Obligations**.

(i) **Expenses**. To the fullest extent provided in the Prepetition Note Documents and this Interim Order, all fees and expenses incurred by the Prepetition Secured Parties and shall accrue as Prepetition Obligations or Adequate Protection Obligations, as applicable (including, without limitation, the reasonable and documented fees and disbursements of White & Case LLP, Uzzi & Lall, Klehr, Harrison, Harvey & Branzburg LLP, and E+H Rechtsanwälte GmbH, and any other advisors, including any local, foreign or specialty counsel retained by the Prepetition Secured Parties, and any internal or third-party appraisers, consultants, financial, restructuring, or other advisors and auditors advising any such counsel) as may be reasonably required, and any replacement or additional advisors thereto, in connection with (i) the administration of the Prepetition Note Documents, (ii) the Chapter 11 Cases or any Successor Case, or (iii) monitoring, protection, or enforcement of any rights or remedies under the Prepetition Note Documents and this Interim Order, in each case whether or not the transactions contemplated hereby are fully consummated.

(ii) **Credit Bid**. Subject only to paragraph 10 hereof and the Carve-Out, the Prepetition Secured Parties shall have the right to credit bid (independently or together, and either directly or through one or more acquisition vehicles) as permitted under section 363(k) of the Bankruptcy Code, up to the full amount of the Prepetition Secured Obligations and the Adequate

Protection Obligations, or any of them, in connection with any sale of all or any portion of the Prepetition Collateral or the Adequate Protection Collateral, including (without limitation) any sale occurring pursuant to section 363 of the Bankruptcy Code or included as part of any chapter 11 plan subject to confirmation under section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise, without the need for further court order authorizing the same. No Debtor shall object to any Prepetition Secured Party credit bidding up to the full amount of the applicable outstanding Prepetition Secured Obligations and any Adequate Protection Obligations, in each case including any accrued interest, fees, and expenses, in any sale of any Adequate Protection Collateral or Prepetition Collateral, as applicable, whether such sale is effectuated through sections 363 or 1129 of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise, without the need for a further court order authorizing the same. If the Prepetition Collateral Agent and the Prepetition Secured Parties (either directly or through one or more acquisition vehicles) make a credit bid in connection with any auction or other sale process relating to the sale or other disposition of any Prepetition Collateral or Adequate Protection Collateral, then for purposes of such auction or sale process or any applicable order of this Court, each of the Prepetition Collateral Agent and Prepetition Secured Parties shall be deemed to be a "qualified bidder" and its bid shall be a "qualified bid" regardless of whether any qualified bidder or qualified bid requirements are satisfied.

(iii) **Binding Effect**. The provisions of this Interim Order shall be binding upon and inure to the benefit of the Prepetition Secured Parties, the Debtors, and their respective successors and assigns (including any trustee or other fiduciary hereinafter appointed as a legal representative of the Debtors or with respect to the property of the estates of the Debtors) whether

in the Chapter 11 Cases, in any Successor Case, or upon dismissal of any such Chapter 11 or chapter 7 case.

(iv) **No Waiver**.

(a) The failure of the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the Prepetition Note Documents or otherwise, as applicable, shall not constitute a waiver of any of the Prepetition Secured Parties' rights hereunder, thereunder, or otherwise. Notwithstanding anything herein, the entry of this Interim Order is without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair any of the rights, claims, privileges, objections, defenses, or remedies of the Prepetition Secured Parties under the Bankruptcy Code or under non-bankruptcy law against any other person or entity in any court, including without limitation, the rights of the Prepetition Collateral Agent and the Prepetition Secured Parties (i) to request conversion of any of the Chapter 11 Cases to cases under chapter 7, dismissal of any of the Chapter 11 Cases, or the appointment of a trustee in any of the Chapter 11 Cases, or (ii) to propose, subject to the provisions of section 1121 of the Bankruptcy Code, a plan of reorganization or liquidation, or similar dispositive plan, or (iii) to exercise any of the rights, claims, or privileges (whether legal, equitable, or otherwise) on behalf of the Prepetition Secured Parties.

(b) The failure or delay on the part of any Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the Prepetition Note Documents, or applicable law, as the case may be, shall not constitute a waiver of any of their respective rights hereunder, thereunder or otherwise. No delay on the part of any party in the exercise of any right or remedy under this Interim Order shall preclude any other or further exercise of any such right or remedy or the exercise of any other right or remedy. None of the rights or

remedies of any party under this Interim Order shall be deemed to have been amended, modified, suspended, or waived unless such amendment, modification, suspension, or waiver is express, in writing and signed by the party against whom such amendment, modification, suspension, or waiver is sought. No consents required hereunder by any Prepetition Secured Parties shall be implied by any inaction or acquiescence by any of the respective Prepetition Secured Parties.

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

(vi) **No Marshaling**. Subject to the entry of a final cash collateral order, Prepetition Secured Parties shall not be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Adequate Protection Collateral or the Prepetition Collateral, as applicable.

(vii) **Section 552(b)**. The Prepetition Secured Parties shall each be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code and, subject to the entry of a final cash collateral order, the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Parties with respect to proceeds, product, offspring, or profits of any of the Prepetition Collateral or the Adequate Protection Collateral.

(viii) **Priority of Terms**. To the extent of any conflict between or among (a) the express terms or provisions of any of the Prepetition Note Documents, the Motion, or any other agreements, on the one hand, and (b) the terms and provisions of this Interim Order, on the other hand, the terms and provisions of this Interim Order prevail.

(ix) **Survival of Interim Order**. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered (i) confirming any plan in any of the Chapter 11 Cases, (ii) converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, (iii) to the extent authorized by applicable law, dismissing any of the Chapter 11 Cases, (iv) withdrawing of the reference of any of the Chapter 11 Cases from this Court, or (v) providing for abstention from handling or retaining of jurisdiction of any of the Chapter 11 Cases in this Court. The terms and provisions of this Interim Order and the Prepetition Note Documents, including the Adequate Protection Obligations granted pursuant to this Interim Order, and the Prepetition Note Documents and any priorities and protections granted to or for the benefit of the Prepetition Secured Parties (including the Adequate Protection Liens and the Adequate Protection Superpriority Claim) hereunder and thereunder, shall continue in full force and effect to the fullest extent provided by section 363(m) of the Bankruptcy Code.

(x) **Enforceability**. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof.

(xi) **No Waivers or Modification of Interim Order**. The Debtors irrevocably waive any right to seek any modification or extension of this Interim Order without the prior written consent of the Prepetition Collateral Agent, and no such consent shall be implied by any other action, inaction, or acquiescence of the Prepetition Collateral Agent or the other Prepetition Secured Parties. The Debtors may not seek to modify or to alter the lien priorities of the respective Prepetition Liens and the Adequate Protection Liens set forth in this Interim Order.

(xii) **Waiver of any Applicable Stay**. Any applicable stay (including, without limitation, under Bankruptcy Rule 6004(h)) is hereby waived and shall not apply to this Interim Order.

(xiii) **Necessary Action**. The Debtors are authorized and directed to take any and all actions and to make, execute and deliver any and all instruments as may be reasonably necessary to implement the terms of this Interim Order and the transactions contemplated hereby.

(xiv) **Effectiveness**. This Interim Order shall constitute findings of fact and conclusions of law and shall be effective as of the Petition Date. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062 or 9024, or any other Bankruptcy Rule, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

(xv) **Bankruptcy Rules**. The requirements of Bankruptcy Rule 4001, 6003, and 6004, in each case to the extent applicable, are satisfied by the contents of this Motion.

25. **Reservations to Any Final Relief**. Notwithstanding language in this Interim Order that provides that certain relief is subject to or conditioned upon entry of a final cash collateral order, such provisions are not intended to be automatically effective and are without prejudice to rights of parties in interest to object to the relief on a final basis and the Court's authority to determine the final relief.

26. **Second Interim Hearing**.

(i) A Second Interim Hearing to consider entry of the Second Interim Order and approval of the continued use of Cash Collateral is scheduled for June 27, 2024 at 3:00 p..m. (EST) at the United States Bankruptcy Court for the District of Delaware.

(ii) On or before two (2) business days after entry of this Interim Order, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Second Interim Hearing (the "Second Interim Hearing Notice"), together with copies of this Interim Order and the Motion, on the Notice Parties and to any other party that has filed a request for notices with this Court prior thereto. The Second Interim Hearing Notice shall state that any party in interest objecting to the entry of the proposed Second Interim Order shall file written objections with the Clerk of the Court no later than June 26, 2024 at 4:00 p.m. (EST), which objections shall be served so that the same are received on or before such date by: (a) proposed counsel for the Debtors, Davis Polk & Wardwell LLP, Attn: Brian M. Resnick (brian.resnick@davispolk.com) and Darren Klein (darren.klein@davispolk.com) and; (b) counsel to the Prepetition Secured Parties, White & Case LLP, 1221 Avenue of the Americas, New York, NY 10020, Attn: Scott Greissman (sgreissman@whitecase.com) and Elizabeth Feld (efeld@whitecase.com) and Klehr Harrison Harvey Branzburg, LLP, 919 N. Market St, Suite 1000, Wilmington, DE 19801, Attn: Richard M. Beck (rbeck@klehr.com); and (c) the U.S. Trustee, J. Caleb Boggs Federal Building, 844 North King Street, Suite 2207, Wilmington, DE 19801, Attn: Linda Richenderfer (linda.richenderfer@usdoj.gov) and Malcolm M. Bates (malcolm.m.bates@usdoj.gov).

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

Thomas M. Horan

Dated: June 24th, 2024
Wilmington, Delaware

THOMAS M. HORAN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

APPROVED BUDGET

[To come]

Fisker Inc., et al.

Cash Collateral Budget (USD 000s)

	Cash Collateral Budget		Cash Collateral Budget Total
Week	**Week 1**	**Week 2**	
Forecast	**Forecast**	**Forecast**	
Week Ending	**21-Jun-24**	**28-Jun-24**	**Jun 18 - Jun 28**
Projected Cash Receipts:			
Receipts from Customers	$ 108	$ -	$ 108
Allego Share Sales	372	-	372
Reimbursement by American Lease	-	-	-
Other Receipts	-	-	-
Total Receipts	**$ 480**	**$ -**	**$ 480**
Projected Cash Disbursements:			
Employee Payroll & Benefits	$ (474)	$ (1,262)	$ (1,736)
Taxes / Regulatory	(65)	(41)	(106)
IT / Software	-	-	-
Engineering	-	-	-
After Sales Service	-	-	-
Professional Services	(117)	(28)	(146)
Board Fees	-	-	-
Rent	-	-	-
Insurance	-	-	-
Freight & Other	-	(45)	(45)
Vehicle Buybacks	-	-	-
Other	-	-	-
Total Operating Disbursements	**$ (657)**	**$ (1,375)**	**$ (2,032)**
Net Operating Cash Flow / (Deficit)	**$ (177)**	**$ (1,375)**	**$ (1,552)**
Non Operating:			
Restructuring Professionals[1]	$ -	$ -	$ -
Utility Deposits	-	(63)	(63)
Total Non Operating	**$ -**	**$ (63)**	**$ (63)**
Net Cash Flow / (Deficit)	**($177)**	**($1,438)**	**($1,615)**
Beginning Cash Balance	$ 10,090	9,913	10,090
Net Cash Flow / (Deficit)	(177)	(1,438)	(1,615)
Draw from KCC – Payroll Escrow Balance	-	-	-
Ending Total Cash Balance	**$ 9,913**	**$ 8,474**	**$ 8,474**
Less Restricted / Trapped Cash:			
Cash Collateralized LCs	$ (6,087)	$ (6,087)	$ (6,087)
Deposits Relating to Vehicle Financing	$ (1,006)	(1,006)	(1,006)
Ending Total Cash, Unrestricted	**$ 2,820**	**$ 1,382**	**$ 1,382**
KCC – Payroll Escrow Balance	-	-	-
Ending Total Cash, Unrestricted + Escrow	**$ 2,820**	**$ 1,382**	**$ 1,382**

1 Debtor professional fees will not be paid during the interim period, but will be included in the carve out and paid later in the case (including in connection with any chapter 7 conversion).